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Thomas F. Walls
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twalls@mwcllc.com

AOR 2003-28

McGUIREWOODS

June 20, 2003

Mr. Lawrence H. Norton
General Counsel
Federal Election Commission
Office of General Counsel
999 E Street, N.W.,
Washington, D.C. 20463

RE: Request for Advisory Opinion

Dear Mr. Norton:

Horizon Lines, LLC ("Horizon Lines") is a limited liability company which has elected to be treated as a partnership for federal tax purposes. Horizon Lines is the sponsoring organization for a non-connected committee known as the Horizon Lines Associates Good Government Fund ("HLAGGF") A controlling interest in Horizon Lines is held by Delian Holdings, LLC ("Delian") an LLC and holding company which has not elected tax treatment by the IRS and therefore is considered a partnership for purposes of federal election campaign law. Delian in turn is wholly owned by Carlyle-Horizon Holdings Corporation ("Carlyle-Horizon"). Neither Delian nor Carlyle-Horizon now has a political action committee of any kind.

Horizon Lines' objective is lawfully to establish a separate segregated fund ("SSF") for which Horizon Lines may pay the administrative expenses and which may solicit members of the restricted class of Horizon Lines and its affiliates, including Carlyle-Horizon and its subsidiary, Horizon Lines of Puerto Rico, Inc. Horizon Lines' preferred course would be one of the following:

HLAGGF would amend its statement of organization to name Carlyle-Horizon as its connected organization and HLAGGF would become an SSF. Horizon Lines would thenceforth pay the administrative and solicitation expenses of HLAGGF, which expenses would be deemed by the Federal Election Commission ("the Commission") to have been paid by Carlyle-Horizon, a corporation. Horizon Lines submits that this course should be permitted because the Commission has in multiple Advisory Opinions expressed the view that

(1) a partnership owned by a corporation, and affiliated with it, may perform the functions of a connected organization for its PAC;

(2) administrative and solicitation costs paid by a partnership which is owned by a corporation are not a contribution by the partnership, but are deemed to have been paid by the corporation which owns the partnership and ;

(3) while the Federal Election Campaign Act does not explicitly provide for the establishment of an SSF by a non-corporate or non-labor entity, the Commission has deemed PACs sponsored by partnerships to be affiliated with a corporation which has a controlling interest in the partnership. Advisory Opinions 2001-7,1997-13, 1996-49, 1994-11, 1993-9 and 1992-17 [1]

Or in the alternative, Horizon Lines would terminate its existing non-connected committee, HLAGGF. Carlyle-Horizon would establish an SSF in the ordinary manner. Horizon Lines, as an affiliate of Carlyle-Horizon would thenceforth pay the administrative and solicitation expenses of that new SSF. We believe that Horizon Lines should be permitted to pay those expenses because of the affiliation between Carlyle-Horizon and HLAGGF and because the Commission has permitted similar arrangements under similar circumstances. Advisory Opinion 1992-17

Before proceeding with the steps described in either of these scenarios, we are submitting this letter to seek an advisory opinion as to the following questions:

1. May the existing non-connected committee HLAGGF name Carlyle-Horizon at its connected organization and become an SSF?

2. If HLAGGF may name Carlyle Horizon as its connected organization and become an SSF, may Horizon Lines pay the administrative expenses of the SSF, on grounds that it is an affiliate of Carlyle-Horizon or on any other grounds?

3. As an alternative course to that posited in Question 1, if the non-connected committee HLAGGF is terminated, and Carlyle-Horizon establishes a SSF, may Horizon Lines pay the administrative and solicitation expenses of that new SSF, on grounds that is an affiliate of Carlyle-Horizon, or on any other grounds?

---

[1] The facts cited in these advisory opinions are similar in important respects to those in Horizon Lines' situation. We acknowledge one difference, but submit that it is not grounds for a substantive distinction: The Advisory Opinions cited above contemplate a partnership owned directly by a corporation. Horizon Lines is owned by Delian (a partnership for FEC purposes) which is in turn owned by Carlyle-Horizon, a corporation. We submit that this intermediate level of ownership does not diminish the rationale for allowing a non-connected committee sponsored by a partnership to name as its connected organization a corporation which holds a controlling interest in that partnership.

4. If the scenario posited in Question 3 is permitted, and were carried out, could the new SSF take the name "Horizon Lines Associates Good Government Fund" as its official name or as its "pacronym?"

Thank you very much for your attention. I will be pleased to answer any questions you may have regarding this request.

Sincerely,

Thomas F. Walls

FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 30, 2003

Mr. Thomas F. Walls
McGuire Woods LLP
Washington Square
1050 Connecticut Avenue N.W.
Washington, D.C. 20036-5317

Dear Mr. Walls:

This refers to your letter dated June 20, 2003 asking for guidance on several alternative proposals on behalf of your client Horizon Lines, LLC ("Horizon Lines"), concerning the establishment of a political committee. One of these proposals is to permit Horizon Lines to establish a separate segregated fund.

You explain that Horizon Lines is a limited liability company that has elected to be treated as a partnership for Federal tax purposes. Horizon Lines is the "sponsoring organization" for a non-connected committee known as Horizon Lines Associates Good Government Fund ("HLAGGF"). You state that "a controlling interest" in Horizon Lines is held by Delian Holdings, LLC ("Delian"), an LLC and holding company that you state "has not elected tax treatment by the IRS and therefore is considered a partnership for purposes of Federal election campaign law." Delian, in turn, is wholly owned by Carlyle-Horizon Holdings Corporation ("Carlyle-Horizon"). Neither Delian nor Carlyle-Horizon now has a political action committee.

As you know, the Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. 437f(a). Under the Commission's regulations, the Office of General Counsel is charged with reviewing requests for advisory opinions for completeness. 11 CFR 112.1(c) and (d).

After reviewing your request, further information will be needed for your request to include a complete description of the relevant facts. This information is relevant to the application of the affiliation factors found at 11 CFR 100.5(g)(4). Therefore, please answer the following questions:

1) You state that Delian Holdings possesses "a controlling interest" in Horizon Lines. Please explain in detail the nature and extent of this controlling interest. Quantify the amount of the controlling interest either in shares of ownership or some other relevant format that gives Horizon Lines this controlling interest. Identify the interests held by other entities or parties in Horizon Lines and compare those interests to those held by Delian Holdings.

2) State whether Delian or Horizon Lines has shares that are publicly traded.

3) State whether Delian or Carlyle-Horizon has the ability to direct or participate in the governance of Horizon Lines. If so, describe the manner in which such control occurs-whether through formal or informal practices or procedures.

4) State whether Delian or Carlyle-Horizon has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decision-making employees of Horizon Lines. State also whether there are any overlapping officers or employees among Horizon Lines, Delian and Carlyle-Horizon.

5) State whether Delian or Carlyle-Horizon provides or arranges for funds or services in a significant amount or on an ongoing basis to Horizon Lines.

6) State whether Delian or Carlyle-Horizon had an active or significant role in the formation of Horizon Lines.

7) Include a copy of the articles of incorporation, bylaws and other corporate governance documents for Horizon Lines, Delian, and Carlyle-Horizon.

Please send your responses to the questions presented above to the Commission's Office of General Counsel. Upon receipt of your responses and any supporting documents, this Office will give further consideration to your inquiry. If you have any questions about the advisory opinion process or this letter, please contact Michael Marinelli at 202-694-1650.

Sincerely,

Rosemary C. Smith

Rosemary C. Smith
Acting Associate General Counsel

McGuireWoods LLP
Washington Square
050 Connecticut Avenue N.W.
Suite 1200
Washington, DC 20036-5317
Phone: 202.857.1700
Fax: 202.857.1737
w.mcguirewoods.com

Thomas F. Walls
Direct: 202.857.2905

McGUIREWOODS

twalls@mwcllc.com
Direct Fax: 202.828.2986

July 28, 2003

Federal Election Commission
Office of the General Counsel
999 E Street NW
Washington, DC 20463
Attn: Rosemary Smith

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2003 JUL 29 P 3: 05

RE: Horizon Lines LLC Request for Advisory Opinion

Dear Ms. Smith:

We have received your letter of June 30, 2003 requesting additional information in response to our letter of June 20, 2003 seeking an Advisory Opinion on behalf of Horizon Lines, LLC ("Horizon Lines"). Your letter poses several questions and requests certain of the organizing documents of Horizon Lines, Delian Holdings, L.L.C. ("Delian") and Carlyle-Horizon Holdings Corp. ("Carlyle-Horizon"). Each of your questions is reproduced below, followed by Horizon Lines' response, and the requested documents are enclosed. Also enclosed are copies of our original request for an advisory opinion and your letter of June 30, 2003.

1) ***You state that Delian Holdings possesses "a controlling interest" in Horizon Lines. Please explain in detail the nature and extent of this controlling interest. Quantify the amount of the controlling interest either in shares of ownership or some other relevant format that gives Horizon Lines this controlling interest. Identify the interests held by other entities or parties in Horizon Lines and compare those interests to those held by Delian Holdings.***

The ownership of Horizon Lines, LLC is as follows:

a. Delian Holdings, L.L.C. owns 100% of the Senior Common Units and 90% of the Common Units of Horizon Lines, which together represent 84.5% of the voting interests of Horizon Lines.

b. SL Service, Inc., a wholly-owned subsidiary of CSX Corporation ("CSX"), owns 90% of the Senior Preferred Units of Horizon Lines, representing 13.5% of the voting interests of Horizon Lines.

c. CSX Domestic Shipping Corporation, a wholly-owned subsidiary of CSX, owns 10% of the Senior Preferred Units and 10% of the Common Units of Horizon Lines, which together represent 2% of the voting interests of Horizon Lines.

2) ***State whether Delian or Horizon Lines has shares that are publicly traded.***

Neither Delian nor Horizon Lines has shares or other equity that is publicly traded.

3) ***State whether Delian or Carlyle-Horizon has the ability to direct or participate in the governance of Horizon Lines. If so, describe the manner in which such control occurs - whether through formal or informal practices or procedures.***

Delian and Carlyle-Horizon have the ability to direct or participate in the governance of Horizon Lines as follows:

a. Delian has voting control of Horizon Lines (as described in item 1 above) and has the power to direct and participate in all governance decisions of Horizon Lines, including the ability to elect all voting members of the Board of Directors of Horizon Lines.

b. Carlyle-Horizon is the sole member of Delian, directing all of its business and affairs, and thus (indirectly through Delian) has the power to direct and participate in all governance decisions of Horizon Lines, including the ability to elect all voting members of the Board of Directors of Horizon Lines.

4) ***State whether Delian or Carlyle-Horizon has the authority to hire, appoint, demote or otherwise control the officers, or other decision-making employees of Horizon Lines. State also whether there are any overlapping officers or employees among Horizon Lines, Delian and Carlyle-Horizon.***

Both Delian and Carlyle-Horizon (acting through Delian) have the authority and ability to hire, appoint, demote or otherwise control the officers and other decision-making employees of Horizon Lines (as described in item 3 above). The overlapping officers among Horizon Lines, Delian and Carlyle-Horizon are as follows:

a. Horizon Lines -- Greg Ledford (Director)
Mark Fariborz (Director)

b. Delian -- Greg Ledford (President and Manager)
Mark Fariborz (Vice President and Secretary)
Mbago Kaniki (Assistant Secretary)

c. Carlyle-Horizon -- Greg Ledford (President)
Mark Fariborz (Vice President, Secretary and Treasurer)
Mbago Kaniki (Assistant Secretary)

5) ***State whether Delian or Carlyle-Horizon provides or arranges for funds or services in a significant amount or on an ongoing basis to Horizon Lines.***

Delian, Carlyle-Horizon and their affiliates provide certain management services to Horizon Lines from time to time but are not otherwise involved in the day to day operations of Horizon Lines or its subsidiaries, except to the extent of matters coming before the Horizon Lines Board of Directors. To date, neither Delian nor Carlyle-Horizon has provided any funds to Horizon Lines beyond their capital contributions. Delian has the power to elect all voting members of the Board of Directors of Horizon Lines, and through this, controls who serves as officers of Horizon Lines. Carlyle-Horizon's parent company has the right to review the books and records of Horizon Lines, LLC and its subsidiaries.

6) ***State whether Delian or Carlyle-Horizon had an active or significant role in the formation of Horizon Lines.***

Neither Delian nor Carlyle-Horizon held any interest in Horizon Lines at the time of its formation. Neither Delian nor Carlyle-Horizon had an active role in the formation of Horizon Lines (formerly known as "CSX Lines, LLC"), which was originally formed in 1998. Delian acquired its controlling interest in Horizon Lines in connection with a recapitalization and conveyance transaction that was consummated on February 27, 2003.

