

THOMPSON COBURN

Attorneys at Law

700 14TH Street, N.W.
Washington, D.C. 20005-2010
202-508-1000
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W-23-1K
RECORDATION NO. 23 FILED

OCT 6 '98 3-51 PM

October 6, 1998

Jacqueline T. Colclough
202-508-1009

VIA HAND DELIVERY

Secretary
Surface Transportation Board
Washington, DC 20423

Re: Transmittal Letter for Recordation of Charter Assignment

Dear Secretary:

On behalf of our client, American Commercial Barge Line LLC, we have enclosed for recordation pursuant to 49 U.S.C. Section 11301 two fully executed originals of the Assignment and Assumption Agreement and Amendment No. 3 to Charter (NM-2) dated June 30, 1998, a secondary document under 49 C.F.R. Section 1177.1(b). The enclosed document relates to an Amended and Restated Bareboat Charter Party dated as of March 18, 1982, which was duly recorded on March 18, 1982 and assigned recordation number W23-I. We request that the enclosed document be cross indexed.

The document concerns the assignment of the obligations of National Marine, Inc. under the original charter as described above to multiple interim lessees. The ultimate and current lessee is American Commercial Barge Line LLC.

The names and addresses of the relevant parties to the document are as follows:

Lessor: State Street Bank and Trust Company, not in its individual capacity but solely as owner trustee for the benefit of Aircraft Services Corporation
Two International Place
Boston, Massachusetts 02110-2804

Original Lessee: National Marine, Inc.
1515 Poydras Street
New Orleans, Louisiana 70112

First Interim Lessee: NMI Holdings LLC
1515 Poydras Street
New Orleans, Louisiana 70112

Charter Party for the M/V

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Second Interim Lessee: American Commercial Lines LLC
1701 East Market Street
Jeffersonville, Indiana 47130

Current Lessee: American Commercial Barge Line LLC
1701 East Market Street
Jeffersonville, Indiana 47130

The enclosed document concerns forty box hopper barges with roll top covers. The names and official numbers of the barges are listed on Attachment A hereto.

A short summary of the document to appear in the index follows: Charter Assignment between State Street Bank and Trust Company, not in its individual capacity but solely as owner trustee for the benefit of Aircraft Services Corporation, as lessor and American Commercial Barge Line LLC, as lessee and covering forty box hopper barges with roll top covers as described in the Amended and Restated Bareboat Charter Party dated as of March 18, 1982, which was duly recorded on March 18, 1982 and assigned recordation number W23-I.

A fee of \$26.00 is enclosed. Please return one original of the enclosed to the undersigned at the above address.

Very truly yours,

Thompson Coburn


Jacqueline T. Coldough

/jtc
Enclosures

<u>VESSEL NAME</u>	<u>OFFICIAL NUMBER</u>	<u>VESSEL NAME</u>	<u>OFFICIAL NUMBER</u>
DM 3001	641538	DM 3011	641548
DM 3002	641539	DM 3012	641549
DM 3003	641540	DM 3013	641550
DM 3004	641541	DM 3014	641551
DM 3005	641542	DM 3015	641552
DM 3006	641543	DM 3016	641553
DM 3007	641544	DM 3017	641554
DM 3008	641545	DM 3018	641555
DM 3009	641546	DM 3019	641556
DM 3010	641547	DM 3020	641557
		DM 3021	641558
		DM 3022	641559
		DM 3023	641560
		DM 3024	641561
		DM 3025	641562
		DM 3026	641563
		DM 3027	641564
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		DM 3035	641572
		DM 3036	641573
		DM 3037	641574
		DM 3038	641575
		DM 3039	641576
		DM 3040	641577

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423-0001

OFFICE OF THE SECRETARY

Jacqueline T. Colclough
Thompson Coburn
700 14th Street, NW
Washington, DC., 20005-2010

Date: 10/6/98

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of 49 U.S.C. 11301

and 49 CFR 1177.3(c), on 10/6/98 at 3:51 PM, and

assigned recordation number(s). W-21-G and W-23-K

Sincerely Yours,


Vernon A. Williams

Enclosure(s) (2)

52.00

\$_____ The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid. In the event of an error or any questions concerning this fee, you will receive a notification after the Surface Transportation Board has an opportunity to examine your document.

Signature _____



OCT 6 '98 3-51 PM

**ASSIGNMENT AND ASSUMPTION AGREEMENT AND
AMENDMENT NO. 3 TO CHARTER (NM-1)**

This Assignment and Assumption Agreement and Amendment No. 3 to Charter (the "Assignment") is made and entered into on this 30th day of June, 1998, by and between (i) National Marine, Inc., a Delaware corporation with a business address of 1515 Poydras Street, Suite 1500, New Orleans, Louisiana 70112, (ii) NMI Holdings LLC, a Delaware limited liability company with a business address of 1515 Poydras Street, Suite 1500, New Orleans, Louisiana 70112, (iii) American Commercial Lines LLC, a Delaware limited liability company with a business address at 1701 East Market Street, Jeffersonville, Indiana 47130, (iv) American Commercial Barge Line LLC, a Delaware limited liability company with a business address at 1701 East Market Street, Jeffersonville, Indiana 47130, (v) State Street Bank and Trust Company, not in its individual capacity but solely as owner trustee for the benefit of Aircraft Services Corporation, and (vi) Aircraft Services Corporation, a Delaware corporation.

I. Recitals

A. National Marine, Inc. ("NMI") entered into an Amended and Restated Bareboat Charter Party dated as of March 18, 1982, as amended by Amendment No. 1 thereto dated December 27, 1982 and Amendment No. 2 thereto dated February 24, 1989 (the "Charter") with State Street Bank and Trust Company, not in its individual capacity but solely as owner trustee (the "Owner Trustee") for the benefit of Aircraft Services Corporation (the "Owner Participant") for the charter of twenty barges, as more particularly described in the Charter.

B. The Owner Participant, NMI and the Owner Trustee entered into a Participation Agreement dated as of April 1, 1981, as amended by Amendment No. 1 thereto dated March 18, 1982 (the "Participation Agreement").

C. The Owner Participant, General Electric Capital Corporation, NMI and the Owner Trustee entered into a Refinancing Agreement (NM-1) dated as of February 24, 1989 (the "Refinancing Agreement", and together with the Charter and the Participation Agreement, herein called the "Documents").

D. Pursuant to a Recapitalization Agreement by and among CSX Corporation, a Virginia corporation, Vectura Group, Inc., a Delaware corporation, American Commercial Lines Holdings LLC, a Delaware limited liability company, American Commercial Lines LLC, a Delaware limited liability company ("ACL LLC"), and NMI, dated as of April 17, 1998 (the "Recap Agreement"), the barging assets of NMI will be combined with those of ACL LLC and subsequently transferred to various subsidiaries of ACL LLC.

E. NMI desires to assign to NMI Holdings LLC ("NMI Holdings") all of NMI's right, title and interest in and to the Documents, and desires NMI Holdings to assume all of the obligations of NMI under the Documents.

F. NMI Holdings desires to assume all of NMI's right, title and interest in and to the Documents, and desires to assume all of the obligations of NMI under the Documents. Immediately following and subject to consummation of the transactions contemplated by the Recap Agreement (the "Closing"), NMI Holdings will be merged into ACL LLC and ACL LLC will assign the Documents to American Commercial Barge Line LLC ("ACBL"), a wholly-owned subsidiary of ACL LLC.

G. Immediately following and subject to the Closing, ACBL desires to assume all of ACL LLC's right, title and interest in and to the Documents, and desires to assume all of the obligations of ACL LLC under the Documents.

H. In connection with the foregoing assignments, the parties desire to amend the Charter in certain respects.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NMI, NMI Holdings, ACL LLC, ACBL, the Owner Trustee and the Owner Participant hereby agree as follows:

ARTICLE ONE

1. NMI hereby assigns, transfers and conveys to NMI Holdings all of its right, title and interest in and to the Documents and all of its rights and obligations under the Documents.

2. NMI Holdings hereby unconditionally accepts the assignment from NMI as set forth in Section 1 hereof, and agrees to perform and discharge all of NMI's obligations pursuant to the Documents as fully and completely as if it had been originally named therein.

3. Effective immediately following and subject to the Closing, and upon the merger of NMI Holdings into ACL LLC, ACL LLC hereby assumes, as the survivor of the merger and by operation of law, the obligation to perform and discharge all of NMI Holdings' obligations pursuant to the Documents as fully and completely as if it had been originally named therein.

4. Effective immediately following and subject to the Closing, and upon ACL LLC's assumption of obligations as set forth in Section 3 hereof, ACL LLC hereby assigns, transfers and conveys to ACBL all of its right, title and interest in and to the Documents and all of its rights and obligations under the Documents.

5. Effective immediately following and subject to the Closing, and upon ACL LLC's assignment of obligations as set forth in Section 4 hereof, ACBL hereby

unconditionally accepts such assignment from ACL LLC, and agrees to perform and discharge all of ACL LLC's obligations pursuant to the Documents as fully and completely as if it had been originally named therein.

6. NMI hereby represents and warrants to NMI Holdings, ACL LLC and ACBL that (i) all payments of Hire have been paid to the Owner Trustee in accordance with the terms of the Documents; (ii) the Documents are in full force and effect as of the date of the Closing (the "Closing Date"); (iii) no event of default exists under the Documents; and (iv) no circumstance or condition exists that, with the lapse of time, the giving of notice, or both, would constitute an event of default under the Documents.

7. NMI and NMI Holdings hereby agree that the assignment of the Documents, and NMI Holdings' assumption thereof, shall be effective as of the date of this Assignment. NMI Holdings and ACL LLC hereby agree that the merger of NMI Holdings into ACL LLC shall be effective as of the Closing Date. ACL LLC and ACBL hereby agree that the assignment of the Documents, and ACBL's assumption thereof, shall be effective as of the Closing Date.