7) ***Include a copy of the articles of incorporation, bylaws and other corporate governance documents for Horizon lines, Delian, and Carlyle-Horizon.***

The requested documents are enclosed.

Thank you for your attention to our request for an advisory opinion. Please let me know if I can provide you any further information or otherwise assist you.

Sincerely,

Thomas F. Walls

Enclosures to July 28 letter of Thomas F. Walls to FEC Office of General Counsel

1. July 28, 2003 Letter of Thomas F. Walls to FEC General Counsel, response to General Counsels's letter of June 30, 2003

2. June 30, 2003 letter of FEC General Counsel's office to Thomas F. Walls, seeking further information regarding Horizon Lines, LLC's request for an advisory opinion

3. June 20, 2003 letter of Thomas F. Walls to FEC Office of General Counsel seeking Advisory Opinion on behalf of Horizon Lines, LLC

4. Certificate of Formation for Sea-Land Domestic Shipping, LLC and subsequent certificates of amendment, changing the LLCs name to CSX Lines, LLC and Horizon Lines, LLC.

5. Amended and Restated Limited Liability Company Agreement of Horixon Lines, LLC, formerly known as CSX LINES, LLC, a Delaware Limited Liability Company

6. Horizon Lines Officers and Directors

7. Certificate of Formation for Delian Holdings, L.L.C.

8. Limited Liability Company Agreement of Delian Holdings, L.L.C.

9. Certificate of Incorporation of Carlyle--Horizon Holdings Corp., with amendment

10. Bylaws of Carlyle-Horizon Holdings Corp.

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2003 JUL 29 P 3: 05

FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 30, 2003

Mr. Thomas F. Walls
McGuire Woods LLP
Washington Square
1050 Connecticut Avenue N.W.
Washington, D.C. 20036-5317

Dear Mr. Walls:

This refers to your letter dated June 20, 2003 asking for guidance on several alternative proposals on behalf of your client Horizon Lines, LLC ("Horizon Lines"), concerning the establishment of a political committee. One of these proposals is to permit Horizon Lines to establish a separate segregated fund.

You explain that Horizon Lines is a limited liability company that has elected to be treated as a partnership for Federal tax purposes. Horizon Lines is the "sponsoring organization" for a non-connected committee known as Horizon Lines Associates Good Government Fund ("HLAGGF"). You state that "a controlling interest" in Horizon Lines is held by Delian Holdings, LLC ("Delian"), an LLC and holding company that you state "has not elected tax treatment by the IRS and therefore is considered a partnership for purposes of Federal election campaign law." Delian, in turn, is wholly owned by Carlyle-Horizon Holdings Corporation ("Carlyle-Horizon"). Neither Delian nor Carlyle-Horizon now has a political action committee.

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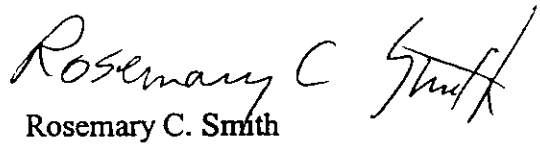
Sincerely,



Rosemary C. Smith
Acting Associate General Counsel

McGuireWoods LLP
Washington Square
1050 Connecticut Avenue N.W.
Suite 1200
Washington, DC 20036-5317
Phone: 202.857.1700
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Thomas F. Walls
Direct: 202.857.2905
twalls@mwcllc.com

June 20, 2003

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2003 JUN 20 P 4: 32

Mr. Lawrence H. Norton
General Counsel
Federal Election Commission
Office of General Counsel
999 E Street, N.W.,
Washington, D.C. 20463

RE: Request for Advisory Opinion

Dear Mr. Norton:

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HLAGGF would amend its statement of organization to name Carlyle-Horizon as its connected organization and HLAGGF would become an SSF. Horizon Lines would thenceforth pay the administrative and solicitation expenses of HLAGGF, which expenses would be deemed by the Federal Election Commission ("the Commission") to have been paid by Carlyle-Horizon, a corporation. Horizon Lines submits that this course should be permitted because the Commission has in multiple Advisory Opinions expressed the view that

(1) a partnership owned by a corporation, and affiliated with it, may perform the functions of a connected organization for its PAC;

(2) administrative and solicitation costs paid by a partnership which is owned by a corporation are not a contribution by the partnership, but are deemed to have been paid by the corporation which owns the partnership and ;

(3) while the Federal Election Campaign Act does not explicitly provide for the establishment of an SSF by a non-corporate or non-labor entity, the Commission has deemed PACs sponsored by partnerships to be affiliated with a corporation which has a controlling interest in the partnership. Advisory Opinions 2001-7,1997-13, 1996-49, 1994-11, 1993-9 and 1992-17 [1]

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Before proceeding with the steps described in either of these scenarios, we are submitting this letter to seek an advisory opinion as to the following questions:

1. May the existing non-connected committee HLAGGF name Carlyle-Horizon at its connected organization and become an SSF?

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3. As an alternative course to that posited in Question 1, if the non-connected committee HLAGGF is terminated, and Carlyle-Horizon establishes a SSF, may Horizon Lines pay the administrative and solicitation expenses of that new SSF, on grounds that is an affiliate of Carlyle-Horizon, or on any other grounds?

---

[1] The facts cited in these advisory opinions are similar in important respects to those in Horizon Lines' situation. We acknowledge one difference, but submit that it is not grounds for a substantive distinction: The Advisory Opinions cited above contemplate a partnership owned directly by a corporation. Horizon Lines is owned by Delian (a partnership for FEC purposes) which is in turn owned by Carlyle-Horizon, a corporation. We submit that this intermediate level of ownership does not diminish the rationale for allowing a non-connected committee sponsored by a partnership to name as its connected organization a corporation which holds a controlling interest in that partnership.

4. If the scenario posited in Question 3 is permitted, and were carried out, could the new SSF take the name "Horizon Lines Associates Good Government Fund" as its official name or as its "pacronym?"

Thank you very much for your attention. I will be pleased to answer any questions you may have regarding this request.

Sincerely,

Thomas F. Walls

Delaware

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "CSX LINES, LLC", CHANGING ITS NAME FROM "CSX LINES, LLC" TO "HORIZON LINES, LLC", FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF FEBRUARY, A.D. 2003, AT 8:30 O'CLOCK A.M.

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

2927511 8100

AUTHENTICATION: 2283493

030136922

DATE: 02-28-03

CERTIFICATE OF AMENDMENT

OF

CSX LINES, LLC

1. The name of the limited liability company is CSX LINES, LLC.

2. The Certificate of Formation of the limited liability company is hereby amended as follows:

The name of the limited liability company shall be **"HORIZON LINES, LLC"**.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of AMENDMENT OF CSX LINES, LLC, this 24th day of February, 2003.

Raymond C. Kolls

Name: Raymond C. Kolls
Title: Authorized Representative

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 08:30 AM 02/24/2003
030115259 – 2927511

** TOTAL PAGE.02 **

State of Delaware

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "CSX LINES, LLC" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF FORMATION, FILED THE THIRTY-FIRST DAY OF JULY, A.D. 1998, AT 4:30 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "SEA-LAND DOMESTIC SHIPPING, LLC" TO "SEA LOGIX, LLC", FILED THE TWENTY-SIXTH DAY OF OCTOBER, A.D. 1999, AT 11 O'CLOCK A.M.

CERTIFICATE OF AMENDMENT, CHANGING ITS NAME FROM "SEA LOGIX, LLC" TO "CSX LINES, LLC", FILED THE EIGHTEENTH DAY OF NOVEMBER, A.D. 1999, AT 4:30 O'CLOCK P.M.

SECRETARY'S OFFICE

Edward J. Freel, Secretary of State

2927511 8100H

0514705

AUTHENTICATION:

001317456

06-22-00

DATE:

State of Delaware

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "SEA LOGIX, LLC", CHANGING ITS NAME FROM "SEA LOGIX, LLC" TO "CSX LINES, LLC", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF NOVEMBER, A.D. 1999, AT 4:30 O'CLOCK P.M.

Edward J. Freel, Secretary of State

2927511 8100

991495321

AUTHENTICATION: 0093292

DATE: 11-19-99

CERTIFICATE OF AMENDMENT

OF

SEA LOGIX, LLC

1. The name of the limited liability company is Sea Logix, LLC.

2. The Certificate of Formation of the limited liability company is hereby amended as follows:

   The name of the limited liability company shall be CSX Lines, LLC.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of Sea Logix, LLC, this 18th day of November, 1999.

Robert S. Zuckerman

Name: Robert S. Zuckerman
Title: Authorized Person

(DEL. - LLC 3240 - 10/1/92)
CT System

State of Delaware

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "SEA-LAND DOMESTIC SHIPPING, LLC", CHANGING ITS NAME FROM "SEA-LAND DOMESTIC SHIPPING, LLC" TO "SEA LOGIX, LLC", FILED IN THIS OFFICE ON THE TWENTY-SIXTH DAY OF OCTOBER, A.D. 1999, AT 11 O'CLOCK A.M.

Edward J. Freel, Secretary of State

2927511 8100

991452613

AUTHENTICATION: 0045804

DATE: 10-26-99

CERTIFICATE OF AMENDMENT

OF

SEA-LAND DOMESTIC SHIPPING, LLC

1. The name of the limited liability company is Sea-Land Domestic Shipping, LLC.

2. The Certificate of Formation of the limited liability company is hereby amended as follows:

The name of the limited liability company shall be Sea Logix, LLC.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment of Sea-Land Domestic Shipping, LLC this 25th day of October, 1999.

Robert S. Zuckerman

Name: Robert S. Zuckerman
Title: Secretary of Sea-Land Service, Inc.
Secretary/Manager

(DEL. - LLC 3240 - 10/1/92)

State of Delaware

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF LIMITED LIABILITY COMPANY OF "SEA-LAND DOMESTIC SHIPPING, LLC", FILED IN THIS OFFICE ON THE THIRTY-FIRST DAY OF JULY, A.D. 1998, AT 4:30 O'CLOCK P.M.

Edward J. Freel, Secretary of State

AUTHENTICATION:

DATE:

2927511 8100

981301024

9231529

08-03-98

CERTIFICATE OF FORMATION

OF

SEA-LAND DOMESTIC SHIPPING, LLC.

1. The name of the limited liability company is Sea-Land Domestic Shipping, LLC. The address is 6000 Carnegie Boulevard, Charlotte, North Carolina 28209.

2. The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is the Corporation Trust Company.

3. Sea-Land Domestic Shipping, LLC. may carry on any lawful business, purpose or activity pursuant to Delaware Corporation Law Chapter 18 Section 18-106.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation of Sea-Land Domestic Shipping, LLC. this 31st day of July, 1998.

SEA-LAND SERVICE, INC.

Authorized Person

By: Robert S. Zuckerman

Robert S. Zuckerman, Secretary

Delaware

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE SAID "CSX LINES, LLC", FILED A CERTIFICATE OF AMENDMENT, CHANGING ITS NAME TO "HORIZON LINES, LLC", THE TWENTY-FOURTH DAY OF FEBRUARY, A.D. 2003, AT 8:30 O'CLOCK A.M.

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

2927511 8320

030152347

AUTHENTICATION: 2294875

DATE: 03-07-03

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY

AGREEMENT

OF

HORIZON LINES, LLC,

formerly known as

CSX LINES, LLC,

a Delaware Limited Liability Company

Dated as of February ___, 2003

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AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF HORIZON LINES, LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT (this "Agreement") of Horizon Lines, LLC, a Delaware limited liability company (formerly named CSX Lines, LLC) (the "Company"), is made and entered into as of this ___ day of February 2003, by and among the Company, Delian Holdings, L.L.C., a Delaware limited liability company ("Delian"), SL Service, Inc., a Delaware corporation ("SL Service") and CSX Domestic Shipping Corporation, a Delaware corporation ("CSX Domestic Shipping"), on the terms set forth herein. SL Service and CSX Domestic Shipping are sometimes collectively referred to herein as the "Initial Members." This Agreement amends and restates, and supersedes in all respects, that certain Limited Liability Company Agreement of the Company (f/k/a CSX Lines, LLC), dated as of December 10, 1999 and any amendments thereto prior to the date hereof (the "Prior Agreement").