8. a. Pursuant to the Documents, each of the Owner Trustee and the Owner Participant, as applicable, hereby acknowledges and gives its consent to the assignment, as described in Section 1 hereof by NMI to NMI Holdings, and the assumption, as described in Section 2 hereof, by NMI Holdings, and releases NMI from all further obligations under the Documents, all as of the date hereof. Each of the Owner Trustee and the Owner Participant, as applicable, hereby gives its consent to the merger, as described in Section 3 hereof, of NMI Holdings into ACL LLC, each of the Owner Trustee and the Owner Participant, as applicable, hereby acknowledges and gives its consent to the assignment, as described in Section 4 hereof by ACL LLC to ACBL, and the assumption, as described in Section 5 hereof, by ACBL, and releases ACL LLC from all further obligations under the Documents, all as of the Closing Date.

b. The Owner Trustee hereby consents to the assignment by NMI to NMI Holdings, and the assumption by NMI Holdings of the First Preferred Fleet Mortgage (NM-1) dated February 24, 1989 and the Second Preferred Fleet Mortgage (NM-2) dated February 24, 1989, each originally by NMI in favor of the Owner Trustee and assigned by the Owner Trustee to Texas Commerce Trust Company of New York, as trustee for General Electric Capital Corporation.

ARTICLE TWO

The Charter is hereby amended effective as of the Closing Date as follows:

1. Section 6(f) of the Charter is amended by deleting the section in its entirety and substituting the following therefor:

“(f) The Charterer represents and warrants that it was duly organized and is now existing as a limited liability company under the laws of the State of Delaware, that it shall maintain its existence as a limited liability company, that it 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, qualified for the purpose of operation of the Vessels in the trade or trades in which Charterer proposes to operate the Vessels and qualified for operation in any other trades in which the Vessels are operated from time to time and that in the event the Charterer shall cease to be such a citizen, or shall cease to be so qualified, the Charterer shall notify the Shipowner and the Secretary thereof as soon as it obtains knowledge of such fact and that within 30 days after the date of each annual meeting of its members (or any written consent in lieu thereof), the Charterer shall submit to the Shipowner and to the Secretary such supplemental proof of citizenship as the Secretary may deem appropriate to establish that it remains such a citizen of the United States and is qualified as provided in this sentence.”

2. Section 9 of the Charter is hereby amended as follows:

a. Section 9(a)(i)(x) is hereby amended (i) by increasing the annual aggregate deductible for protection and indemnity insurance from \$1,000,000 to \$2,000,000 and (ii) by increasing the per occurrence deductible for protection and indemnity insurance from \$10,000 to \$25,000;

b. Section 9(a)(ii)(y) is hereby amended by increasing the annual aggregate deductible for marine, hull and machinery insurance from \$750,000 to \$2,000,000; and

c. Section 9(g) is hereby amended by increasing the threshold amount of losses on any of the Vessels for purposes of determining whether payments shall be paid to Charterer from \$50,000 to \$250,000.

3. Section 29(a) of the Charter is deleted in its entirety.

4. Section 29(c) of the Charter is amended by deleting the section in its entirety and substituting the following therefor:

“(c) Consolidated Leverage Ratio. ACL LLC shall be in compliance with Section 6.11 (Consolidated Leverage Ratio) of the Credit Agreement dated as of June 30, 1998 (the “Credit Agreement”) among ACL LLC, American Commercial Lines Holdings LLC, Chase Securities Inc. and The Chase

Manhattan Bank. Copies of Section 6.11 and the related definitions are attached to Assignment and Assumption Agreement and Amendment No. 3 to Charter.”

5. Section 29(d) of the Charter is amended by deleting the section in its entirety and substituting the following therefor:

“(d) Distributions. ACL LLC shall not pay any dividends or make any other distributions other than in accordance with the terms of the Credit Agreement.”

6. Section 29(e) of the Charter is amended by changing the percentage in subsection (iv) from ten percent (10%) to twenty-five percent (25%).

ARTICLE THREE

1. This Assignment may be executed in any number of counterparts, each of which, when so executed, shall be considered an original, but all of which shall be considered one and the same agreement.

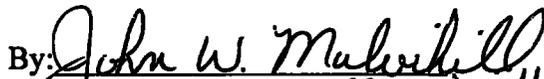
2. (a) All capitalized terms in this Assignment and any other terms and conditions contained herein which are specifically defined in the Documents shall have the same definition ascribed to them therein, except for those terms specifically defined, modified or amended herein.

(b) Except as specifically modified and amended herein, all terms and conditions set forth in the Documents are hereby ratified and affirmed in their entirety as of the date of this Assignment.

IN WITNESS WHEREOF, each of the parties hereto, intending to be legally bound hereby, has caused this Assignment to be executed by its duly authorized representatives on the day and year first above written, after a due reading of the whole.

ATTEST:

NATIONAL MARINE, INC.

By: 
Name: JOHN W. MULVIHILL
Title:

By: 
Name: David Wagstaff III
Title: Vice President

ATTEST:

NMI HOLDINGS LLC

By: 
Name: Katherine N. Hayden
Title: Administrative Assistant

By: 
Name: David Wagstaff III
Title: Vice President

ATTEST:

**AMERICAN COMMERCIAL
LINES LLC**

By: 
Name: Robert G. Burns
Title: Assistant Secretary

By: 
Name: Michael A. Khouri
Title: Senior Vice President

ATTEST:

**AMERICAN COMMERCIAL
BARGE LINE LLC**

By: 
Name: Robert G. Burns
Title: Assistant Secretary

By: 
Name: Michael A. Khouri
Title: Senior Vice President

**STATE STREET BANK AND TRUST
COMPANY, not in its individual capacity but
solely as owner trustee for the benefit of Aircraft
Services Corporation**

By: 
Name: CHRISTINA VAN RYZIN
Title: ASSISTANT VICE PRESIDENT

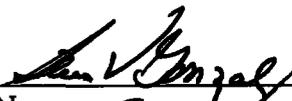
AIRCRAFT SERVICES CORPORATION

By: _____
Name:
Title:

**STATE STREET BANK AND TRUST
COMPANY, not in its individual capacity but
solely as owner trustee for the benefit of Aircraft
Services Corporation**

By: _____
Name:
Title:

AIRCRAFT SERVICES CORPORATION

By:  _____
Name: Steven V Gonzalez
Title: Vice President

ACKNOWLEDGEMENT

I, David Wagstaff III, certify that I am Vice President of National Marine, Inc., a Delaware corporation, that the foregoing instrument was signed on behalf of the corporation by authority of its Board of Directors, and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the corporation. I further declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed effective as of June 30, 1998.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

David Wagstaff III
Vice President

ACKNOWLEDGEMENT

I, David Wagstaff III, certify that I am Vice President of NMI Holdings LLC, a Delaware limited liability company, that the foregoing instrument was signed on behalf of the company by authority of its Board of Managers, and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the company. I further declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed effective as of June 30, 1998.

A handwritten signature in black ink, appearing to read 'DW III', is written above a horizontal line.

David Wagstaff III
Vice President

ACKNOWLEDGEMENT

I, Michael A. Khouri, certify that I am Senior Vice President of American Commercial Lines LLC, a Delaware limited liability company, that the foregoing instrument was signed on behalf of the company by authority of its Board of Managers, and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the company. I further declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed effective as of June 30, 1998.

A handwritten signature in black ink, appearing to read "MA Khouri", written over a horizontal line.

Michael A. Khouri
Senior Vice President

ACKNOWLEDGEMENT

I, Michael A. Khouri, certify that I am Senior Vice President of American Commercial Barge Line LLC, a Delaware limited liability company, that the foregoing instrument was signed on behalf of the company by authority of its Board of Managers, and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the company. I further declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed effective as of June 30, 1998.

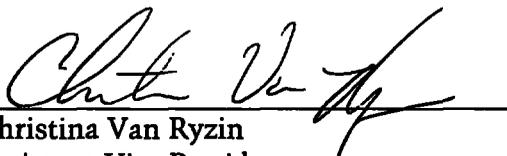


Michael A. Khouri
Senior Vice President

ACKNOWLEDGEMENT

I, Christina Van Ryzin, certify that I am Assistant Vice President of State Street Bank and Trust Company, a Massachusetts banking corporation, that the foregoing instrument was signed on behalf of the corporation by authority of its Board of Directors, and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the corporation. I further declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

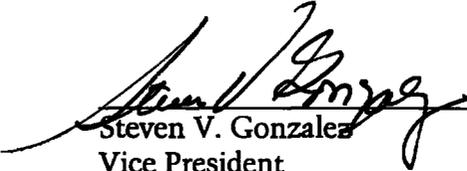
Executed effective as of June 30, 1998.


Christina Van Ryzin
Assistant Vice President

ACKNOWLEDGEMENT

I, Steven V. Gonzalez, certify that I am Vice President of Aircraft Services Corporation, a Delaware corporation, that the foregoing instrument was signed on behalf of the corporation by authority of its Board of Directors, and that I acknowledge that the execution of the foregoing instrument was the free act and deed of the corporation. I further declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed effective as of June 30, 1998.


Steven V. Gonzalez
Vice President

ACKNOWLEDGMENT AND CONSENT

Pursuant to the Security Agreement dated February 24, 1989 by the Owner Trustee in favor of General Electric Capital Corporation (the "Loan Participant"), the Loan Participant hereby acknowledges and gives its consent to the assignment, as described in Section 1 of the Assignment, by NMI to NMI Holdings, and the assumption, as described in Section 2 of the Assignment, by NMI Holdings, and releases NMI from all further obligations under the Documents, all as of the date hereof. The Loan Participant hereby gives its consent to the merger, as described in Section 3 of the Assignment, of NMI Holdings into ACL LLC, the Loan Participant hereby acknowledges and gives its consent to the assignment, as described in Section 4 of the Assignment by ACL LLC to ACBL, and the assumption, as described in Section 5 of the Assignment, by ACBL, and releases ACL LLC from all further obligations under the Documents, all as of the Closing Date.

All capitalized terms used herein and not otherwise defined shall have the same meaning ascribed thereto in the foregoing Assignment and Assumption Agreement and Amendment No. 2, to which this Acknowledgment and Consent is appended.