WHEREAS, pursuant to Sections 2.1(a)(ii), (iii) and (iv) of that certain Transaction Agreement (the "Transaction Agreement"), dated as of December 16, 2002, by and among Delian, SL Service and CSX Corporation, a corporation organized under the laws of the Commonwealth of Virginia ("CSX"), SL Service has effected a recapitalization of the Company on the terms set forth herein (the "Recapitalization");

WHEREAS, as a result of the Recapitalization, the issued and outstanding Membership Interests consist solely of (i) 60,000 Senior Preferred Units, (ii) 1,000 Senior Common Units and (iii) 1,000 Common Units;

WHEREAS, prior to the consummation of transactions contemplated by the Transaction Agreement and following the Recapitalization, SL Service transferred all of its right, title and interest to 6,000 Senior Preferred Units and 100 Common Units to CSX Domestic Shipping (the "CSX Transfer"); and

WHEREAS, in connection with the consummation of the Closing Transactions contemplated by the Transaction Agreement (the "Closing"), Delian has purchased from SL Service all of SL Service's right, title and interest in and to 1,000 Senior Common Units and 900 Common Units and Delian has contributed $7,553,518 to the Company in respect of its Senior Common Units;

NOW THEREFORE, in consideration of the premises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1
ORGANIZATIONAL MATTERS

1.1 *Formation*. The Company was formed under the Act by the filing of the Certificate and the execution of the Prior Agreement and, pursuant to the Recapitalization, has been reorganized for the purposes and upon the terms and subject to the conditions hereinafter

set forth. The rights and liabilities of the Members of the Company shall be as provided in the Act, except as otherwise expressly provided herein. In the event of any inconsistency between any terms and conditions contained in this Agreement and any non-mandatory provisions of the Act, the terms and conditions contained in this Agreement shall govern.

1.2 *Name*. The name of the Company shall be "Horizon Lines, LLC." The Company may also conduct business at the same time under one or more fictitious names if the Board of Directors determines that such is in the best interests of the Company. The Board of Directors may change the name of the Company, from time to time, in accordance with applicable law; provided, however, the Board of Directors shall give the Members prompt written notice of any such name change.

1.3 *Principal Place of Business; Other Places of Business*. The principal place of business of the Company shall be located at such place, within or outside the State of Delaware, as the Board of Directors may from time to time designate in accordance with the terms of this Agreement. The Company may maintain offices and places of business at such other place or places, within or outside the State of Delaware, as the Board of Directors deems advisable; provided, however, the Board of Directors shall give the Members prompt written notice of any change in its principal place of business.

1.4 *Business Purpose*. The purpose of the Company is to conduct any activity in which a limited liability company may lawfully engage pursuant to the Act, as the Board of Directors may from time to time determine in its discretion in accordance with the terms of this Agreement.

1.5 *Certificate of Formation; Filings*. The Company has caused an authorized representative to prepare, execute and file a certificate of formation (the "Certificate") in the Office of the Delaware Secretary of State as required by the Act. The Company shall make such additional filings and recordings with any governmental authority in the State of Delaware or in any other jurisdiction as the Board of Directors deems necessary or advisable and that are not inconsistent with this Agreement.

1.6 *Fictitious Business Name Statements*. Following the execution of this Agreement, fictitious business name statements shall be filed and published when, as and if the Board of Directors determines it necessary. Any such statement shall be renewed as required by applicable law.

1.7 *Designated Agent for Service of Process*. The Company shall continuously maintain a registered office and a designated and duly qualified agent for service of process on the Company in the State of Delaware.

1.8 *Term*. The term of the Company commenced on the date that the Certificate was filed with the Office of the Delaware Secretary of State, and shall continue until terminated pursuant to this Agreement.

1.9 *Citizenship*. The Company shall at all times be a U.S. Citizen.

ARTICLE 2
DEFINITIONS

Capitalized words and phrases used and not otherwise defined elsewhere in this Agreement shall have the following meanings:

"Acceleration Event" means any transaction or series of related transactions as a result of which Delian, Carlyle Partners III, L.P., Craddock, LLC or any Intermediate Holding Company, Transfers (including through a new equity issuance) to any Person any direct or indirect interest in the Company (which for the avoidance of doubt, shall include any interest in an Intermediate Holding Company) held directly or indirectly by any of Delian, Carlyle Partners III, L.P., Craddock, LLC or any Intermediate Holding Company prior to such time as 100% of the issued and outstanding Senior Preferred Units have been redeemed or purchased by the Company or its designee; provided, however, that the following shall not be Acceleration Events for any purpose hereunder:

(a) the issuance of equity interests in Delian or any Intermediate Holding Company to any Person in consideration for cash, securities or other property so long as such cash, securities or other property are contributed to Delian or its Subsidiaries (including any Unrestricted Subsidiaries (as defined in the Guarantee and Indemnity Agreement)) and, in connection with such transaction or series of related transactions, not other cash, securities or other property is thereafter dividended or distributed out of Delian;

(b) the purchase by Carlyle Partners III, L.P. or any Carlyle Investment Fund or any of their respective wholly-owned Subsidiaries (for so long as such Subsidiaries are wholly-owned) of any direct or indirect interest in the Company or any Intermediate Holding Company held by Craddock, LLC or its Affiliates;

(c) the repurchase by Delian or any Intermediate Holding Company or their respective designees of any equity securities or options of such Person held by management employees, management officers or management directors (as opposed to financial investors);

(d) the Transfer by Carlyle Partners III, L.P. of any direct or indirect interest in the Company solely to any other Carlyle Investment Fund or such Fund's wholly-owned Subsidiaries (for so long as such Subsidiaries are wholly-owned);

(e) the Transfer by Carlyle Partners III, L.P. or any Intermediate Holding Company to Craddock, LLC of equity securities of Delian or any Intermediate Holding Company or rights to acquire equity securities of such Persons that would not result in Craddock, LLC having more than a 25% direct or indirect interest in the Company;

(f) the Transfer of a direct or indirect interest in Craddock, LLC by any holder of any such interest in Craddock, LLC for so long as Craddock, LLC remains an Affiliate of Theophilos Priovolos and for so long as

Craddock, LLC does not have more than a 25% direct or indirect interest in the Company.

For the avoidance of doubt, the definition of Acceleration Event (x) shall include indirect Transfers that have the same substantive effect as a Transfer of an equity interest, including, without limitation, the issuance of new equity securities by Delian or any Intermediate Holding Company and the distribution of the proceeds of such issuance in connection with such issuance of new equity securities but (y) shall not include the sale or Transfer by any Person of any direct or indirect interest in Carlyle Partners III, L.P. or any Carlyle Investment Fund so long as the aggregate direct or indirect investment of Carlyle Partners III, L.P. or any such Carlyle Investment Fund in the Company does not constitute all or substantially all the assets of Carlyle Partners III, L.P. or such Carlyle Investment Fund.

"Acceptance Notice" is defined in Section 7.2.2(b).

"Act" shall mean the Delaware Limited Liability Company Act, Delaware Code, Title 6, Sections 18-101, *et. seq.*, as amended. References to particular provisions of the Act are intended to refer to any similar provision then in force.

"Actual Puerto Rico EBITDA" for any period shall mean the actual combined EBITDA for the Puerto Rico division of the Company (including, for the purposes of determining the Puerto Rico Accrual Amount, the results of operations for Lines of Puerto Rico) during such period determined on a basis consistent with, and using the Company's accounting policies in effect at the time of, the calculation of EBITDA for such division in the model separately identified as such (the "Model"). Without limiting the foregoing, all allocations of overhead made to the Puerto Rico division during the applicable period shall be determined in the same manner in which such allocations were made for the purposes of calculating the EBITDA of the Puerto Rico division as reflected in such Model (i.e., on a "per load" basis) and shall be made as if Lines of Puerto Rico were a Subsidiary of, and consolidated with, the Company and its Subsidiaries. Actual Puerto Rico EBITDA for each of 2003, 2004 and 2005 shall be calculated in good faith by the Company, which calculation shall be approved by the Board of Directors based upon the Company's year-end financial statements for such calendar year (or in the case of any financial period ending on any date other than December 31 or if the audited year-end financial statements are not yet available as of any date of determination, based upon the Company's unaudited month-end or year-end financial statements as the case may be). The Company shall notify SL Service of such determination in writing (the "Calculation Notice") within 30 days from the date the Company's final audited financial statements for each such calendar year are delivered to the Company which written notice shall provide a reasonably detailed calculation of the Actual Puerto Rico EBITDA for such calendar year. In the event that SL Service disagrees with such calculation it shall notify the Company within 30 days of its receipt of the Calculation Notice setting forth in reasonable detail its disagreement with such calculation. In such event, Delian and SL Service shall negotiate in good faith for a period of at least 15 days and, if they are unable to agree, either Delian or SL Service may submit any dispute to a nationally recognized independent accounting firm acceptable to each of them (the "Independent Auditor") for resolution based solely upon the written submissions of the parties, which Independent Auditor's determination shall be final and binding upon the parties. The fees and expenses of the Independent Auditor shall be paid one-half by Delian and one-half by SL Service. If SL Service fails to deliver an objection in writing within 30 days of its receipt of the

Calculation Notice, SL Service shall be deemed to have accepted the Company's calculation of the Actual Puerto Rico EBITDA for all purposes hereunder. It is understood and agreed that no representation or warranty has been made with respect to any Net Profit Target or any numbers in the Model or whether or not such numbers are achievable. It is further understood and agreed that the relevant number for purposes of calculating the Puerto Rico Accrual Amount is the Puerto Rico EBITDA and the Model is only being used as illustrative of accounting practices.

"Additional Members" means those Persons admitted as Members pursuant to Section 3.2.

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Add to such Capital Account the following items:

(i) The amount, if any, that such Member is obligated to contribute to the Company upon liquidation of such Member's Interest; and

(ii) The amount that such Member is obligated to restore or is deemed to be obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(*c*) or the penultimate sentence of each of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Subtract from such Capital Account such Member's share of the items described in Regulations Sections 1.704-1(b)(2)(ii)(*d*)(*4*), (*5*) and (*6*).

The foregoing provisions of this definition are intended to comply with Regulations Section 1.704-1(b)(2)(ii)(*d*) and shall be interpreted consistently therewith.

"Affiliate" shall mean, with respect to any Person, any other Person that directly, or through one or more intermediaries, controls or is controlled by or is under common control with such Person, and, if such a Person is an individual, any member of the Immediate Family of such individual. As used in this definition, "control" (including, with correlative meanings, "controlled" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies of a Person (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"Agreement" is defined in the preamble to this Agreement.

"Applicable Rate" is defined in Section 4.5.

"Base Preference Amount" is defined in Section 4.2.3(a).

"Base Preferred Return" is defined in Section 4.2.3(b).

"Board of Directors" is defined in Section 6.1.1.

"Capital Account" means the Capital Account maintained for each Member on the Company's books and records in accordance with the following provisions:

(a) As of the date of this Agreement and after giving effect to the transactions contemplated by the Transaction Agreement each Member's Capital Account balance shall initially be as set forth next to such Member's name on Exhibit A hereto.

(b) To each Member's Capital Account there shall be added (i) such Member's Capital Contributions, (ii) such Member's allocable share of Net Profits and any items in the nature of income or gain that are specially allocated to such Member pursuant to Article 5 hereof or any other provision of this Agreement, and (iii) the amount of any Company liabilities assumed by such Member or which are secured by any property distributed to such Member.

(c) From each Member's Capital Account there shall be subtracted (i) the amount of (A) cash and (B) the Gross Asset Value of any Company Assets (other than cash) distributed to such Member (other than any payment of principal and/or interest to such Member pursuant to the terms of a loan made by the Member to the Company) pursuant to any provision of this Agreement, (ii) such Member's allocable share of Net Losses and any other items in the nature of expenses or losses that are specially allocated to such Member pursuant to Article 5 or any other provision of this Agreement, and (iii) liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

(d) In the event any Interest in the Company is transferred in accordance with the terms of this Agreement after the date hereof, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Interest.

(e) In determining the amount of any liability for purposes of the foregoing subsections (a) and (b) hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

(f) The Capital Account of each Member shall separately account in sub-accounts in accordance with the terms of this definition of Capital Account for the capital attributable to the different classes of Units in the Company, such that capital attributable to Senior Preferred Units ("Senior Preferred Capital"), Senior Common Units ("Senior Common Capital"), and Common Units ("Common Capital") shall be separately stated and accounted for in such sub-accounts.

(g) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations. In the event that the Board of Directors determines that it is prudent to modify the manner in which the Capital Accounts, or any additions or subtractions thereto, are computed in order to comply with such Regulations, the Board of Directors may make such modification; provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to Article 4 or

Article 8 hereof upon the dissolution of the Company. The Board of Directors shall also make (i) any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(*q*), and (ii) any appropriate modifications in the event that unanticipated events might otherwise cause this Agreement not to comply with Regulations Sections 1.704-1(b) and 1.704-2.