GENERAL ELECTRIC CAPITAL CORPORATION

By: 
Name: R. T. Sturgeon
Title: Manager-Operations

CREDIT AGREEMENT dated as of June 30, 1998, among AMERICAN COMMERCIAL LINES LLC, a Delaware limited liability company (the "*Borrower*"), AMERICAN COMMERCIAL LINES HOLDINGS LLC, a Delaware limited liability company ("*Holdings*"), the Lenders (as defined in Article I), and THE CHASE MANHATTAN BANK, a New York banking corporation, as issuing bank (in such capacity, the "*Issuing Bank*"), as administrative agent (in such capacity, the "*Administrative Agent*"), as security trustee (in such capacity, the "*Security Trustee*") and as collateral agent (in such capacity, the "*Collateral Agent*") for the Lenders.

The Borrower has requested the Lenders to extend credit in the form of (a) Tranche B Term Loans (such term and each other capitalized term used but not defined herein having the meaning given it in Article I) on the Closing Date, in an aggregate principal amount not in excess of \$200,000,000, (b) Tranche C Term Loans on the Closing Date, in an aggregate principal amount not in excess of \$235,000,000, and (c) Revolving Loans at any time and from time to time prior to the Revolving Credit Maturity Date, in an aggregate principal amount at any time outstanding not in excess of \$100,000,000. The Borrower has requested the Issuing Bank to issue letters of credit, in an aggregate face amount at any time outstanding not in excess of \$25,000,000, to support payment obligations incurred in the ordinary course of business by the Borrower and its Subsidiaries. The proceeds of the Term Loans, together with the proceeds of the Senior Unsecured Debt and the proceeds from the Equity Contribution, are to be used solely (a) to pay the cash consideration to be paid in connection with the Recapitalization, (b) to pay all amounts outstanding under the Existing Credit Agreements and all other existing Indebtedness of Holdings, the Borrower and its Subsidiaries, NMS, Inc., NBL and National Marine (other than Indebtedness permitted under Section 6.01(a)) and (c) to pay fees and expenses in connection with the Transactions. The proceeds of the Revolving Loans are to be used solely for general corporate purposes.

The Lenders are willing to extend such credit to the Borrower and the Issuing Bank is willing to issue letters of credit for the account of the Borrower on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. *Defined Terms.* As used in this Agreement, the following terms shall have the meanings specified below:

"399" shall mean 399 Venture Partners, Inc.

"*ABR Borrowing*" shall mean a Borrowing comprised of ABR Loans.

"*ABR Loan*" shall mean any ABR Term Loan or ABR Revolving Loan.

"*ABR Revolving Loan*" shall mean any Revolving Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

"*ABR Term Borrowing*" shall mean a Borrowing comprised of ABR Term Loans.

"*ABR Term Loan*" shall mean any Term Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

"Account" shall mean any right to payment for goods sold or for services rendered, whether or not it has been earned by performance.

"Adjusted LIBO Rate" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the product of (a) the LIBO Rate in effect for such Interest Period and (b) Statutory Reserves.

"Administrative Agent Fees" shall have the meaning assigned to such term in Section 2.05(b).

"Administrative Questionnaire" shall mean an Administrative Questionnaire in the form of Exhibit A or such other form as may be supplied from time to time by the Administrative Agent.

"Affiliate" shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified.

"Agreement" shall mean this Credit Agreement as originally executed and as hereafter amended from time to time, including any exhibits hereto.

"Aggregate Revolving Credit Exposure" shall mean the aggregate amount of the Lenders' Revolving Credit Exposures.

"Alternate Base Rate" shall mean, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Base CD Rate in effect on such day plus 1% and (c) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%. If for any reason the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Base CD Rate or the Federal Funds Effective Rate or both for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (b) or (c), or both, of the preceding sentence, as appropriate, until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Base CD Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change in the Prime Rate, the Base CD Rate or the Federal Funds Effective Rate, respectively. The term **"Prime Rate"** shall mean the rate of interest per annum publicly announced from time to time by the Administrative Agent as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective on the date such change is publicly announced as being effective. The term **"Base CD Rate"** shall mean the sum of (a) the product of (i) the Three-Month Secondary CD Rate and (ii) Statutory Reserves and (b) the Assessment Rate. The term **"Federal Funds Effective Rate"** shall mean, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for the day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Applicable Percentage" shall mean, for any day, with respect to any Eurodollar Loan or ABR Loan, or with respect to the Commitment Fees, as the case may be, the applicable percentage set forth below under the caption "Eurodollar Spread--Revolving Loans", "Eurodollar Spread--Tranche B Term Loans", "Eurodollar Spread--Tranche C Term Loans", "ABR Spread--Revolving Loans", "ABR Spread--Tranche B Term Loans", "ABR Spread--Tranche C Term Loans" or "Fee Percentage", as the case may be, based upon the Consolidated Leverage Ratio as of the relevant date of determination; *provided* that, until the Administrative Agent shall have received the Borrower's consolidated financial statements pursuant to Section 5.04(a) with respect to its fiscal year ended December 25, 1998, the Consolidated Leverage Ratio shall be deemed to be in Category 1 for purposes of determining the Applicable Percentage:

<u>Consolidated Leverage Ratio</u>	<u>Eurodollar Spread—Revolving Loans</u>	<u>ABR Spread—Revolving Loans</u>	<u>Eurodollar Spread—Tranche B Term Loans</u>	<u>ABR Spread—Tranche B Term Loans</u>	<u>Eurodollar Spread—Tranche C Term Loans</u>	<u>ABR—Spread Tranche C Term Loans</u>	<u>Fee Percentage</u>
<u>Category 1</u> Equal to or greater than 4.5 to 1.0	2.25%	1.25%	2.50%	1.50%	2.75%	1.75%	0.500%
<u>Category 2</u> Equal to or greater than 4.0 to 1.0 but less than 4.5 to 1.0	2.00%	1.00%	2.25%	1.25%	2.50%	1.50%	0.500%
<u>Category 3</u> Equal to or greater than 3.5 to 1.0 but less than 4.0 to 1.0	1.75%	0.75%	2.00%	1.00%	2.25%	1.25%	0.500%
<u>Category 4</u> Equal to or greater than 3.0 to 1.0 but less than 3.5 to 1.0	1.50%	0.50%	2.00%	1.00%	2.25%	1.25%	0.375%
<u>Category 5</u> Less than 3.0 to 1.0	1.25%	0.25%	2.00%	1.00%	2.25%	1.25%	0.375%

Each change in the Applicable Percentage resulting from a change in the Consolidated Leverage Ratio shall be effective with respect to all Loans, Commitments and Letters of Credit outstanding on and after the date of delivery to the Administrative Agent of the financial statements and certificates required by Section 5.04(a) or (b) indicating such change until the date immediately preceding the next date of delivery of such financial statements and certificates indicating another such change. Notwithstanding the foregoing, (a) at any time during which the Borrower has failed to deliver the financial statements and certificates required by Section 5.04(a) or (b), or (b) at any time after the occurrence and during the continuance of an Event of Default, the Consolidated Leverage Ratio shall be deemed to be in Category 1 for purposes of determining the Applicable Percentage.

“Approved Fund” shall mean, with respect to any Lender that is a fund that invests in commercial loans, any other fund that invests in commercial loans and is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

“Assessment Rate” shall mean for any date the annual rate (rounded upwards, if necessary, to the next 1/100 of 1%) most recently estimated by the Administrative Agent as the then current net annual assessment rate that will be employed in determining amounts payable by the Administrative Agent to the Federal Deposit Insurance Corporation (or any successor thereto) for insurance by such Corporation (or such successor) of time deposits made in dollars at the Administrative Agent's domestic offices.

"Asset Sale" shall mean the sale, transfer or other disposition (by way of merger or otherwise) by the Borrower or any of the Subsidiaries to any person other than the Borrower or any Subsidiary Guarantor of (a) any Capital Stock or equity interests of any of the Subsidiaries (other than directors' qualifying shares or interests) or (b) any other assets of the Borrower or any of the Subsidiaries (other than (i) inventory, excess, damaged, obsolete or worn out assets, scrap and Permitted Investments, in each case disposed of in the ordinary course of business, (ii) assets transferred with an aggregate fair market value not exceeding \$25,000,000 in any fiscal year of the Borrower in connection with the replacement or upgrade of a tangible asset of the Borrower or any Subsidiary Guarantor which will be used in a Related Business and is acquired, or commitments to acquire such asset have been made, within 270 days of such transfer, (iii) dispositions resulting in Casualty Proceeds or Condemnation Proceeds or (iv) sales or transfers (x) by or among Foreign Subsidiaries or (y) from a Loan Party to a Foreign Subsidiary (or, unless and until Garvan shall become a Foreign Subsidiary, to Garvan) to the extent, in the case of this clause (y), that (A) such Loan Party would be permitted to advance the fair market value of the asset transferred to such Foreign Subsidiary or, if applicable, to Garvan under Section 6.04(c) or 6.04(l), respectively, and (B) any such transfer is treated as an intercompany loan pursuant to Section 6.04(c) or 6.04(l), respectively, and evidenced by an intercompany note pledged to the Collateral Agent pursuant to the Pledge Agreement for the benefit of the Secured Parties), *provided* that any asset sale or series of related asset sales described in clause (b) above (including by way of condemnation or casualty) having a value not in excess of \$750,000 shall be deemed not to be an "Asset Sale" for purposes of this Agreement.

"Assignment and Acceptance" shall mean an assignment and acceptance entered into by a Lender and an assignee, and accepted by the Administrative Agent, in the form of Exhibit B or such other form as shall be approved by the Administrative Agent.

"Assignments of Insurances" shall mean each of the Assignments of Insurances, substantially in the form of Exhibit K, between the Borrower and the Collateral Agent and Security Trustee for the benefit of the Secured Parties.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States of America.

"Borrowing" shall mean a group of Loans of a single Type made by the Lenders on a single date and as to which a single Interest Period is in effect.

"Borrowing Request" shall mean a request by the Borrower, executed by a Responsible Officer of the Borrower, in accordance with the terms of Section 2.03 and substantially in the form of Exhibit C or such other form as shall be approved by the Administrative Agent.