"Capital Contributions" means, with respect to any Member, the total amount of money and the Gross Asset Value of property (other than money) contributed to the capital of the Company by such Member.

"Capital Stock" means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) in equity of such Person, whether now outstanding or hereafter issued.

"Carlyle Investment Fund" means any investment fund, whether organized as a limited partnership or otherwise (including any "alternative investment vehicle" constituted in substantially the same manner as such investment fund which shall be deemed a part of such Carlyle Investment Fund for purposes of this definition), that is controlled by TC Group, L.L.C. or its Affiliates, which is formed for the purpose of raising private equity capital to invest in debt or equity securities and which fund's direct or indirect investment in the Company will not constitute more than 10% of the assets of such fund at the time such investment in the Company is made.

"Cash Available for Distribution" means, with respect to any fiscal year, all Company cash receipts (excluding the proceeds from the Senior Debt and the proceeds from any Terminating Capital Transaction, but including any decreases in, or amounts released from, Reserves), after deducting payments for accounts payable by the Company or its Subsidiaries, payments required to be made in connection with any loan to the Company or any other loan secured by a lien on any Company Assets, capital expenditures, any other cash expenditure (including any payment to any Member or affiliate thereof pursuant to any management or services agreement permitted under the Guarantee and Indemnity Agreement) and any other amounts set aside for the restoration, increase or creation of reasonable Reserves; provided, however, Cash Available for Distribution shall not include any cash that the Company is prohibited from distributing to the Members by the terms of any indebtedness of the Company or its Subsidiaries.

"Certificate" means the Certificate of Formation of the Company filed under the Act in the Office of the Delaware Secretary of State for the purpose of forming the Company as a Delaware limited liability company, and any duly authorized, executed and filed amendments or restatements thereof.

"Closing" is defined in the recitals to this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

"Common Capital" is defined within the definition of Capital Account.

"Common Member" means each Member who holds Common Units, solely in its capacity as such.

"Common Redemption Price" is defined in Section 8.3.3.

"Common Units" is defined in Section 3.1.

"Company" is defined in the preamble to this Agreement.

"Company Minimum Gain" has the meaning set forth in Regulations Sections 1.704-2(b)(2) and 1.704-2(d)(1) for the phrase "partnership minimum gain."

"Company Assets" means all direct and indirect interests in real and personal property owned by the Company from time to time, and shall include both tangible and intangible property (including cash).

"CSX" is defined in the recitals to this Agreement.

"CSX Domestic Shipping" is defined in the preamble to this Agreement.

"CSX Transfer" is defined in the recitals to this Agreement.

"Demand Registrations" is defined in Section 9.1.1.

"Depreciation" means, for each fiscal year or other period, an amount equal to the federal income tax depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Board of Directors.

"Delian" is defined in the preamble to this Agreement.

"Directors" is defined in Section 6.1.1.

"Distribution Amount" is defined as the $175,000,000 of loan proceeds from the Senior Debt distributed to SL Service and CSX Domestic Shipping by the Company pursuant to Section 2.1(b)(iv) of the Transaction Agreement.

"Early Distribution Notice" is defined in Section 4.2.2.

"Economic Interest" means a Person's right to share in the Net Profits, Net Losses, or similar items of, and to receive distributions from, the Company, but does not include any other rights of a Member including, without limitation, the right to vote or to participate in the management of the Company, or, except as specifically provided in this Agreement or

required under the Act, any right to information concerning the business and affairs of the Company.

"Event of Withdrawal" means, with respect to a Member, the happening of any of the following events: (a) such Member's withdrawal from the Company in accordance with this Agreement; (b) such Member's assignment of its Membership Interest in accordance with this Agreement; (c) the removal of such Person as a Member in accordance with this Agreement; or (d) the commencement of voluntary or involuntary insolvency or bankruptcy proceedings with respect to a Member.

"First Tier Allocation" means, as of any date of determination the sum of (x) the First Tier Allocation Component Amounts for each fiscal year beginning in 2003 through and including the fiscal year most recently then ended, plus, (y) the First Tier Allocation Component Amount for the partial year period from the immediately preceding January 1st through and including the last day of the month most recently then ended.

"First Tier Allocation Component Amount" means, (i) for any fiscal year in which the net operating income of the Company for such fiscal year equals or exceeds the Net Profit Target for such fiscal year, the Net Profit Target for such fiscal year, (ii) for any fiscal year in which the net operating income of the Company for such fiscal year is less than the Net Profit Target for such fiscal year, the net operating income of the Company for such fiscal year, (iii) for any period of less than a fiscal year in which the net operating income of the Company for such period equals or exceeds a prorated portion of the Net Profit Target for the fiscal year during which such period occurs, the prorated portion of the Net Profit Target for such fiscal year and (iv) for any period of less than a fiscal year in which the net operating income of the Company for such period is less than a prorated portion of the Net Profit Target for the fiscal year during which such period occurs, the net operating income of the Company for such period.

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the agreement of the Board of Directors and the Member making such contribution at or prior to the time of such contribution.

(b) The Gross Asset Values of all Company Assets immediately prior to the occurrence of any event described in the following subsections (i) through (iv) hereof shall be adjusted to equal their respective gross fair market values, as determined by the Board of Directors using such reasonable method of valuation as it may adopt, as of the following times:

(i) the acquisition of an additional Interest in the Company (other than in connection with the execution of this Agreement) by a new or existing Member in exchange for more than a de minimis Capital Contribution, if the Board of Directors reasonably determines that such adjustment is necessary or appropriate to reflect the relative Economic Interests of the Members in the Company;

(ii) the distribution by the Company to a Member of more than a de minimis amount of Company Assets as consideration for an Interest in the Company, if the Board of Directors reasonably determines that such adjustment is necessary or appropriate to reflect the relative Economic Interests of the Members in the Company;

(iii) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(*g*); and

(iv) at such other times as the Board of Directors shall reasonably determine necessary or advisable in order to comply with Regulations Sections 1.704-1(b) and 1.704-2.

(c) The Gross Asset Value of any Company Asset distributed to a Member shall be the gross fair market value of such asset on the date of distribution as reasonably determined by the Board of Directors.

(d) The Gross Asset Values of Company Assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(*m*); provided, however, that Gross Asset Values shall not be adjusted pursuant to this subsection (d) to the extent that the Board of Directors reasonably determines that an adjustment pursuant to the above subsection (b) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (d).

(e) If the Gross Asset Value of a Company Asset has been determined or adjusted pursuant to the above subsections (a), (b) or (d) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such Company Asset for purposes of computing Net Profits and Net Losses.

"Guarantee and Indemnity Agreement" means that certain Amended and Restated Guarantee and Indemnity Agreement, dated as of the date hereof, by and among the Company and Delian, as guarantors, and CSX, CSX Alaska Vessel Company, LLC, and SL Service, as beneficiaries, which amends and restates in its entirety the Guarantee and Indemnity Agreement, dated December 16, 2002, by and among the Company, Delian, Lines of Puerto Rico and CSX Lines of Alaska, LLC, as guarantors, and CSX, CSX Alaska Vessel Company, LLC, and SL Service, as beneficiaries, and as further amended from time to time in accordance with its terms.

"Immediate Family" means, and is limited to, an individual Member's current spouse, parents, parents-in-law, grandparents, children, siblings, and grandchildren, or a trust or estate, all of the beneficiaries of which include only such Member's spouse, parents, parents-in-law, grandparents, children, siblings, or grandchildren.

"Incapacity" means the entry of an order of incompetence or of insanity, or the death, dissolution, bankruptcy (as defined in the Act) or termination (other than by merger or consolidation) of any Person.

"Initial Members" is defined in the preamble to this Agreement.

"Initial Public Offering" means the initial, exclusively primary, underwritten public offering of common equity securities of the Company pursuant to a registration statement filed under the Securities Act with the SEC.

"Intermediate Holding Company" shall mean any Person in which Carlyle Partners III, L.P., Craddock, LLC or any of their Affiliates owns any interest and which owns a direct or indirect interest in the Company, after giving effect to the transaction by which it becomes an Intermediate Holding Company.

"Limitation Date" is defined in Section 4.2.2.

"Lines of Puerto Rico" means CSX Lines of Puerto Rico, Inc., a corporation organized under the laws of the State of Delaware and its successors and assigns.

"Long-Form Registrations" is defined in Section 9.1.1.

"Majority-in-Interest of the Members" means Members holding, in the aggregate, Membership Units constituting a majority of the votes entitled to be cast held by all Members of the Company, voting as a single class.

"Member Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i) with respect to "partner nonrecourse debt minimum gain."

"Member Nonrecourse Debt" has the meaning set forth in Regulations Section 1.704-2(b)(4) for the phrase "partner nonrecourse debt."

"Member Nonrecourse Deductions" has the meaning set forth in Regulations Section 1.704-2(i) for the phrase "partner nonrecourse deductions."

"Members" means, individually, any one of, and, collectively, all of, the Persons admitted as members of the Company, including, without limitation, the Initial Members, any Additional Members and any Substitute Members but excluding any Person who has withdrawn as a member of the Company in accordance with this Agreement (including as a result of an Event of Withdrawal).

"Membership Interest" or "Interest" means the entire ownership interest of a Member in the Company at any particular time, including, without limitation, the Member's Economic Interest and any and all rights to vote and otherwise participate in the management of the Company's affairs, and the rights to any and all benefits to which a Member may be entitled as provided in this Agreement, together with the obligations of such Member to comply with all of the terms and provisions of this Agreement.

"Membership Units" means the Common Units, the Senior Common Units and the Senior Preferred Units.

"Net Profit Target" means, for each fiscal year, the Net Profit target set forth on Exhibit B next to such fiscal year.

"Net Profits" or "Net Losses" means, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses pursuant hereto shall be added to such taxable income or loss;

(b) Any expenditure of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(*i*), and not otherwise taken into account in computing Net Profits or Net Losses pursuant hereto, shall be subtracted from such taxable income or loss;

(c) Gain or loss resulting from any disposition of Company Assets where such gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the Company Assets disposed of, notwithstanding that the adjusted tax basis of such Company Assets differs from its Gross Asset Value;

(d) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year;

(e) To the extent an adjustment to the adjusted tax basis of any asset included in Company Assets pursuant to Code Section 734(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)*(m)(4)* to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for the purposes of computing Net Profits and Net Losses;

(f) If the Gross Asset Value of any Company Asset is adjusted in accordance with subsection (b) or (c) of the definition thereof, the amount of such adjustment shall be taken into account in the taxable year of such adjustment as gain or loss from the disposition of such asset for purposes of computing Net Profits or Net Losses; and

(g) Notwithstanding any other provision of this definition of "Net Profits" or "Net Losses," any items that are specially allocated pursuant to Section 5.2 or Section 5.4.2 hereof shall not be taken into account in computing Net Profits or Net Losses.

"Nonrecourse Deductions" has the meaning set forth in Regulations Sections 1.704-2(b)(1) and 1.704-2(c).

"Nonrecourse Liability" has the meaning set forth in Regulations Sections 1.704-2(b)(3) and 1.752-1(a)(2).

"Non-Voting Director" is defined in Section 6.1.1.

"Offer Notice" is defined in Section 7.2.2(a).

"Person" means and includes any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization, government or any department or agency thereof, any other form of business or legal entity, or any other entity otherwise similar to any of the foregoing.

"Piggyback Registration" is defined in Section 9.2.1.

"Preferred Allocation" is defined in Section 5.1.1(b).

"Prior Common Allocations" is defined in Section 5.3.

"Puerto Rico Accrual Amount" is defined in Section 4.2.3(c).

"Puerto Rico EBITDA Target" means, for any calendar year, the amount set forth next to such calendar year on Exhibit C hereto.

"Puerto Rico Preference Amount" is defined in Section 4.2.3(d).

"Puerto Rico Preferred Return" is defined in Section 4.2.3(e).

"Proposed Distribution" is defined in Section 4.2.2.

"Recourse Liability" has the meaning set forth in Regulations Section 1.752-1(a)(1).

"Redemption Date" is defined in Section 8.1.

"Redemption Election Notice" is defined in Section 4.2.2.

"Redemption Notice" is defined in Section 8.4.

"Redemption Units" is defined in Section 8.4.

"Registrable Securities" means any Membership Units held by SL Service, CSX Domestic Shipping or any Affiliate thereof (or their permitted transferee and successive transferees), and any securities of the Company issued or issuable directly or indirectly with respect to such Membership Units, whether by way of dividend, distribution, recapitalization, merger, consolidation, exchange or other reorganization; provided, however, that any such securities shall cease to be Registrable Securities at such time as they (i) have been distributed to the public pursuant to an offering registered under the Securities Act or (ii) may be sold to the public through a broker, dealer or market maker in compliance with Rule 144 under the Securities Act or any similar rule then in force (not subject to volume, holding period or manner-of-sale restrictions).

"Registration Expenses" means all reasonable expenses required in connection with the Company's performance of or compliance with Article 9 of this Agreement, including all registration and filing fees, printing expenses, messenger and delivery expenses, and fees and disbursements of counsel for the Company and all independent certified public accountants, underwriters (excluding discounts and commissions) and other Persons retained by the Company.

"Regulations" means proposed, temporary and final Treasury Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding Treasury Regulations).

"Regulatory Allocations" is defined in Section 5.2.8.

"Recapitalization" is defined in the recitals to this Agreement.

"Reserves" means funds set aside or amounts allocated to reserves that shall be maintained in amounts deemed sufficient by the Members for working capital, to pay taxes, insurance, debt service, and other costs or expenses incident to the conduct of business by the Company as contemplated hereunder.

"Restricted Subsidiary" means any Subsidiary of Delian or of a Continuing Person (as defined in the Guarantee and Indemnity Agreement) that is a Guarantor (as defined in the Guarantee and Indemnity Agreement).

"Safe Harbors" is defined in Section 7.8.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended.

"Senior Common Capital" is defined within the definition of Capital Account.

"Senior Common Member" means each Member who holds Senior Common Units, solely in its capacity as such.

"Senior Common Units" is defined in Section 3.1.

"Senior Credit Agreement" is defined in Section 11.14.

"Senior Debt" is defined in Section 11.14.

"Senior Preferred Capital" is defined within the definition of Capital Account.

"Senior Preferred Liquidation Preference" is defined in Section 4.2.3(g).

"Senior Preferred Member" means each Member who holds Senior Preferred Units, solely in its capacity as such.

"Senior Preferred Invested Capital" is defined in Section 4.2.3(f).

"Senior Preferred Redemption Price" is defined in Section 8.2.3.

"Senior Preferred Units" is defined in Section 3.1.

"Short-Form Registrations" is defined in Section 9.1.1.

"SL Service" is defined in the preamble to this Agreement.

"Special Gross Income Allocation" is defined in Section 5.3.

"Special Redemption Gross Income Allocation" is defined in Section 5.3.

"Subsidiary" of any Person means any corporation, partnership, limited liability company or other entity of which at least a majority of the outstanding Capital Stock (or similar interests) having voting power (or other designative ability) to elect or designate directors (or similar governing body members) shall at the time be held, directly or indirectly, by such Person.

"Substitute Member" means any Person (i) to whom a Member Transfers all or any part of its Interest in the Company, and (ii) which has been admitted to the Company as a Substitute Member pursuant to Section 7.6 of this Agreement.

"Terminating Capital Transaction" means any sale or other disposition of all material assets of the Company or a related series of transactions that, taken together, result in the sale or other disposition of all material assets of the Company, in each case in exchange for cash or marketable securities.

"Tested Transaction" is defined in Section 11.02(a) of the Guarantee and Indemnity Agreement.

"Transaction Agreement" is defined in the recitals to this Agreement.

"Transfer" means, with respect to any Interest in the Company, a sale, conveyance, exchange, assignment, pledge, encumbrance, gift, bequest, hypothecation or other transfer or disposition by any other means, whether for value or no value and whether voluntary or involuntary (including, without limitation, by operation of law), or an agreement to do any of the foregoing in a transaction or series of related transactions.

"U.S. Citizen" means a "citizen of the United States" within the meaning of Section 2 of the Shipping Act, 1916, as amended, 46 U.S.C. App. Section 802, specifically including subsection (c) of such section, and qualified to own and operate vessels in the coastwise trade of the United States.

"Voting Directors" is defined in Section 6.1.1.

"Written Consent" means, as applicable, a written consent (including consents transmitted electronically as permitted by the Act) executed by (i) the Members having not less than the minimum number of votes necessary to authorize or take such action at a meeting at which all Members entitled to vote thereon were present and voted; or (ii) a majority of the Voting Directors.

ARTICLE 3
CAPITAL, CAPITAL ACCOUNTS, MEMBERSHIP INTERESTS

3.1 *Membership Interests.* The aggregate Membership Interests of the Company shall be divided into three classes of Membership Units designated the senior preferred units (the "Senior Preferred Units"), the senior common units (the "Senior Common Units") and the common units (the "Common Units"), each of which shall have the rights, preferences and privileges as are described herein. The names, addresses and number of Membership Units of the Members are set forth on Exhibit A. Such Membership Units are issued to the Members pursuant to this Agreement and shall hereafter represent (i) in the case of SL Service, the Membership Interests held by SL Service prior to the date hereof and retained thereby following the consummation of the transactions contemplated in the Transaction Agreement, (ii) in the case of CSX Domestic Shipping, the portion of the Membership Interest held by SL Service prior to the date hereof and transferred to CSX Domestic Shipping in accordance with the CSX Transfer and (iii) in the case of Delian, the Membership Interests purchased from SL Service by Delian as of the date hereof pursuant to the Transaction Agreement. Exhibit A shall be amended from time to time by the Board of Directors to reflect the issuance of additional Membership Units by the Company to any Member (including any Additional Member or Substitute Member) pursuant to this Agreement or the Transfer of any Membership Units by any Member; provided, however, that the Company and the Board of Directors shall not be required to recognize any Transfer in violation of the terms of this Agreement and any such Transfer shall be void and of no force or effect; and provided, further that no new issuance of Membership Units and no new classes of Membership Units shall be permitted so long as the Senior Preferred Units are outstanding.

3.2 *Additional Capital Contributions by Members.* No Member shall be required to make any additional Capital Contributions to the Company, and no Member shall be permitted to make any additional Capital Contributions to the Company without the consent of the Board of Directors. In the event that any Capital Contributions are made by any Member or any other Person who becomes a Member as a result thereof (each, an "Additional Member" and, collectively, the "Additional Members"), the Company shall be authorized to issue additional Senior Common Units to such Member or Additional Member on such terms and conditions and for such Capital Contributions as the Board of Directors and such Member or Additional Member may agree; provided, however, that no new issuance of Membership Units and no new classes of Membership Units shall be permitted so long as the Senior Preferred Units are outstanding. As a condition to being admitted as a Member of the Company, each Additional Member shall execute an agreement to be bound by the terms and conditions of this Agreement.

3.3 *Capital Accounts.* A Capital Account shall be established and maintained for each Member in accordance with the terms of this Agreement.

3.4 *Member Capital.* Except as otherwise expressly provided in this Agreement or with the prior consent of the Board of Directors, (a) no Member shall demand or be entitled to receive a return of or interest on its Capital Contributions or Capital Account, (b) no Member shall withdraw any portion of its Capital Contributions or receive any distributions from the Company as a return of capital on account of such Capital Contributions, and (c) the Company shall not be required to redeem or repurchase the Interest of any Member.

3.5 *Member Loans.* No Member shall be required to make any loans or otherwise lend any funds to the Company. No loans made by any Member to the Company shall have any effect on such Member's Percentage Interest, such loans representing a debt of the Company payable or collectible solely from the assets of the Company in accordance with the terms and conditions upon which such loans were made.

3.6 *Voting Rights.*

3.6.1 Except as otherwise set forth herein, any matter requiring the approval of the Members hereunder or under the Act shall require the affirmative vote of the holders of a majority of the votes entitled to be cast by all Members, voting as a single class. Meetings of the Members, for any purpose or purposes, may be called by a majority of the Board of Directors, or at the written request of a Majority-in-Interest of the Members. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting of Members shall be limited to the purposes stated in the notice. Any action which may be taken at any meeting of the Members may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of Membership Units outstanding having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of the Members. Written notice of the taking of the action without a meeting by less than unanimous Written Consent shall be given to those Members who have not signed such Written Consent promptly following the taking of such action.

3.6.2 Each Senior Common Member shall be entitled to three hundred and twenty (320) votes per Senior Common Unit held by such Senior Common Member.

3.6.3 Each Common Member shall be entitled to twenty (20) votes per Common Unit held by such Common Member.

3.6.4 Each Senior Preferred Member shall be entitled to one (1) vote per Senior Preferred Unit held by such Senior Preferred Member.

3.6.5 Notwithstanding the foregoing, if any holder of Senior Preferred Units or Senior Common Units at any time hereafter is not a U.S. Citizen and as a result thereof, in whole or in part, the Company is not a U.S. Citizen as required by then applicable law or regulations or applicable vessel lease documents, such holder may propose changes to the voting and/or ownership structure of the Company so that the Company continues to be a U.S. Citizen and preserve the benefits thereof in all material

respects. Any such change shall be subject to the consent of Delian, which consent shall not be withheld, delayed or conditioned, so long as such proposed changes do not impair in any material respect the rights of Delian relative to any other Member or impair the economic interests of Delian in any respect. Until such time as such changes have been so consented to, such holder shall reduce the number of votes to which it is entitled or take such other action as may be reasonably required so that the Company is a U.S. Citizen.

3.7 *Liability of Members*. Except as otherwise required by any non-waivable provision of the Act or other applicable law, (i) no Member shall be personally liable in any manner whatsoever for any debt, liability or other obligation of the Company, whether such debt, liability or other obligation arises in contract, tort, or otherwise; and (ii) no Member shall in any event have any liability whatsoever in excess of the amount of any wrongful distribution to such Member, if, and only to the extent, such Member has actual knowledge (at the time of the distribution) that such distribution is made in violation of Section 18-607 of the Act.

3.8 *Competitive Activities*. (i) Participation by the Members in the Company shall not in any way act as a restraint on other present or future business activities or investments of any Member or its Affiliates whether or not such activity is competitive with the business of the Company; (ii) such participation shall not, to the extent permitted under the Guarantee and Indemnity Agreement, in any way preclude or restrict a Member or any of its Affiliates from entering into a partnership or other business arrangement with the Company or any of its Subsidiaries that is not prohibited under Section 11.05 of the Guarantee and Indemnity Agreement; (iii) no Member shall under any circumstances be obligated to offer or present to the Company or the other Members any business opportunity presented or offered to such Member or the Company as a prerequisite to the acquisition of or investment in such business opportunity by such Member for its own account or for the account of others; (iv) neither the Company nor any of the Members shall have any rights, by virtue of this Agreement or the relationship created hereby, in any business or enterprise of any other Member; (v) each Member and its respective Affiliates will remain free to engage in any activities similar to, that may be in competition with, or that are made possible or more profitable by reason of, the Company without any obligation to account to or share the results or profits of such activities with the Company or any Member; and (vi) each Member and its respective Affiliates may continue to conduct those business activities being conducted by such Persons on the date hereof, as well as any other activities in which they may be engaged at any time after the date hereof. The Members acknowledge and agree that the conduct and activities of the Members authorized and permitted by this Section 3.8 and the other provisions of this Agreement shall not be, nor be deemed to be, conduct or activities that constitute or would constitute violations of any duty or obligation imposed upon Members under the Act or under any other applicable law, if any.

ARTICLE 4
DISTRIBUTIONS

4.1 *Distributions of Cash Available for Distribution*. Except as otherwise provided in Article 8 or Section 4.3, Cash Available for Distribution shall be distributed to the Members only at such times as may be determined by the Board of Directors and in such manner as is provided in Section 4.2. The Board of Directors shall also have the power, right and authority to use the Company's cash and/or other property to pay Company expenses and to fund

such Reserves as the Board of Directors, in its reasonable business judgment, reasonably deems appropriate.

4.2 *Order of Distributions.*

4.2.1 Except as provided in Section 4.2.2 and Section 4.3, Cash Available for Distribution shall be distributed to the Members in the following order of priority:

(a) first, so long as any Senior Preferred Units remain outstanding, to the Senior Preferred Members, pro rata in accordance with the number of Senior Preferred Units held by each of them until the Senior Preferred Members have received in respect of such Senior Preferred Units, in the aggregate, an amount equal to the Senior Preferred Liquidation Preference as of the date of distribution;

(b) second, to the Senior Common Members, pro rata in accordance with the number of Senior Common Units held by each of them until the Senior Common Members have received, in respect of such Senior Common Units, an amount equal to the First Tier Allocation as of the date of distribution; and

(c) thereafter, all other amounts to the Senior Common Members and Common Members, pro rata in accordance with their respective amount of Senior Common Capital and Common Capital (after adjusting such Capital Accounts for all distributions that occurred prior to or concurrently with such distribution, including any distribution pursuant to subsection (b) above), or if all of the Common Units have been redeemed, to the Senior Common Members pro rata in accordance with the number of Senior Common Units held by each of them.