"Business Day" shall mean any day other than a Saturday, Sunday or day on which banks in New York City are authorized or required by law to close; *provided, however*, that when used in connection with a Eurodollar Loan, the term **"Business Day"** shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"Capital Lease Obligations" of any person shall mean the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Capital Stock" of any person shall mean any and all shares, interests (including membership and economic interests in a limited liability company), rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such person, including any preferred stock, but excluding any debt securities convertible into such equity prior to such conversion.

“*Casualty*” shall have the meaning set forth in each of the Mortgages and the Fleet Mortgages.

“*Casualty Proceeds*” shall have the meaning set forth in each of the Mortgages and the Fleet Mortgages.

A “*Change in Control*” shall be deemed to have occurred if (a) prior to the first fully distributed public offering of Voting Stock of Holdings, (i) the Permitted Holders and the Permitted Transferees shall cease to own directly or indirectly, beneficially or of record, shares representing at least 51% on a fully diluted, as if converted, basis of the aggregate ordinary voting power represented by the issued and outstanding Voting Stock of Holdings, (ii) 399 and its Permitted Transferees shall cease to own directly or indirectly, beneficially or of record, shares representing at least 35% on a fully diluted, as if converted, basis of the aggregate ordinary voting power represented by the issued and outstanding Voting Stock of Holdings, *provided* that if 399 at any time shall not be permitted to hold more than 24.9% of such voting power under any applicable law, regulation or order of any applicable Governmental Authority, then a Change of Control shall not be deemed to have occurred so long as 399 owns, directly or indirectly, beneficially or of record, at least 24.9% of such voting power; (b) after the first fully distributed public offering of Voting Stock of Holdings, the Permitted Holders and the Permitted Transferees shall cease to own directly or indirectly, beneficially or of record, shares representing at least 25% on a fully diluted, as if converted, basis of the aggregate ordinary voting power represented by the issued and outstanding Voting Stock of Holdings; (c) after the first fully distributed public offering of Voting Stock of Holdings, any person or group (within the meaning of Rule 13d-5 of the Securities Exchange Act of 1934 as in effect on the date hereof) other than the Permitted Holders and the Permitted Transferees shall own directly or indirectly, beneficially or of record, a percentage of the issued and outstanding Voting Stock of Holdings on a fully diluted, as if converted, basis having ordinary voting power in excess of the percentage then owned, directly or indirectly, beneficially and of record, on a fully diluted, as if converted, basis, by the Permitted Holders and the Permitted Transferees; (d) a majority of the seats (except in the case of any vacancy for 60 days or less resulting from the death or resignation of any director of Holdings) on the board of managers or analogous body of Holdings shall at any time be occupied by persons who were not (i) nominated by the board of directors or analogous body of Holdings, (ii) appointed by directors so nominated or (iii) appointed by one or more Permitted Holders or Permitted Transferees; (e) any change in control (or similar event, however denominated) with respect to Holdings or the Borrower shall occur under and as defined in any indenture or agreement in respect of Indebtedness to which any such person or any Subsidiary is a party; or (f) Holdings shall cease to own, beneficially and of record, 100% of the issued and outstanding Capital Stock of the Borrower.

“*Closing Date*” shall mean the date of the first Credit Event.

“*Code*” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“*Collateral*” shall mean all the “*Collateral*” as defined in any Security Document and shall also include the Mortgaged Properties.

“*Commitment*” shall mean, with respect to any Lender, such Lender's Revolving Credit Commitment and Term Loan Commitment.

“*Commitment Fee*” shall have the meaning assigned to such term in Section 2.05(a).

“*Condemnation*” shall have the meaning set forth in each of the Mortgages and the Fleet Mortgages.

“*Condemnation Proceeds*” shall have the meaning set forth in each of the Mortgages and the Fleet Mortgages.

"Confidential Information Memorandum" shall mean the Confidential Information Memorandum of the Borrower dated June 1998.

"Consolidated Capital Expenditures" shall mean, for any period, the sum of (a) the aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability) by the Borrower or any of the Subsidiaries during such period that, in accordance with GAAP, are or should be included in "additions to property, plant and equipment" or similar items reflected in the consolidated statement of cash flows of the Borrower and the Subsidiaries for such period (including the amount of assets leased in connection with any Capital Lease Obligation), and (b) to the extent not included pursuant to clause (a) above, the aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability) by the Borrower or any Subsidiary during such period to acquire, by purchase or otherwise, the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any person; *provided, however*, that, for purposes of Section 6.10 only, to the extent the Borrower or a Subsidiary uses, within 270 days of the receipt thereof, (i) the proceeds of the disposition of assets described in clause (b)(i) or (ii) of the definition of the term "Asset Sale" or (ii) Casualty Proceeds or Condemnation Proceeds to purchase, construct, repair, lease or replace any property, plant or equipment, the amount of the related Consolidated Capital Expenditure shall be reduced by the amount of such proceeds.

"Consolidated Current Assets" shall mean, as of any date of determination, the total assets that would properly be classified as current assets (other than cash and cash equivalents) of the Borrower and the Subsidiaries as of such date, determined on a consolidated basis in accordance with GAAP.

"Consolidated Current Liabilities" shall mean, as of any date of determination, the total liabilities (other than, without duplication, (a) the current portion of long-term Indebtedness and (b) outstanding Revolving Loans) that would properly be classified as current liabilities of the Borrower and the Subsidiaries as of such date, determined on a consolidated basis in accordance with GAAP.

"Consolidated EBITDA" shall mean, for any period, Consolidated Net Income for such period, plus, to the extent deducted in computing such Consolidated Net Income, (a) the sum, without duplication, of (i) all Federal, state, local and foreign taxes, and Tax Distributions, (ii) Consolidated Net Interest Expense and (iii) depreciation, depletion, amortization of intangibles and other non-cash charges or non-cash losses (including non-cash transaction expenses and the amortization of debt discounts), minus, to the extent added in computing such Consolidated Net Income, (b) any non-cash income or non-cash gains, all as determined on a consolidated basis with respect to the Borrower and the Subsidiaries in accordance with GAAP.

"Consolidated Interest Coverage Ratio" shall mean, for any period, the ratio of (a) Consolidated EBITDA for such period to (b) Consolidated Net Interest Expense for such period.

"Consolidated Leverage Ratio" shall mean, as of any date of determination, the ratio of (a) Net Debt on such date to (b) Consolidated EBITDA for the period of four consecutive fiscal quarters ending on such date. For purposes of determining the Consolidated Leverage Ratio as of September 25, 1998, December 25, 1998, and March 26, 1999, Consolidated EBITDA shall be deemed to be (i) \$51,265,000 for the fiscal quarter ended December 26, 1997, (ii) \$22,576,000 for the fiscal quarter ended March 27, 1998, and (iii) \$28,208,000 for the fiscal quarter ended June 25, 1998, respectively.

"Consolidated Net Income" shall mean, for any period, net income or loss of the Borrower and the Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, *provided* that there shall be excluded (a) the income of any person in which any other person (other than the Borrower or any of the Subsidiaries or any director holding qualifying shares in accordance with applicable law) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to the Borrower or any wholly owned Subsidiary by such person during

such period, (b) the income (or loss) of any person accrued prior to the date it becomes a Subsidiary of the Borrower or is merged into or consolidated with the Borrower or any of the Subsidiaries or the date that person's assets are acquired by the Borrower or any of the Subsidiaries, (c) the income of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by the Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (d) any gains or losses attributable to sales of assets out of the ordinary course of business (net of taxes incurred (or in the case of a loss, any tax benefit realized) and Tax Distributions payable with respect thereto), (e) (to the extent not included in clauses (a) through (d) above) any non-cash extraordinary gains or non-cash extraordinary losses (net of taxes incurred (or in the case of a loss, any tax benefit realized) and Tax Distributions payable with respect thereto) and (f) any Tax Distributions payable with respect to such period.

"Consolidated Net Interest Expense" shall mean, for any period, the gross cash interest expense of the Borrower and the Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, including the portion of any payments or accruals with respect to Capital Lease Obligations that are allocable to interest expense in accordance with GAAP, but excluding (a) the amortization of debt discounts and (b) the amortization of all fees (including fees with respect to Interest Rate Protection Agreements) payable in connection with the incurrence of Indebtedness to the extent included in interest expense in accordance with GAAP (including fees and expenses in connection with the Transactions and the first Credit Event) less the total interest income of the Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP. For purposes of the foregoing, gross cash interest expense shall be determined after giving effect to any net payments made or received by the Borrower or any Subsidiary with respect to Interest Rate Protection Agreements.

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and the terms *"Controlling"* and *"Controlled"* shall have meanings correlative thereto.

"Credit Event" shall have the meaning assigned to such term in Section 4.01.

"CSX" shall mean CSX Corporation.

"Default" shall mean any event or condition which upon notice, lapse of time or both would constitute an Event of Default.

"dollars" or *"\$"* shall mean lawful money of the United States of America.

"Domestic Subsidiaries" shall mean all Subsidiaries incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia.

"environment" shall mean ambient air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, the workplace or as otherwise defined in any Environmental Law.

"Environmental Claim" shall mean any written accusation, allegation, notice of violation, claim, demand, order, directive, cost recovery action or other cause of action by, or on behalf of, any Governmental Authority or any person for damages, injunctive or equitable relief, personal injury (including sickness, disease or death), Remedial Action costs, tangible or intangible property damage, natural resource damages, nuisance, pollution, any adverse effect on the environment caused by any Hazardous Material, or for fines, penalties or restrictions, resulting from or based upon (a) the existence, or the continuation of the existence, of a Release (including sudden or non-sudden, accidental or non-accidental Releases), (b) exposure to any Hazardous Material, (c) the presence, use,

handling, transportation, storage, treatment or disposal of any Hazardous Material or (d) the violation or alleged violation of any Environmental Law or Environmental Permit.

“Environmental Law” shall mean any and all applicable present and future treaties, laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, Release or threatened Release of any Hazardous Material or to health and safety matters, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 *et seq.* (collectively “CERCLA”), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 *et seq.*, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 *et seq.*, the Clean Air Act of 1970, as amended 42 U.S.C. §§ 7401 *et seq.*, the Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 *et seq.*, the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 *et seq.*, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.*, the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f) *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 *et seq.*, and any similar or implementing state or local law, and all amendments or regulations promulgated under any of the foregoing.