4.2.2 Except as provided in Section 4.3, the Company shall not be entitled to, and shall not, make any distributions prior to the date that is 90 days following the second anniversary of the date hereof (the "Limitation Date"). Notwithstanding the foregoing, at any time prior to the Limitation Date, the Company may notify the holders of the Senior Preferred Units in a reasonably detailed writing (each, an "Early Distribution Notice") that the Company (i) is entitled to make a distribution under the terms of the Guarantee and Indemnity Agreement, (ii) intends to distribute an amount specified in such notice (such amount, the "Proposed Distribution") to the Members and (iii) will have sufficient funds to redeem all Senior Preferred Units. Upon receipt of an Early Distribution Notice, the holders of a majority of the Senior Preferred Units may elect to require that all, but not less than all, of the Senior Preferred Units be redeemed for an amount equal to the Senior Preferred Liquidation Preference prior to, and as a condition of, distributing all or any portion of the Proposed Distribution by providing a written notice to the Company (a "Redemption Election Notice") signed by the holders of a majority of the Senior Preferred Units on or before the date that is 15 days after the date of the Early Distribution Notice. If the holders of a majority of the Senior Preferred Units elect to require that the Senior Preferred Units be redeemed, the Company will redeem the Senior Preferred Units not later than concurrently with the Company actually

making such Proposed Distribution, and the Company (having redeemed such Senior Preferred Units) shall be entitled to distribute to the holders of the Senior Common Units and Common Units in accordance with Sections 4.2.1(b) and (c) above any portion of the Proposed Distribution in excess of the Senior Preferred Liquidation Preference; provided, however, that the Company's obligations with respect to any redemption and Proposed Distribution as provided in this Section 4.2.2 may be made contingent upon the consummation of any transaction or series of related transactions described in the Early Distribution Notice. If the holders of a majority of the Senior Preferred Units do not elect to require that the Senior Preferred Units be redeemed, the Company shall be entitled to distribute to the holders of the Senior Common Units and Common Units in accordance with Sections 4.2.1(b) and (c) an amount equal to the Proposed Distribution in such manner as described in the Early Distribution Notice notwithstanding the preference on distributions granted to the holders of the Senior Preferred Units.

4.2.3 As used herein, the following terms have the following meanings:

(a) "Base Preference Amount" means, as of any date of determination, the Senior Preferred Invested Capital as of such date plus the Base Preferred Return as of such date.

(b) "Base Preferred Return" means, as of any date of determination, an amount equal to a return of 10% per annum on the weighted average balance of the Senior Preferred Invested Capital during the period beginning on the immediately preceding February 27th through and including the date of determination, which shall commence accruing on the date hereof and shall be added to the Senior Preferred Invested Capital each February 26th thereafter until the Senior Preferred Units are redeemed in full (with the intent that such return shall be compounded annually).

(c) "Puerto Rico Accrual Amount" shall initially be zero and there shall be added to the Puerto Rico Accrual Amount (i) effective as of January 1, 2004, an amount equal to 50% of the amount by which the Actual Puerto Rico EBITDA for the calendar year ending December 31, 2003 exceeds the Puerto Rico EBITDA Target for such calendar year, plus, (ii) effective as of January 1, 2005, an amount equal to 50% of the amount by which the Actual Puerto Rico EBITDA for the calendar year ending December 31, 2004 exceeds the Puerto Rico EBITDA Target for such calendar year, plus, (iii) effective as of January 1, 2006, an amount equal to 50% of the amount by which the Actual Puerto Rico EBITDA for the calendar year ending December 31, 2005 exceeds the Puerto Rico EBITDA Target for such calendar year, plus (iv) the cumulative Puerto Rico Preferred Return added to the Puerto Rico Accrual Amount pursuant to the definition of Puerto Rico Preferred Return with respect to all calendar years ended prior to the date on which the Puerto Rico Accrual Amount is being determined, minus (v) the amount, if any, by which the cumulative aggregate distributions received by the Senior Preferred Members on account of the Senior Preferred Units exceeds the Base Preference Amount. Notwithstanding the foregoing, in the event that the sum of clauses (i), (ii) and (iii) of this definition exceeds $25 million, for all purposes hereunder the Puerto Rico Accrual Amount

shall be reduced by such excess amount so that the sum of such clauses equals $25 million. Such reduction, if any, shall be applied first to clause (iii) until clause (iii) equals zero, then to clause (ii) until clause (ii) equals zero and then to clause (i) until clause (i) equals $25 million.

(d) "Puerto Rico Preference Amount" means, as of any date of determination, an amount equal to (i) the Puerto Rico Accrual Amount as of such date, plus (ii) the Puerto Rico Preferred Return as of such date, plus (iii) in the event the Senior Preferred Units are redeemed on or prior to December 31, 2005, an amount equal to the sum of (x) 50% of the amount by which the Actual Puerto Rico EBITDA for the period beginning the immediately preceding January 1 and ending as of the last day of the month immediately preceding the date of determination exceeds a pro rated portion of the applicable EBITDA target for the calendar year in which such date of determination occurs (as set forth in the definition of Puerto Rico Accrual Amount) and (y) the product of $12.5 million and a fraction the numerator of which is equal to the number of days from the first day of the month during which the date of determination occurs through and including December 31, 2005 and the denominator of which is equal to the total number of days from the date hereof through and including December 31, 2005.

(e) "Puerto Rico Preferred Return" means, as of any date of determination, an amount equal to a return of 5% per annum on the weighted average balance of the Puerto Rico Accrual Amount during the period beginning on January 1 of the year in which the date of determination occurs through and including the date of determination, which shall commence accruing on January 1, 2004 and shall be added to the Puerto Rico Accrual Amount annually thereafter until the Senior Preferred Units have been redeemed in full (with the intent that such return shall be compounded annually).

(f) "Senior Preferred Invested Capital" means, as of any date of determination, an amount (which in no event shall be less than zero) equal to (i) $60 million, plus (ii) the cumulative Base Preferred Return added to the Senior Preferred Invested Capital pursuant to the definition of Base Preferred Return with respect to all prior periods, minus (iii) the cumulative aggregate distributions (other than the Distribution Amount) received by the Senior Preferred Members on account of the Senior Preferred Units.

(g) "Senior Preferred Liquidation Preference" shall mean an amount equal to the sum of the Base Preference Amount plus the Puerto Rico Preference Amount.

4.3 *Tax Distributions*. Notwithstanding Section 4.2, distributions of Cash Available for Distribution shall be made quarterly to each Member in an amount not to exceed the amount sufficient to satisfy the federal and applicable state income tax liability of such Member attributable (i) in the case of Common Members and Senior Common Members, to all allocations of taxable income of the Company to such Member during such three month period pursuant to Article 5 in respect of each such Member's Common Units and Senior Common Units, if any and (ii) in the case of Senior Preferred Members, to all allocations of taxable income of the Company to such Member during such three month period in respect of the Puerto

Rico Preference Amount. Any amount distributed to a Member pursuant to this Section 4.3 shall be treated as an advance of amounts otherwise distributable to such Member pursuant to Section 4.2 such that, in determining a Member's right to distributions pursuant to Section 4.2, distributions received by such Member pursuant to this Section 4.3 shall be taken into account as if received pursuant to Section 4.2.

4.4 *Distributions Upon Liquidation.* Distributions made in conjunction with the final liquidation of the Company, including, without limitation, the net proceeds of a Terminating Capital Transaction, shall be applied or distributed as provided in Article 10 hereof.

4.5 *Withholding.* The Company may withhold distributions or portions thereof if it is required to do so by any applicable rule, regulation, or law, and each Member hereby authorizes the Company to withhold from or pay on behalf of or with respect to such Member any amount of federal, state, local or foreign taxes that the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement. Any amount paid on behalf of or with respect to a Member pursuant to this Section 4.5 shall constitute a loan by the Company to such Member unless the Company withholds such payment from a distribution which would otherwise be made to the Member, which loan shall be repaid by such Member within fifteen (15) days after notice from the Company that such payment must be made. Any amounts withheld from any distribution pursuant to this Section 4.5 shall be treated as having been distributed to such Member and shall reduce such Member's Capital Account balance in accordance with the definition thereof. Each Member hereby unconditionally and irrevocably grants to the Company a security interest in such Member's Interest in the Company to secure such Member's obligation to pay to the Company any amounts required to be paid pursuant to this Section 4.5. Any amounts payable by a Member hereunder shall bear interest at the Applicable Rate from the date such amount is due (i.e., 15 days after demand) until such amount is paid in full. Each Member shall take such actions as the Company shall request in order to perfect or enforce the security interest created hereunder. A Member's obligations hereunder shall survive the dissolution, liquidation, or winding up of the Company. The "Applicable Rate" as used herein shall mean (i) the interest rate payable from time to time on the Company's revolving credit facility or (ii) if no such facility is then available to the Company, the publicly quoted rate of interest announced from time to time by Citibank, N.A., as its commercial prime or reference rate of interest, in effect as of the time of any determination plus 3.0%.

4.6 *Distributions in Kind.* No right is given to any Member to demand or receive property other than cash as provided in this Agreement. So long as any Senior Preferred Units remain outstanding the Company shall not make any distribution in kind of the Company Assets to the Members without the consent of the holders of a majority of the Senior Preferred Units. At any time after the Senior Preferred Units have been redeemed in full, the Board of Directors may determine, in its sole and absolute discretion, to make a distribution in kind of Company Assets to the Members, and such Company Assets shall be distributed in such a fashion as to ensure that the fair market value thereof is distributed and allocated in accordance with this Article 4 and with Article 5 and Article 10 hereof; provided, however, that no Member may be compelled to accept a distribution consisting, in whole or in part, of any Company Assets in kind unless the ratio that the fair market value of such distribution in kind bears to such Member's total distribution does not exceed the ratio that the fair market value of similar

distributions in kind bear to the total distributions of other Members receiving distributions concurrently therewith (if any).

4.7 *Limitations on Distributions*. Notwithstanding any provision to the contrary contained in this Agreement, no distribution shall be made to any Member on account of its Membership Interest in violation of Section 18-607 of the Act.

ARTICLE 5
ALLOCATIONS OF NET PROFITS AND NET LOSSES

5.1 *Allocation of Net Profits and Net Losses*.

5.1.1 *Net Profits*. Except as otherwise provided in this Article 5, Net Profits for each fiscal year shall be allocated as follows:

(a) first, to the Senior Preferred Members pro rata in proportion to the amount of Net Loss previously allocated to the Senior Preferred Members under Section 5.1.2(c) until the cumulative amount of Net Profits allocated under this paragraph (a) shall equal the cumulative amount of such Net Loss;

(b) second, to the Senior Preferred Members pro rata in proportion to the number of Senior Preferred Units held by each of them until the cumulative amount of Net Profits allocated under this clause (b) (the "Preferred Allocation") equals (i) the cumulative Base Preferred Return for such fiscal year and each prior fiscal year plus (ii) the Puerto Rico Accrual Amount (plus any amount subtracted from the Puerto Rico Accrual Amount pursuant to clause (v) of the definition thereof);

(c) third, to the Senior Common Members pro rata in proportion to the amount of Net Loss previously allocated to the Senior Common Members under Sections 5.1.2(c) until the cumulative amount of Net Profits allocated under this paragraph (c) shall equal the cumulative amount of such Net Loss;

(d) fourth, to the Senior Common Members pro rata in proportion to the amount of Net Loss previously allocated to the Senior Common Members under Sections 5.1.2(b) until the cumulative amount of Net Profits allocated under this paragraph (d) shall equal the cumulative amount of such Net Loss;

(e) fifth, to the Common Members pro rata in proportion to the amount of Net Loss previously allocated to the Common Members under Section 5.1.2(a), until the cumulative amount of Net Profits allocated under this paragraph (e) shall equal the cumulative amount of such Net Loss;

(f) sixth, to the Senior Common Members pro rata in proportion to the number of Senior Common Units held by each of them until the

cumulative amount of Net Profits allocated under this paragraph (f) equals an amount equal to the First Tier Allocation; and

(g) seventh, 80% to the Senior Common Members pro rata in proportion to the number of Senior Common Units held by each of them, and 20% to the Common Members pro rata in proportion to the number of Common Units held by each of them (or if no Common Units are then outstanding, 100% to the Senior Common Members pro rata in proportion to the number of Senior Common Units held by each of them).