“Environmental Permit” shall mean any permit, approval, authorization, certificate, license, variance, filing or permission required by or from any Governmental Authority pursuant to any Environmental Law.

“Equity Contribution” shall mean the contribution by VGI Investors to Holdings of an aggregate amount of \$60,000,000 in exchange for (a) Junior Preferred Interests in an aggregate stated amount of \$59,454,545 and (b) Junior Common Interests in an aggregate stated amount of \$545,455.

“Equity Issuance” shall mean the issuance by Holdings, the Borrower or any Subsidiary of any equity securities or any other equity interests of Holdings, the Borrower or any Subsidiary, as applicable, or the receipt by Holdings, the Borrower or any Subsidiary of any capital contribution, in each case, after the Closing Date, other than (a) any such issuance of equity securities or other equity interests to, or receipt of any such capital contribution from, Holdings, the Borrower or a Subsidiary, (b) any issuance of directors’ qualifying shares, (c) any issuance of equity securities or other equity interests by Holdings to management or key employees of Holdings, the Borrower or any Subsidiary to the extent that the Net Cash Proceeds therefrom shall not exceed \$1,000,000 during any fiscal year of the Borrower, (d) any issuance of equity securities or other equity interests by any Foreign Subsidiary to existing stockholders of such Foreign Subsidiary as a result of a capital call by such Foreign Subsidiary, (e) any issuance or issuances by Holdings of equity securities to the extent that the Net Cash Proceeds therefrom shall not exceed \$1,000,000 during any fiscal year (net of any such Net Cash Proceeds used substantially concurrently to purchase equity securities of Holdings from management or key employees of Holdings, the Borrower or any Subsidiary upon their death, disability or termination of employment) and (f) any Sponsor Equity Contribution.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” shall mean (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding

deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“*Eurodollar Borrowing*” shall mean a Borrowing comprised of Eurodollar Loans.

“*Eurodollar Loan*” shall mean any Eurodollar Revolving Loan or Eurodollar Term Loan.

“*Eurodollar Revolving Loan*” shall mean any Revolving Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate in accordance with the provisions of Article II.

“*Eurodollar Term Borrowing*” shall mean a Borrowing comprised of Eurodollar Term Loans.

“*Eurodollar Term Loan*” shall mean any Term Loan bearing interest at a rate determined by reference to the Adjusted LIBO Rate in accordance with the provisions of Article II.

“*Event of Default*” shall have the meaning assigned to such term in Article VII.

“*Excess Cash Flow*” shall mean, for any fiscal year of the Borrower, the excess of (a) the sum, without duplication, of (i) Consolidated EBITDA for such fiscal year, (ii) extraordinary cash income of the Borrower and its consolidated Subsidiaries, if any, during such fiscal year and not included in Consolidated EBITDA and (iii) reductions to non-cash working capital of the Borrower and its consolidated Subsidiaries for such fiscal year (*i.e.*, the decrease, if any, in Consolidated Current Assets minus Consolidated Current Liabilities from the beginning to the end of such fiscal year) over (b) the sum, without duplication, of (i) the amount of any cash income taxes and cash foreign withholding taxes payable by the Borrower and its consolidated Subsidiaries, and the amount of any Tax Distributions payable, in each case with respect to such fiscal year, (ii) cash interest paid (net of cash interest received) by the Borrower and its consolidated Subsidiaries during such fiscal year, (iii) Consolidated Capital Expenditures made in cash in accordance with Section 6.10 during such fiscal year, except to the extent financed with the proceeds of Indebtedness or a Sponsor Equity Contribution, (iv) scheduled principal repayments of Indebtedness made by the Borrower and its consolidated Subsidiaries during such fiscal year, (v) optional and mandatory prepayments of the principal of Loans during such fiscal year, but only to the extent that such prepayments by their terms cannot be reborrowed or redrawn and do not occur in connection with a refinancing of all or any portion of the Loans, (vi) extraordinary cash expenses paid by the Borrower and its consolidated Subsidiaries, if any, during such fiscal year and not included in Consolidated EBITDA and (vii) additions to non-cash working capital for such fiscal year (*i.e.*, the increase, if any, in Consolidated Current Assets minus Consolidated Current Liabilities from the beginning to the end of such fiscal year), *provided* that to the extent otherwise included therein, the Net Cash Proceeds of Asset Sales and dispositions resulting in Casualty Proceeds or Condemnation Proceeds and gains or losses resulting from translation of foreign currencies shall be excluded from the calculation of Excess Cash Flow.

“*Excluded Taxes*” shall mean, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is

organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.21(a)), any withholding tax that is imposed on amounts payable to such Foreign Lender under the laws in effect at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender's failure to comply with Section 2.20(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.20(a).

"Existing Credit Agreements" shall mean the agreements listed in Schedule 1.01(a).

"Family Group" shall mean, with respect to a natural person, such person, such person's spouse, siblings, and descendants (whether natural, by marriage or adopted) and any trust solely for the benefit of such person and/or such person's spouse, siblings, their respective ancestors and/or descendants (whether natural, by marriage or adopted).

"Fee Letter" shall mean the Fee Letter dated April 17, 1998, between VGI and the Administrative Agent.

"Fees" shall mean the Commitment Fees, the Administrative Agent's Fees, the L/C Participation Fees and the Issuing Bank Fees.

"Financial Officer" of any person shall mean the chief financial officer, principal accounting officer, Treasurer or Controller of such person.

"Financing Transactions" shall mean (a) the execution, delivery and performance by each Loan Party of the Loan Documents to which it is to be a party, the borrowing of Loans, the use of the proceeds thereof and the issuance of Letters of Credit hereunder, (b) the execution, delivery and performance by each Loan Party of the Senior Unsecured Debt Documents to which it is to be a party, the issuance of the Senior Unsecured Debt and the use of the proceeds thereof and (c) the Equity Contribution.

"Fleet Mortgages" shall mean the first preferred fleet mortgages delivered pursuant to clause (i) of Section 4.02(j) or pursuant to Section 5.10, as supplemented from time to time pursuant to the terms thereof, each substantially in the form of Exhibit E-2.

"Foreign Lender" shall mean any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Subsidiary" shall mean any Subsidiary that is not a Domestic Subsidiary.

"GAAP" shall mean generally accepted accounting principles applied on a consistent basis.

"Garvan" shall mean Garvan, C.A., a Venezuelan company.

"Governmental Authority" shall mean any Federal, state, local or foreign court or governmental agency, authority, instrumentality or regulatory body.

"Guarantee" of or by any person shall mean any obligation, contingent or otherwise, of such person guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other person (the *"primary obligor"*) in any manner, whether directly or indirectly, and including any

obligation of such person, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment of such Indebtedness or (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness; *provided, however*, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business.

"*Guarantee Agreements*" shall mean the Parent Guarantee Agreement and the Subsidiary Guarantee Agreement.

"*Guarantors*" shall mean Holdings and the Subsidiary Guarantors.

"*Hazardous Materials*" shall mean all explosive or radioactive substances or wastes, hazardous or toxic substances or wastes, pollutants, solid, liquid or gaseous wastes, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls ("*PCBs*") or PCB-containing materials or equipment, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"*Indebtedness*" of any person shall mean, without duplication, (a) all obligations of such person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such person upon which interest charges are customarily paid (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business), (d) all obligations of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person, (e) all obligations of such person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property, valued at the fair market value of the assets subject to such Lien (in the case of nonrecourse Indebtedness) owned or acquired by such person, whether or not the obligations secured thereby have been assumed, (g) all Guarantees by such person of Indebtedness of others, (h) all Capital Lease Obligations of such person, (i) all obligations of such person in respect of interest rate protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements and (j) all obligations of such person as an account party in respect of letters of credit and bankers' acceptances. The Indebtedness of any person shall include the Indebtedness of any partnership in which such person is a general partner, except to the extent that the terms of such Indebtedness provide otherwise.

"*Indemnified Taxes*" shall mean Taxes other than Excluded Taxes.

"*Indemnity, Subrogation and Contribution Agreement*" shall mean the Indemnity, Subrogation and Contribution Agreement, substantially in the form of Exhibit D, among the Borrower, the Subsidiary Guarantors and the Collateral Agent.

"*Interest Payment Date*" shall mean, with respect to any Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months' duration been applicable to such Borrowing, and, in addition, the date of any prepayment of such Borrowing or conversion of such Borrowing to a Borrowing of a different Type.

"*Interest Period*" shall mean (a) as to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is 1, 2, 3 or 6 months

thereafter, as the Borrower may elect, and (b) as to any ABR Borrowing, the period commencing on the date of such Borrowing and ending on the earlier of (i) the next succeeding March 31, June 30, September 30 or December 31 and (ii) the Revolving Credit Maturity Date, the Tranche B Maturity Date or the Tranche C Maturity Date, as applicable; *provided, however*, that if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

“Interest Rate Protection Agreement” shall mean any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or similar agreement or arrangement designed to protect the Borrower or any Subsidiary against fluctuations in interest rates, and not entered into for speculation.

“Issuing Bank Fees” shall have the meaning assigned to such term in Section 2.05(c).

“Junior Preferred Interests” shall mean junior preferred limited liability company membership interests in Holdings.

“Junior Common Interests” shall mean voting and nonvoting junior common limited liability company membership interests in Holdings.

“L/C Commitment” shall mean the commitment of the Issuing Bank to issue Letters of Credit pursuant to Section 2.22.

“L/C Disbursement” shall mean a payment or disbursement made by the Issuing Bank pursuant to a Letter of Credit.

“L/C Exposure” shall mean at any time the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time *plus* (b) the aggregate principal amount of all L/C Disbursements that have not yet been reimbursed at such time. The L/C Exposure of any Revolving Credit Lender at any time shall mean its Pro Rata Percentage of the aggregate L/C Exposure at such time.

“L/C Participation Fee” shall have the meaning assigned to such term in Section 2.05(c) .

“Lenders” shall mean (a) the financial institutions listed on Schedule 2.01 (other than any such financial institution that has ceased to be a party hereto pursuant to an Assignment and Acceptance) and (b) any financial institution that has become a party hereto pursuant to an Assignment and Acceptance.