5.1.2 *Net Losses*. Except as otherwise provided in this Article 5, Net Losses for each fiscal year shall be allocated as follows:

(a) first, so long as any Common Units remain outstanding, to the Common Members pro rata in proportion to the number of Common Units held by each of them until each such Common Member's Common Capital is reduced to zero;

(b) second, so long as any Senior Common Units remain outstanding, to the Senior Common Members pro rata in proportion to the number of Senior Common Units held by each of them until each such Senior Common Member's Senior Common Capital is reduced to zero; and

(c) third, so long as any Senior Preferred Units remain outstanding, to the Senior Preferred Members pro rata in proportion to the number of Senior Preferred Units held by each of them or if no Senior Preferred Units remain outstanding to the Senior Common Members pro rata in proportion to the number of Senior Common Units held by each of them.

5.2 *Regulatory Allocations*. Notwithstanding the foregoing provisions of this Article 5, the following special allocations shall be made in the following order of priority:

5.2.1 If there is a net decrease in Company Minimum Gain during a Company taxable year, then each Member shall be allocated items of Company income and gain for such taxable year (and, if necessary, for subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g)(2). This Section 5.2.1 is intended to comply with the minimum gain chargeback requirement of Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

5.2.2 If there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Company taxable year, each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such taxable year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in a manner consistent with the provisions of Regulations Section 1.704-2(i)(5). This Section 5.2.2 is intended to comply with the partner nonrecourse debt minimum gain

chargeback requirement of Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

5.2.3 If any Member unexpectedly receives an adjustment, allocation, or distribution of the type contemplated by Regulations Section 1.704-1(b)(2)(ii)(*d*)(*4*), (*5*) or (*6*), items of Company income and gain shall be allocated to all such Members (in proportion to the amounts of their respective Adjusted Capital Account Deficits) in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit of such Member as quickly as possible. It is intended that this Section 5.2.3 qualify and be construed as a "qualified income offset" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(*d*).

5.2.4 If the allocation of Net Loss to a Member as provided in Section 5.1.2 hereof would create or increase an Adjusted Capital Account Deficit, there shall be allocated to such Member only that amount of Net Loss as will not create or increase an Adjusted Capital Account Deficit. The Net Loss that would, absent the application of the preceding sentence, otherwise be allocated to such Member shall be allocated to the other Members in accordance with Section 5.1.2, subject to the limitations of this Section 5.2.4.

5.2.5 To the extent that an adjustment to the adjusted tax basis of any Company Asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(*m*)(*2*) or Regulations Section 1.704-1(b)(2)(iv)(*m*)(*4*), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of its Interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in accordance with Section 5.1 in the event that Regulations Section 1.704-1(b)(2)(iv)(*m*)(*2*) applies, or to the Members to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(*m*)(*4*) applies.

5.2.6 The Nonrecourse Deductions for each taxable year of the Company shall be allocated to the Senior Common Members in proportion to the number of Senior Common Units held by each of them.

5.2.7 The Member Nonrecourse Deductions shall be allocated each year to the Member that bears the economic risk of loss (within the meaning of Regulations Section 1.752-2) for the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

5.2.8 The allocations set forth in each of Sections 5.2.1 through 5.2.7 hereof (the "Regulatory Allocations") are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2(i). Notwithstanding the provisions of Section 5.1, the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred.

5.3 *Clawback of Prior Common Allocations.* If in any fiscal year of the Company (or portion thereof) (i) the amount of Net Profits for such fiscal period is less than the Preferred Allocation for such fiscal period and (ii) any amount of Net Profits has been allocated to the Senior Common Members or the Common Members in any prior fiscal year on account of the Senior Common Units or Common Units held by them (the aggregate amount of such prior allocations, the "Prior Common Allocations"), then a portion of such Prior Common Allocations shall be "clawed back" (first from the Common Members, pro rata in accordance with the amount of Prior Common Allocations made to them on account of the Common Units, and then from the Senior Common Members, pro rata in accordance with the amount of Prior Common Allocations made to each of them on account of the Senior Common Units) and the Senior Preferred Units will receive, in lieu of any Net Profits allocation for such fiscal period, a special allocation of gross income in an amount equal to the Preferred Allocation for such fiscal period (a "Special Gross Income Allocation"); provided, however, that in any fiscal period such Special Gross Income Allocation shall be limited to an amount equal to the excess of (i) the sum of (A) the Prior Common Allocations and (B) the Net Profits, if any, for such fiscal period over (ii) the aggregate amount of Special Gross Income Allocations for all prior fiscal periods. In addition, if at the time the Senior Preferred Units are being redeemed (including a redemption as a result of a distribution in liquidation), the Capital Account balance of each Senior Preferred Member allocable to the Senior Preferred Units held by them is less than the Senior Preferred Liquidation Preference, such Senior Preferred Member shall to the fullest extent possible receive a special allocation ("Special Redemption Gross Income Allocation") of gross income in accordance with the preceding sentence in an amount equal to the amount by which the Senior Preferred Liquidation Preference exceeds the Capital Account balance allocable to such Senior Preferred Units.

5.4 *Tax Allocations.*

5.4.1 Except as provided in Section 5.4.2 hereof, for income tax purposes under the Code and the Regulations each Company item of income, gain, loss and deduction shall be allocated between the Members as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to this Article 5. The Company will elect to use the remedial allocation method within the meaning of Regulations Section 1.704-3(d).

5.4.2 Tax items with respect to Company Assets that are contributed to the Company with a Gross Asset Value that varies from its basis in the hands of the contributing Member immediately preceding the date of contribution shall be allocated between the Members for income tax purposes pursuant to Regulations promulgated under Code Section 704(c) so as to take into account such variation. The Company shall account for such variation under the remedial method as described in Regulations Section 1.704-3(d). If the Gross Asset Value of any Company Asset is adjusted pursuant to the definition of "Gross Asset Value," subsequent allocations of income, gain, loss and deduction with respect to such Company Asset shall take account of any variation between the adjusted basis of such Company Asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations promulgated thereunder under the remedial method. Allocations pursuant to this Section 5.4.2 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account

or share of Net Profits, Net Losses and any other items or distributions pursuant to any provision of this Agreement.

5.5 *Allocation of Company Debt.* The Members acknowledge that, for purposes of Sections 707 and 752 of the Code and in accordance with Regulations 1.707-5(b)(2) and 1.752-3(a)(3), and consistent with allocations of other significant items of Company income or gain, 100% of the Senior Debt (and any indebtedness incurred to refinance the Senior Debt) shall be allocated to the Senior Preferred Members pro rata in proportion to the number of Senior Preferred Units held by each of them.

5.6 *Tax Matters Member.* The Company shall be treated and shall file its tax returns as a partnership for federal income tax and other tax purposes. The Company shall prepare or cause to be prepared, on a cash or accrual basis as the Board of Directors shall determine based on applicable federal income tax rules, all federal, state and local partnership tax returns required to be filed by the Company. Delian (or its successor) shall be the "tax matters partner" of the Company as described in Code Section 6231(a)(7) and in any similar capacity under applicable state or local tax law. Delian shall not be liable in its capacity as such to the Company or the Members for any losses, claims or damages. All reasonable out-of-pocket expenses incurred by Delian while acting in such capacity shall be paid or reimbursed by the Company. Delian shall take such action as may be necessary to cause each other Member to become a "notice partner" within the meaning of Code Sections 6223 and 6231(a)(8). Delian, in its reasonable discretion, may take any action contemplated by Sections 6222 through 6231 of the Code that is not left to the determination of an individual Member under such Sections. Except as may be provided herein or in the Transaction Agreement, Delian, in its discretion, shall make all applicable elections, determinations and other decisions for the Company relating to tax matters, including, without limitation, the positions to be taken on the Company's tax returns and the settlement or further contest and litigation of any audit matters raised by the Internal Revenue Service or any taxing authority; provided, however, that Delian (or its successor) shall not settle, compromise or abandon any tax proceeding relating to the allocation of the Senior Debt (or any borrowing obtained to refinance such Senior Debt) without the prior written consent of SL Service (not to be unreasonably withheld, conditioned or delayed) if such settlement, compromise or abandonment could have an adverse impact on SL Service; provided further, however, that if SL Service withholds its consent, SL Service shall be required to assume control of such tax proceeding at is own expense and the liability of the other Members with respect thereto shall be limited to the amount for which such tax proceeding could have been settled before SL Service assumed control of such tax proceeding.

5.7 *Other Provisions.*

5.7.1 For any fiscal year during which any part of a Membership Interest is transferred between the Members or to another Person, the portion of the Net Profits, Net Losses and other items of income, gain, loss, deduction and credit that are allocable with respect to such part of a Membership Interest shall be apportioned between the transferor and the transferee under any method allowed pursuant to Section 706 of the Code and the applicable Regulations as reasonably determined by Delian.

5.7.2 In the event that the Code or any Regulations require tax allocations of items of income, gain, loss, deduction or credit different from those set forth in this Article 5, such allocations shall be made in accordance with the Code and

such Regulations and in such a manner that, to the greatest extent possible, the net amount of such allocations shall be equal to the net amount that would have been allocated to each Member if such different allocations had not been required, and no such new allocation shall give rise to any claim or cause of action by any Member.

5.7.3 The Company's "excess nonrecourse liabilities," within the meaning of Regulations Section 1.752-3(a)(3), arising out of the Senior Debt (or any borrowing obtained to refinance the Senior Debt) shall be allocated 100% to the Senior Preferred Members pro rata in proportion to the number of Senior Preferred Units held by each of them.

5.7.4 The Members acknowledge and are aware of the income tax consequences of the allocations made by this Article 5 and hereby agree to be bound by the provisions of this Article 5 in reporting their shares of Net Profits, Net Losses and other items of income, gain, loss, deduction and credit for federal, state and local income tax purposes.

ARTICLE 6
MANAGEMENT AND OPERATIONS

6.1 *Board of Directors.*

6.1.1 Except as otherwise provided in this Agreement or the Act, the business and affairs of the Company shall be managed by a board of directors (the "Board of Directors") consisting of (i) at least one and no more than nine voting members (each, a "Voting Director" and collectively, the "Voting Directors"), one of whom may be designated as the chairman of the Board of Directors (the "Chairman") and (ii) so long as any Affiliate of CSX holds any Membership Interests, one non-voting member (the "Non-Voting Director" and, together with the Voting Directors, the "Directors"), provided that CSX may waive its right to maintain the Non-Voting Director at any time at its sole discretion, on a temporary or permanent basis. The Board of Directors shall have the power and authority to authorize the Company and its officers and employees to take all actions and to perform all acts and to execute and deliver all agreements, instruments and other documents which it, in its sole discretion, may deem necessary or desirable and which are not prohibited by the Act or this Agreement. All actions to be taken by the Board of Directors shall be approved by a majority of the Voting Directors at any duly called regular or special meeting of the Board of Directors at which a quorum is present or by Written Consent without a meeting in accordance with Section 6.1.9. Each member of the Board of Directors other than the Non-Voting Member shall be a "manager" as defined in the Act; provided, however, none of the Voting Directors acting individually, the Non-Voting Director or any Member shall have any right, power or authority to act (as agent or otherwise) for, or to bind, the Company in any manner except through the Board of Directors or any committee thereof (other than such Directors who are also officers of the Company, who shall be authorized to take actions in their capacity as such, as expressly provided herein or as may be delegated pursuant to Section 6.2).

6.1.2 There shall initially be three Voting Directors who shall be Gregory Ledford, Mark Fariborz and Charles Raymond. So long as he is a Voting Director, Charles Raymond shall serve as Chairman. Except for the initial Voting

Directors, the Voting Directors shall be elected by a Majority-in-Interest of the Members. Each Voting Director shall serve as such until his resignation, removal or death, or until the election of his successor. The number of Voting Directors may be increased or decreased, from time to time, by a Majority-in-Interest of the Members. Any Voting Director may be removed, with or without cause, and any vacancy created by resignation, removal or death of any Voting Director or for any other reason shall be filled by a Majority-in-Interest of the Members.

6.1.3 The Non-Voting Director shall initially be Paul Goodwin. Except for the initial Non-Voting Director, the Non-Voting Director shall be elected by CSX Domestic Shipping (or its designee which shall be an Affiliate of CSX). The Non-Voting Director shall serve as such until his resignation, removal or death, or until the election of his successor. The Non-Voting Director may be removed, with or without cause, by the holders of a majority of the Senior Preferred Units then outstanding, and any vacancy created by resignation, removal or death of the Non-Voting Director or for any other reason shall be filled by the holders of a majority of the Senior Preferred Units then outstanding. The Non-Voting Member shall be entitled to attend all meetings of the Board of Directors of the Company, other than any meeting or portion thereof in which the subject for discussion involves SL Service or any of its Affiliates or competitors and the Board of Directors determines by resolution that it would be inappropriate in light of competitive concerns for such Person to participate. Notwithstanding anything contained in this Agreement to the contrary, in no event shall the Non-Voting Director have the right, power or authority to (i) vote upon any matter to be approved by a the Board of Directors or (ii) act (as agent or otherwise) for, or to bind, the Company in any manner.