“Letter of Credit” shall mean any letter of credit issued pursuant to Section 2.22.

“LIBO Rate” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Page 3750 of the Dow Jones Service (or on any successor or substitute page of such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not so available at such time for any reason, the “LIBO Rate” with respect to such Eurodollar Borrowing for such Interest Period shall be the rate at which dollar deposits approximately equal in principal amount to the Administrative Agent’s portion of such Eurodollar Borrowing and for a maturity comparable to such Interest Period are offered to the principal London office of the Administrative Agent in immediately available funds

in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

“*Lien*” shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“*LLC Agreement*” shall mean the Amended and Restated Limited Liability Company Agreement of Holdings dated as of June [], 1998, by and among Holdings, CSX Corporation, VGI, National Marine and certain other persons party thereto.

“*Loan Documents*” shall mean this Agreement, the Letters of Credit, the Guarantee Agreements, the Security Documents and the Indemnity, Subrogation and Contribution Agreement.

“*Loan Parties*” shall mean the Borrower and the Guarantors.

“*Loans*” shall mean the Revolving Loans and the Term Loans.

“*Margin Stock*” shall have the meaning assigned to such term in Regulation U.

“*Material Adverse Effect*” shall mean (a) a materially adverse effect on the business, assets, operations, condition (financial or otherwise), liabilities, prospects or material agreements of Holdings, the Borrower and the Subsidiaries, taken as a whole, (b) material impairment of the ability of the Borrower and the other Loan Parties to perform any of their obligations under the Loan Documents to which they are or will be a party or (c) material impairment of the rights of or benefits available to the Lenders under any Loan Document.

“*Mortgaged Properties*” shall mean (a) the owned real properties and leasehold and subleasehold interests of the Loan Parties specified on Schedules 3.20(a) and 3.20(b) and (b) the Vessels specified on Schedule 3.20(c).

“*Mortgages*” shall mean the mortgages, deeds of trust, leasehold mortgages, assignments of leases and rents, modifications and other security documents delivered pursuant to clause (i) of Section 4.02(j) or pursuant to Section 5.10, each substantially in the form of Exhibit E-1.

“*Multiemployer Plan*” shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“*National Marine*” shall mean National Marine, Inc., a Delaware corporation and wholly owned subsidiary of VGI.

“*National Marine Contribution*” shall mean the transfer by National Marine of all the limited liability membership interests in NMI Holdings pursuant to, and in accordance with the terms of, the Recapitalization Documents to Holdings in exchange for (a) Junior Preferred Interests in an aggregate stated amount of up to \$1,500,000, (b) Junior Common Interests in an aggregate stated amount of up to \$110,909 and (c) Senior Common Interests in an aggregate stated amount of up to \$3,389,091 (with a future profits interests in Holdings of up to \$32,500,000), in each case subject to adjustment as set forth in the Recapitalization Documents.

“*NBL*” shall mean NBL, Inc., a Louisiana corporation and a subsidiary of VGI.

“*Net Cash Proceeds*” shall mean (a) with respect to any Asset Sale, the cash proceeds (including cash proceeds subsequently received (as and when received) in respect of non-cash

consideration initially received and including all insurance settlements and condemnation awards in any fiscal year of the Borrower in excess of \$250,000), net of (i) selling expenses (including reasonable broker's fees or commissions, legal fees, transfer and similar taxes and the Borrower's good faith estimate of income taxes and Tax Distributions paid or payable in connection with such sale), (ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations associated with such Asset Sale (*provided* that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds) and (iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which is secured by the asset sold in such Asset Sale and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such asset), (b) with respect to any issuance or disposition of Indebtedness, the cash proceeds thereof, net of all taxes and customary fees, commissions, costs and other expenses incurred, and Tax Distributions payable, in connection therewith and (c) with respect to any Equity Issuance or Sponsor Equity Contribution, the cash proceeds thereof, net of all customary fees, commissions, costs and other expenses incurred, and Tax Distributions payable, in connection therewith.

"Net Debt" shall mean, at any date and without duplication, (a) the aggregate amount of all Indebtedness of the Borrower and the Subsidiaries on a consolidated basis at such date (other than any Indebtedness described in clause (i) or, except to the extent of any unreimbursed drawings thereunder, (j) of the definition of the term "Indebtedness") minus (b) the aggregate amount of all cash and Permitted Investments as shown on the Borrower's consolidated balance sheet on such date.

"NMI Holdings" shall mean NMI Holdings LLC, a Delaware limited liability company and wholly owned subsidiary of National Marine.

"NMI Holdings Merger" shall mean the merger of NMI Holdings and its subsidiaries with and into Holdings, with Holdings as the surviving limited liability company, and with certain subsidiaries of NMI Holdings surviving as direct or indirect wholly owned Subsidiaries of the Borrower.

"Non-Pledged Foreign Subsidiaries" shall mean ACL Venezuela Ltd. and ACBL Hidrovias Ltd., for so long as the Borrower is restricted under agreements in effect on the Closing Date from pledging or causing to be pledged the Capital Stock of such Foreign Subsidiaries.

"Obligations" shall mean all obligations defined as "Obligations" in the Guarantee Agreements and the Security Documents.

"Other Taxes" shall mean any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement.

"Parent Guarantee Agreement" shall mean the Parent Guarantee Agreement, substantially in the form of Exhibit F, made by Holdings in favor of the Collateral Agent for the benefit of the Secured Parties.

"PBGC" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"Perfection Certificate" shall mean the Perfection Certificate substantially in the form of Annex 2 to the Security Agreement.

"Permitted Holders" shall mean 399, CSX, their respective Affiliates and management existing at the Borrower, Holdings or any Subsidiary on the Closing Date or within 90 days thereafter.

"Permitted Investments" shall mean:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from Standard & Poor's Ratings Service or from Moody's Investors Service, Inc.;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than \$250,000,000 or any Lender;

(d) other investment instruments approved in writing by the Required Lenders and offered by financial institutions which have a combined capital and surplus and undivided profits of not less than \$250,000,000; and

(e) shares of funds registered under the Investment Company Act of 1940, as amended, that have assets of at least \$100,000,000 and invest only in obligations described in clauses (a) through (d) above, to the extent that such shares are rated by Moody's Investors Service, Inc. or Standard & Poor's Ratings Service in one of the two highest rating categories assigned by such agency for shares of such nature.

"Permitted Transferees" shall mean with respect to a person, such person's Affiliates, limited partners, stockholders, directors and employees (and partnerships or trusts of which such directors and employees are the sole partners or beneficiaries), and in the case of a natural person, pursuant to applicable laws of descent and distribution or to any member of such person's Family Group.

"person" shall mean any natural person, corporation, unincorporated organization, business trust, joint venture, association, company, limited liability company, partnership or government, or any agency or political subdivision thereof.

"Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 307 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Pledge Agreement" shall mean the Pledge Agreement, substantially in the form of Exhibit G, among the Borrower, Holdings, the Subsidiaries party thereto and the Collateral Agent for the benefit of the Secured Parties.

"Pro Rata Percentage" of any Revolving Credit Lender at any time shall mean the percentage of the Total Revolving Credit Commitment represented by such Lender's Revolving Credit Commitment.

"Recapitalization" shall mean the recapitalization of Holdings pursuant to, and in accordance with the terms of, the Recapitalization Documents, including (a) the VGI Asset Transfer, (b) the National Marine Contribution, (c) the NMI Holdings Merger and (d) the issuance of equity securities of Holdings thereunder.

"Recapitalization Agreement" shall mean the Recapitalization Agreement dated as of April 17, 1998, among CSX Corporation, VGI, Holdings, the Borrower and National Marine, as the same

may be amended, supplemented or otherwise modified in accordance with the terms thereof and hereof.

"Recapitalization Documents" shall mean the Recapitalization Agreement and all other agreements and documents relating to the transactions contemplated thereby.

"Register" shall have the meaning given such term in Section 9.04(d).

"Regulation U" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Related Business" shall mean any business of the Borrower and its Subsidiaries as conducted on the Closing Date and any business related, ancillary or complementary thereto.

"Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Material in, into, onto or through the environment.

"Remedial Action" shall mean (a) "remedial action" as such term is defined in CERCLA, 42 U.S.C. Section 9601(24), and (b) all other actions required by any Governmental Authority or voluntarily undertaken to: (i) cleanup, remove, treat, abate or in any other way address any Hazardous Material in the environment; (ii) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Material so it does not migrate or endanger or threaten to endanger public health, welfare or the environment; or (iii) perform studies and investigations in connection with, or as a precondition to, (i) or (ii) above.

"Required Lenders" shall mean, at any time, Lenders having Loans, L/C Exposure and unused Revolving Credit and Term Loan Commitments representing at least a majority of the sum of all Loans outstanding, L/C Exposure and unused Revolving Credit and Term Loan Commitments at such time.

"Responsible Officer" of any person shall mean any executive officer or Financial Officer of such person and any other officer or similar official thereof responsible for the administration of the obligations of such person in respect of this Agreement.

"Revolving Credit Borrowing" shall mean a Borrowing comprised of Revolving Loans.

"Revolving Credit Commitment" shall mean, with respect to each Lender, the commitment of such Lender to make Revolving Loans hereunder as set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Lender assumed its Revolving Credit Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04.

"Revolving Credit Exposure" shall mean, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender, *plus* the aggregate amount at such time of such Lender's L/C Exposure.

"Revolving Credit Lender" shall mean a Lender with a Revolving Credit Commitment.

"Revolving Credit Maturity Date" shall mean June 30, 2005.

"Revolving Loans" shall mean the revolving loans made by the Lenders to the Borrower pursuant to clause (c) of Section 2.01. Each Revolving Loan shall be a Eurodollar Revolving Loan or an ABR Revolving Loan.

"Secured Parties" shall have the meaning assigned to such term in the Security Agreement.

"Security Agreement" shall mean the Security Agreement, substantially in the form of Exhibit H, among the Borrower, the Subsidiaries party thereto and the Collateral Agent for the benefit of the Secured Parties.

"Security Documents" shall mean the Mortgages, the Fleet Mortgages, the Security Agreement, the Pledge Agreement, the Assignments of Insurances and each of the security agreements, mortgages and other instruments and documents executed and delivered pursuant to any of the foregoing or pursuant to Section 5.10.

"Senior Common Interests" shall mean senior common limited liability company membership interests in Holdings.

"Senior Preferred Interests" shall mean senior preferred limited liability company membership interests in Holdings.

"Senior Unsecured Notes" shall mean the Senior Notes due 2008 to be issued by the Borrower and a special purpose co-obligor of the Borrower on the Closing Date in the aggregate principal amount of \$300,000,000.

"Senior Unsecured Debt" shall mean the Senior Unsecured Notes, any Guarantees thereof and the Indebtedness represented thereby.

"Senior Unsecured Debt Documents" shall mean the indenture under which the Senior Unsecured Notes are issued and all other instruments, agreements and other documents evidencing or governing the Senior Unsecured Notes or providing for any Guarantee or other right in respect thereof.

"Sponsor Equity Contribution" shall mean the issuance by Holdings of any equity securities or other equity interests of Holdings to one or more Permitted Holders to the extent that the Net Cash Proceeds therefrom are committed to finance a Consolidated Capital Expenditure at the time of such issuance and are used to finance a Consolidated Capital Expenditure within 270 days after such Net Cash Proceeds are received.

"Statutory Reserves" shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority, domestic or foreign, to which the Administrative Agent or any Lender (including any branch, Affiliate, or other fronting office making or holding a Loan) is subject (a) with respect to the Base CD Rate, for new negotiable nonpersonal time deposits in dollars of over \$100,000 with maturities approximately equal to three months, and (b) with respect to the Adjusted LIBO Rate, for Eurocurrency Liabilities (as defined in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute Eurocurrency Liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"subsidiary" shall mean, with respect to any person (herein referred to as the *"parent"*), any corporation, partnership, limited liability company, association or other business entity (a) of which

securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, owned, controlled or held, or (b) that is, at the time any determination is made, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" shall mean any direct or indirect subsidiary of the Borrower, after giving effect to the Recapitalization.

"Subsidiary Guarantee Agreement" shall mean the Subsidiary Guarantee Agreement, substantially in the form of Exhibit I, made by the Subsidiary Guarantors in favor of the Collateral Agent for the benefit of the Secured Parties.

"Subsidiary Guarantor" shall mean each Subsidiary listed on Schedule 1.01(b), and each other Subsidiary that is or becomes a party to a Subsidiary Guarantee Agreement.

"Taxes" shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

"Tax Distribution" shall mean, so long as the Borrower is a limited liability company, distributions to Holdings as sole member (or shareholder) of the Borrower in an aggregate amount, with respect to any taxable period ending after March 31, 1998, not to exceed the amount payable by Holdings pursuant to the tax distribution provisions of the LLC Agreement, as in effect on the date of this Agreement, to the holders of Holdings' Capital Stock as a direct result of their holding membership interests in Holdings; *provided* that with respect to any period during which Borrower is included in a consolidated group (other than as the parent of such group) for Federal income tax purposes (by reason of an initial public offering or otherwise), Borrower shall be permitted to distribute to the parent company of such group cash in an amount equal to the combined Federal, state and local income taxes that would be paid by the Borrower and its domestic Subsidiaries with respect to such period if they operated as a single Delaware corporation filing separate tax returns with respect to their combined actual taxable income.

"Term Borrowing" shall mean a Borrowing comprised of Tranche B Term Loans or Tranche C Term Loans.

"Term Loan Commitments" shall mean the Tranche B Commitments and the Tranche C Commitments.

"Term Loan Repayment Dates" shall mean the Tranche B Term Loan Repayment Dates and the Tranche C Term Loan Repayment Dates.

"Term Loans" shall mean the Tranche B Term Loans and the Tranche C Term Loans.

"Three-Month Secondary CD Rate" shall mean, for any day, the secondary market rate for three-month certificates of deposit reported as being in effect on such day (or, if such day shall not be a Business Day, the next preceding Business Day) by the Board through the public information telephone line of the Federal Reserve Bank of New York (which rate will, under the current practices of the Board, be published in Federal Reserve Statistical Release H.15(519) during the week following such day), or, if such rate shall not be so reported on such day or such next preceding Business Day, the average of the secondary market quotations for three-month certificates of deposit of major money center banks in New York City received at approximately 10:00 a.m., New York City time, on such day (or, if such day shall not be a Business Day, on the next preceding Business Day) by the Administrative Agent from three New York City negotiable certificate of deposit dealers of recognized standing selected by it.

"Total Revolving Credit Commitment" shall mean, at any time, the aggregate amount of the Revolving Credit Commitments, as in effect at such time.

"Tranche B Commitment" shall mean, with respect to each Lender, the commitment of such Lender to make Tranche B Term Loans hereunder as set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Lender assumed its Tranche B Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04

"Tranche B Maturity Date" shall mean June 30, 2006.

"Tranche B Term Borrowing" shall mean a Borrowing comprised of Tranche B Term Loans.

"Tranche B Term Loan Repayment Date" shall have the meaning assigned to such term in Section 2.11(a)(i).

"Tranche B Term Loans" shall mean the term loans made by the Lenders to the Borrower pursuant to clause (a) of Section 2.01. Each Tranche B Term Loan shall be either a Eurodollar Term Loan or an ABR Term Loan.

"Tranche C Commitment" shall mean, with respect to each Lender, the commitment of such Lender to make Tranche C Term Loans hereunder as set forth on Schedule 2.01, or in the Assignment and Acceptance pursuant to which such Lender assumed its Tranche C Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04.

"Tranche C Maturity Date" shall mean June 30, 2007.

"Tranche C Term Borrowing" shall mean a Borrowing comprised of Tranche C Term Loans.

"Tranche C Term Loan Repayment Date" shall have the meaning assigned to such term in Section 2.11(a)(ii).

"Tranche C Term Loans" shall mean the term loans made by the Lenders to the Borrower pursuant to clause (b) of Section 2.01. Each Tranche C Term Loan shall be either a Eurodollar Term Loan or an ABR Term Loan.

"Transactions" shall mean the Recapitalization and the Financing Transactions.

"Type", when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, the term ***"Rate"*** shall include the Adjusted LIBO Rate and the Alternate Base Rate.

"Vessels" shall mean the towboats and barges listed on Schedule 3.20(c).

"VGP" shall mean Vectura Group, Inc, a Delaware corporation and any successor thereto (whether by merger, consolidation, liquidation or otherwise).

"VGI Asset Transfer" shall mean, pursuant to, and in accordance with the terms of, the Recapitalization Documents, (a) the transfer by VGI and its subsidiaries of all their consolidated assets (other than certain limited assets and interests in certain subsidiaries as set forth in the Recapitalization Documents) to NMI Holdings and subsidiaries of NMI Holdings, (b) the assumption by NMI Holdings and subsidiaries of NMI Holdings of all liabilities of VGI, National Marine and NBL (other than certain limited liabilities as set forth in the Recapitalization Documents) and (c) the issuance by NMI Holdings of all its limited liability company membership interests to National Marine.

“*VGI Investors*” shall mean VGI and certain investors arranged by VGI.

“*Voting Stock*” of a person shall mean all classes of Capital Stock of such person then outstanding and normally entitled to vote in the election of directors (or persons performing similar functions).

“*wholly owned Subsidiary*” of any person shall mean a subsidiary of such person of which securities (except for directors' qualifying shares) or other ownership interests representing 100% of the equity or 100% of the ordinary voting power or 100% of the general partnership interests are, at the time any determination is being made, owned, controlled or held by such person or one or more wholly owned subsidiaries of such person or by such person and one or more wholly owned subsidiaries of such person.

“*Withdrawal Liability*” shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. *Terms Generally.* The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, (a) any reference in this Agreement to any Loan Document shall mean such document as amended, restated, supplemented or otherwise modified from time to time and (b) all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided, however*, that if the Borrower notifies the Administrative Agent that the Borrower wishes to amend any covenant in Article VI or any related definition to eliminate the effect of any change in GAAP occurring after the date of this Agreement or to reflect the application of Accounting Principles Board Opinions 16 and 17 on the operation of such covenant (or if the Administrative Agent notifies the Borrower that the Required Lenders wish to amend Article VI or any related definition for either such purpose), then the Borrower's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, or without the application of Accounting Principles Board Opinions 16 and 17, as applicable, until either such notice is withdrawn or such covenant is amended in a manner satisfactory to the Borrower and the Required Lenders.

ARTICLE II

The Credits

SECTION 2.01. *Commitments.* Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly, (a) to make a Tranche B Term Loan to the Borrower on the Closing Date in a principal amount not to exceed its Tranche B Commitment, (b) to make a Tranche C Term Loan to the Borrower on the Closing Date in a principal amount not to exceed its Tranche C Commitment, and (c) to make Revolving Loans to the Borrower, at any time and from time to time on or after the date hereof, and until the earlier of the Revolving Credit Maturity Date and the termination of the Revolving Credit Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in such Lender's Revolving Credit Exposure exceeding such Lender's Revolving Credit Commitment. Within the limits set forth in clause (c) of the preceding sentence and subject to the terms, conditions and limitations set forth herein, the Borrower may borrow, pay or prepay and reborrow Revolving Loans. Amounts paid or prepaid in respect of Term Loans may not be reborrowed.

consolidate with any other wholly owned Subsidiary in a transaction in which the surviving entity is a wholly owned Subsidiary and no person other than the Borrower or a wholly owned Subsidiary receives any consideration (*provided*, that if any such transaction involves a Domestic Subsidiary, the surviving entity shall be a wholly owned Domestic Subsidiary and no person other than the Borrower or a wholly owned Domestic Subsidiary shall receive any consideration) and (C) any Foreign Subsidiary may merge into or consolidate with any other Foreign Subsidiary in a transaction in which the surviving entity is a Subsidiary and the value of the Borrower's direct or indirect interest in such surviving entity immediately after such merger or consolidation is at least equal to the aggregate value of its direct or indirect interest in the merging or consolidating Foreign Subsidiaries immediately prior to such merger or consolidation, and (iii) the Borrower and any Subsidiary may make Consolidated Capital Expenditures permitted by Section 6.10 and sale and lease-back transactions permitted by Section 6.03.

(b) Neither the Borrower nor any Subsidiary shall engage in any Asset Sale otherwise permitted under paragraph (a) above unless (i) such Asset Sale is for consideration at least 85% of which is cash, (ii) such consideration is at least equal to the fair market value (as determined in good faith by the Borrower's board of directors or analogous body) of the assets being sold, transferred, leased or disposed of and (iii) the fair market value (as determined in good faith by the Borrower's board of directors or analogous body) of all assets sold, transferred, leased or disposed of pursuant to this paragraph (b) shall not exceed (i) \$20,000,000 in any fiscal year or (ii) \$100,000,000 in the aggregate.

SECTION 6.06. *Dividends and Distributions; Restrictions on Ability of Subsidiaries to Pay Dividends.* (a) Declare or pay, directly or indirectly, any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of its Capital Stock or directly or indirectly redeem, purchase, retire or otherwise acquire for value (or permit any Subsidiary to purchase or acquire) any of its Capital Stock or set aside any amount for any such purpose; *provided, however*, that:

(i) any Subsidiary may declare and pay dividends or make other distributions ratably to its shareholders;

(ii) Holdings may declare and pay dividends with respect to the Senior Preferred Interests payable solely in additional Senior Preferred Interests;

(iii) Holdings may declare and pay dividends with respect to the Junior Preferred Interests payable solely in additional Junior Preferred Interests;

(iv) the Borrower may distribute to Holdings, and Holdings may distribute to its members, Tax Distributions;

(v) if at the time thereof and after giving effect thereto no Default has occurred and is continuing, the Borrower may declare and pay dividends to Holdings at such times and in such amounts, not exceeding \$3,000,000 during any fiscal year, as shall be necessary to permit Holdings to discharge liabilities it can incur and pay pursuant to this Agreement;

(vi) following the fifth anniversary of the Closing Date, the Borrower may pay dividends to Holdings, and Holdings may declare and pay dividends to its members, in cash in an aggregate amount during any fiscal year not to exceed the lesser of (A) 50% of that portion of Excess Cash Flow (if any) from the preceding fiscal year not required to be used to prepay the Loans pursuant to Section 2.13(d) and (B) the sum of (1) \$7,500,000 and (2) the excess (if any) of the aggregate amount provided in this subclause (B) for prior fiscal years ending after such fifth anniversary over the aggregate amount actually dividended to Holdings pursuant to this clause (vi) in such fiscal years, *provided* that no payment shall be permitted under this clause (vi) unless at the time of such payment and after giving effect thereto (x) no Default has occurred and is continuing and (y) the Consolidated Leverage Ratio

as of the last day of the last fiscal quarter for which financial statements are available does not exceed 3.50 to 1.00; and

(vii) the Borrower may declare and pay dividends or make other distributions to permit Holdings to purchase, redeem, retire or otherwise acquire (A) Capital Stock of its members, or options or warrants to purchase Capital Stock, held by officers, directors or employees of Holdings, the Borrower or any Subsidiary pursuant to a compensation plan or arrangement in connection with the death, disability or termination of employment of any such officer, director or employee or (B) Capital Stock owned by any officer, director or employee of Holdings, the Borrower or any Subsidiary pursuant to the exercise of options or warrants to purchase such Capital Stock by such officer, director or employee or to pay taxes incurred in connection with such exercise of options or warrants in an aggregate amount for all such transactions described in clauses (A) and (B) not exceeding the sum of (x) \$1,000,000 plus (y) the proceeds of any substantially concurrent issuance of Capital Stock of Holdings to any officer, director or employee of Holdings, the Borrower or any Subsidiary.

(b) Permit its subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any such subsidiary to (i) pay any dividends or make any other distributions on its Capital Stock or any other interest or (ii) make or repay any loans or advances to the Borrower or the parent of such subsidiary, *provided* that the foregoing shall not apply to restrictions and conditions imposed by law or by any Loan Document or the Senior Unsecured Debt Documents.

SECTION 6.07. *Transactions with Affiliates.* Except as set forth on Schedule 6.07, sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except that (a) the Borrower or any Subsidiary may engage in (i) any of the foregoing transactions in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (ii) the transactions permitted pursuant to Sections 6.04, 6.05 and 6.06 and (iii) the Transactions, including, without limitation, the Tax Distributions and (b) this Section 6.07 shall not apply to transactions between or among (i) the Borrower and one or more wholly owned Domestic Subsidiaries or (ii) wholly owned Foreign Subsidiaries.

SECTION 6.08. *Business of Holdings, Borrower and Subsidiaries.* (a) Other than Holdings, engage at any time in any business or business activity other than a Related Business.

(b) In the case of Holdings, engage in any business or business activity other than being a holding company for the Capital Stock of the Borrower and the issuer of its securities permitted hereby and activities reasonably incidental thereto.

SECTION 6.09. *Other Indebtedness and Agreements.* (a) Permit any waiver, supplement, modification, amendment, termination or release of (i) the LLC Agreement or the Recapitalization Documents or (ii) any indenture, instrument or agreement pursuant to which any Indebtedness or preferred stock of Holdings, the Borrower or any Subsidiary is outstanding in an aggregate outstanding principal amount in excess of \$5,000,000, or modify its articles of organization, operating agreement or by-laws, in each case to the extent that any such waiver, supplement, modification, amendment, termination or release would be adverse to the Lenders in any material respect.

(b) (i) make any distribution, whether in cash, property, securities or a combination thereof, other than regular scheduled (or, in the case of Indebtedness described in Section 6.01(d), mandatory) payments of principal and interest as and when due, in respect of, or pay, or offer or commit to pay, or directly or indirectly redeem, repurchase, retire or otherwise acquire for consideration, or set apart any sum for the aforesaid purposes, any Indebtedness for borrowed money of the Borrower or any Subsidiary in an outstanding principal amount exceeding \$5,000,000 or (ii) pay in cash any amount

in respect of such Indebtedness that may at the obligor's option be paid in kind or in other securities, except:

(A) payment of Indebtedness created under the Loan Documents;

(B) repayment of Indebtedness (including Indebtedness under the Existing Debt Instruments and the Existing Credit Agreements) on the Closing Date in connection with the Recapitalization; and

(C) payment of intercompany Indebtedness between or among Holdings, the Borrower and its Subsidiaries permitted under clauses (e) and (f) of Section 6.01 and payment of Indebtedness permitted under clauses (h) and (i) of Section 6.01.

SECTION 6.10. *Capital Expenditures.* Permit the aggregate amount of Consolidated Capital Expenditures made by the Borrower and the Subsidiaries, taken as a whole, (a) in the fiscal year ended December 25, 1998, to exceed the excess of (i) \$70,000,000 over (ii) the aggregate amount of Consolidated Capital Expenditures made in 1998 by the Borrower and the Subsidiaries and National Marine and its subsidiaries, taken as a whole, prior to the Closing Date, and (b) in any fiscal year of the Borrower set forth below to exceed the sum of (x) the amount set forth opposite such fiscal year below and (y) the Net Cash Proceeds from Sponsor Equity Contributions made during such fiscal year; *provided, however*, that the amount of Consolidated Capital Expenditures in any fiscal year of the Borrower so permitted to be incurred shall be increased by an amount equal to the amount of unused Consolidated Capital Expenditures so permitted to be incurred for the immediately preceding fiscal year of the Borrower (without giving effect to this proviso):

<u>Year</u>	<u>Amount</u>
1999	\$ 90,000,000
2000	110,000,000
2001	110,000,000
2002	110,000,000
2003	150,000,000
2004	150,000,000
2005	155,000,000
2006	160,000,000
2007	160,000,000

SECTION 6.11. *Consolidated Leverage Ratio.* Permit the Consolidated Leverage Ratio as of the end of any fiscal quarter falling in any period set forth below to be in excess of the ratio set forth below for such period.

<u>Year</u>	<u>Ratio</u>
June 30, 1998 through September 30, 2000	5.50 to 1.00
December 31, 2000 through September 30, 2001	5.00 to 1.00
December 31, 2001 through September 30, 2002	4.50 to 1.00
Thereafter	4.00 to 1.00

SECTION 6.12. *Consolidated Interest Coverage Ratio.* Permit the Consolidated Interest Coverage Ratio for (a) the (i) fiscal quarter ended September 25, 1998, (ii) the two fiscal quarter period ended December 25, 1998, or (iii) the three fiscal quarter period ended March 26, 1999, to be less than 1.75 to 1.00 or (b) any period of four consecutive fiscal quarters ending in any period set forth below to be less than the ratio set forth below for such period, tested, in each case, at the end of such quarter.

<u>Period</u>	<u>Ratio</u>
June 25, 1999, through September 29, 2000	1.75 to 1.00
The last Friday in December, 2000 through the last Friday in September, 2001	2.00 to 1.00
The last Friday in December, 2001 through the last Friday in September, 2002	2.25 to 1.00
Thereafter	2.50 to 1.00

SECTION 6.13. *Fiscal Year.* Permit the fiscal year of Holdings or the Borrower to end on a day other than the last Friday in December of any calendar year.

ARTICLE VII

Events of Default

In case of the happening of any of the following events ("*Events of Default*"):

(a) any representation or warranty made or deemed made in or in connection with any Loan Document or the borrowings or issuances of Letters of Credit hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(b) default shall be made in the payment of any principal of any Loan or the reimbursement with respect to any L/C Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or any Fee or L/C Disbursement or any other amount (other than an amount referred to in (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of five Business Days;

(d) default shall be made in the due observance or performance by Holdings, the Borrower or any Subsidiary of any covenant, condition or agreement contained in Section 5.01(a), 5.05 or 5.06 or in Article VI;

(e) default shall be made in the due observance or performance by Holdings, the Borrower or any Subsidiary of any covenant, condition or agreement contained in any Loan Document (other than those specified in (b), (c) or (d) above) and such default shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent or any Lender to the Borrower;

(f) Holdings, the Borrower or any Subsidiary shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness in a principal amount in excess of \$5,000,000, when and as the same shall become due and payable, or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness if the effect of any failure referred to in this clause (ii) is to cause,