6.1.4 The Board of Directors may, but shall not be required to, create one or more committees of its members and to delegate such power and authority to such committees as it may determine, including, without limitation, (i) an executive committee, (ii) an audit committee, a majority of the members of which shall not be employees or officers of the Company (iii) a compensation committee, and (iv) such other committees as the Board of Directors deems advisable and in the best interests of the Company. No officer or employee of the Company who serves on the compensation committee, if any, may vote on his or her compensation, benefits, employment status or any other matter relating thereto.

6.1.5 Regular meetings of the Board of Directors shall be held at the principal office of the Company (or at such other place(s) as may be designated by the Board of Directors) at such times as shall be designated from time to time by the Board of Directors. Notice of any regular meeting of the Board of Directors shall be given as far in advance of the meeting as is reasonably practicable but in no event less than 72 hours before the meeting, and may be given by telephone, facsimile transmission, electronic mail, overnight courier, certified mail (return receipt requested) or personal delivery; provided that for notices provided by means of overnight courier or certified mail, such notices must be received more than 72 hours prior to the meeting.

6.1.6 Special meetings of the Board of Directors may be called on at least 24 hours' prior notice by or at the request of any Director designated as Chairman or by any two Voting Directors and shall be held at the principal office of the Company (or,

at such other place(s) as may be designated by the Board of Directors) at such time as is specified in such written notice. The Director or Directors calling any special meeting of the Board of Directors may designate any reasonable time for the holding of the special meeting. Reasonable efforts shall be made to provide each member of the Board of Directors actual notice of any special meeting of the Board of Directors prior to such meeting, which notice may be given by telephone, facsimile transmission, electronic mail or personal delivery..

6.1.7 Directors may participate in any regularly scheduled or special meetings of the Board of Directors telephonically or through other similar communications equipment, as long as all of the Directors participating in the meeting can hear one another. Participation in a meeting pursuant to the preceding sentence shall constitute presence in person at such meeting for all purposes of this Agreement.

6.1.8 A quorum shall be required to conduct any business at any regular or special meeting of the Board of Directors, and a quorum shall be deemed present at any such meeting so long as at least a majority of the Voting Directors are in attendance (whether in person or as permitted under Section 6.1.7). To the extent required by applicable law, no more of the Voting Directors may fail to qualify as U.S. citizens than a minority of the number of Voting Directors necessary to constitute a quorum, as a quorum may be defined from time to time pursuant to this Agreement.

6.1.9 Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting by Written Consent, which consent shall set forth the actions to be so taken. Any such Written Consent shall have the same effect as an act of a majority of Directors at a properly called and constituted regular or special meeting of the Board of Directors. Any draft of such Written Consent circulated to the Voting Directors for execution shall be concurrently circulated to the Non-Voting Director by the same means as such Written Consent is circulated to the Voting Directors. Prompt notice of the action taken by Written Consent shall be given to the Non-Voting Director (and to any Voting Directors who have not consented and would have been entitled to notice if the action had been taken at a meeting).

6.2 *Designation of Officers.*

6.2.1 The Board of Directors may, from time to time, designate officers of the Company and delegate to such officers such authority and duties as the Board of Directors may deem advisable and may assign titles (including, without limitation, Chairman, CEO, CFO, COO, president, vice-president, secretary and/or treasurer) to any such officer. Unless the Board of Directors otherwise determines from time to time, if the title assigned to an officer of the Company is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law, then the assignment of such title shall constitute the delegation to such officer of the authority and duties that are customarily associated with such office. Any number of titles may be held by the same officer. Any officer to whom a delegation is made shall serve in the capacity and have such powers as delegated unless and until such delegation is revoked, in whole or in part, by the Board of Directors, with or without cause, or such officer resigns.

6.2.2 In addition to such other duties as may be delegated to any officer of the Company, the Chairman shall preside at all meetings of the Board of Directors and meetings of the Members at which he is present. The Chief Executive Officer of the Company shall be the most senior officer of the Company and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Company.

6.2.3 No Person may hold the offices of Chairman, President or Chief Executive Officer (or offices constituting the authority and duties that are customarily associated with such offices), or act in the place of the Chairman, the President or Chief Executive Officer (or offices constituting the authority and duties that are customarily associated with such offices) in case of absence or disability unless such person so acting is a U.S. Citizen.

6.3 *Senior Preferred Members Consent.* Without the prior written consent of the holders of a majority of the Senior Preferred Units, the Company shall not: (i) engage in any Tested Transaction prohibited by the Guarantee and Indemnity Agreement; (ii) enter into any transaction or series of related transactions that is reasonably likely to cause the Company as an entity to be taxed as a corporation; or (iii) engage in any transaction or series of related transactions with an Affiliate that is prohibited under Section 11.05 of the Guarantee and Indemnity Agreement.

6.4 *Specific Authority.* Without limiting the general authority granted to the Board of Directors in Section 6.1 and subject to Section 6.3, the Board of Directors shall have the authority to take the following actions (which authority may be delegated in whole or in part to the officers of the Company):

6.4.1 enter into, deliver, perform and take any action under, any contract, agreement or other instrument as the Board of Directors shall determine to be necessary or desirable to further the purposes of the Company, including, without limitation, this Agreement;

6.4.2 open, maintain and close bank accounts, make deposits thereunder and investment decisions with respect thereto and draw checks or other orders for the payment of moneys;

6.4.3 collect all sums due the Company, including the assertion by all advisable means of the Company's right to payment;

6.4.4 employ and dismiss from employment and pay the fees and expenses of any and all attorneys, accountants, consultants, appraisers or other agents on such terms and for such compensation as the Board of Directors may determine (including, to the extent permitted under the Guarantee and Indemnity Agreement, TC Group, L.L.C., Craddock, LLC or any of their Affiliates),

6.4.5 obtain insurance for the Company including insurance for the Board of Directors relating to the indemnification referred to in Section 6.6 hereof;

6.4.6 admit additional Members as provided herein;

6.4.7 determine distributions of Cash Available for Distribution and other property to the extent provided in Article 4;

6.4.8 dissolve and liquidate the Company as provided in Article 10;

6.4.9 bring and defend actions, investigations and proceedings at law or equity or arbitrations or other forms of alternative dispute resolution and before any governmental, administrative or other regulatory agency, body or commission or arbitrator, mediator or other forum for dispute resolution;

6.4.10 make all elections, investigations, evaluations and decisions, binding the Company thereby, that may in the sole judgment of the Board of Directors be necessary or desirable for the acquisition, management or disposition of assets by the Company, including without limitation the exercise of rights to elect to adjust the tax basis of Company assets;

6.4.11 incur expenses and other obligations on behalf of the Company and, to the extent that funds of the Company are available for such purpose, pay all such expenses and obligations; and

6.4.12 act for and on behalf of the Company in all matters incidental to the foregoing.

6.5 *No Fiduciary Duties*. Notwithstanding anything contained herein to the contrary, no Director or Member (solely in their capacity as such) shall have any fiduciary duties, responsibilities or liabilities relating to any such fiduciary duties or responsibilities, to any Member, any Affiliate of any Member or the Company, as permitted by Section 18-1101 of the Act. With respect to any action taken or failure to act by the Board of Directors, the Board of Directors may make such decision to act, or not to act (a) in its sole and absolute discretion, (b) with or without cause, (c) subject to such conditions as it shall deem appropriate, and (d) without taking into account the interests of, and without incurring liability to, any other Member, any Affiliate of a Member or the Company; provided, however, that the foregoing shall not be deemed to bar liability of any Director to the Company for fraud, gross negligence or willful misconduct. For the avoidance of doubt, the protection afforded by this Section 6.5 shall apply notwithstanding the negligence (not constituting gross negligence) of the Board of Directors.

6.6 *Limitation of Liability; Indemnification.*

6.6.1 To the fullest extent permitted by law, none of the Directors, Officers or employees of the Company (collectively, the "Indemnitees") shall be liable, responsible, or accountable, in damages or otherwise, to any Member for doing any act or failing to do any act on or after the date hereof, the effect of which may cause or result in loss or damage to the Company or such Member if: (i) the act or failure to act of such Indemnitee was in good faith, in a manner it reasonably believed to be within the scope of such Indemnitee's authority and in a manner it reasonably believed to be in, or not inconsistent with, the best interest of the Company; and (ii) the conduct of such Person did not constitute fraud, willful misconduct, gross negligence or a material breach of this Agreement.

6.6.2 The Company shall defend, indemnify and hold harmless any Indemnitee to the greatest extent permitted by law against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, proceedings, costs, expenses and disbursements of any kind or nature whatsoever, and all costs of investigation in connection therewith, as a result of any claim, threatened action or legal proceeding by any Person (including, without limitation, by or through the Company, any Subsidiary of the Company and/or any Member), or otherwise imposed upon or incurred by such Indemnitee, relating to the performance or nonperformance of any act concerning the activities of the Company or a Subsidiary of the Company on or after the date hereof, if: (i) the act or failure to act of such Indemnitee was in good faith, within the scope of such Indemnitee's authority and in a manner it reasonably believed to be in, or not inconsistent with, the best interest of the Company or such Subsidiary; and (ii) the conduct of such Indemnitee did not constitute fraud, willful misconduct, gross negligence or a material breach of a material provision of this Agreement. The indemnification authorized by this Section 6.6.2 shall include any judgment, award, settlement, the payment of reasonable attorneys' fees and other expense (not limited to taxable costs) incurred in settling or defending any claims, threatened action or finally adjudicated legal proceeding. Notwithstanding the foregoing, the exculpation and indemnification authorized by Section 6.6.1 and this Section 6.6.2 shall not include any claim by any Person relating to the period prior to the date hereof or the transactions contemplated by the Transaction Agreement.

6.6.3 From time to time, as requested by an Indemnitee hereunder, such attorneys' fees and other expenses shall, unless the Board of Directors determines that the Indemnitee has failed to meet the standards set forth in Section 6.6.2, be advanced by the Company prior to the final disposition of such claims, actions or proceedings upon receipt by the Company of an undertaking, reasonably acceptable to the Board of Directors, by or on behalf of such Indemnitee to repay such amounts if it shall be determined that such Indemnitee is not entitled to be indemnified as authorized hereunder.

6.6.4 Any indemnification by the Company provided hereunder shall be satisfied solely out of assets of the Company as an expense of the Company (and the proceeds of any directors' and officers' insurance). No Member shall be subject to personal liability by reason of the indemnification provision provided for in this Section 6.6.

6.6.5 The provisions of this Section 6.6 are for the benefit of the Indemnitees and their estate and heirs and shall not be deemed to create any rights for the benefit of any other Person. The rights conferred on any person by this Section 6.6 shall not be exclusive of any other rights which such person may have or hereafter acquire.

6.6.6 The provisions of this Section 6.6 shall survive the termination of this Agreement. Any termination or amendment of this Section 6.6 shall not adversely affect any right or protection hereunder of any Indemnitee in respect of any act or omission prior to the time of such termination or amendment.

6.6.7 The Company may, but shall not be required to, obtain directors and officers insurance with respect to any obligation to indemnify the Indemnitees hereunder.

ARTICLE 7
TRANSFERS OF INTERESTS

7.1 *Restrictions on Transfer of Senior Common Units.*

7.1.1 Until such time as the Senior Preferred Units have been redeemed in full, no Senior Common Member shall Transfer any Senior Common Units or Common Units without the prior written consent of the holders of a majority of the Senior Preferred Units then outstanding other than Transfers to Carlyle Partners III, L.P., any Carlyle Investment Fund, Craddock, LLC or their Affiliates that do not constitute an Acceleration Event.

7.1.2 At such time as the Senior Preferred Units have been redeemed in full, the Senior Common Units shall be freely transferable so long as such Transfer does not cause the Company to cease to be a U.S. Citizen.

7.2 *Restrictions on Transfer of Senior Preferred Units.*

7.2.1 Any Senior Preferred Member may Transfer the Senior Preferred Units held thereby to any Person who is a U.S. Citizen so long as (i) such Person is transferred at least 10,000 Senior Preferred Units (or such lesser number as is held by the transferring Senior Preferred Member immediately prior to such Transfer), (ii) the Senior Preferred Member first obtains the consent of Delian as to the identity of the transferee (such consent not to be unreasonably withheld, conditioned or delayed) and (iii) such Senior Preferred Member first complies with the right of first offer set forth in Section 7.2.2; provided, however, that the foregoing requirement of this clause (iii) shall not apply to a bona fide Transfer by any Senior Preferred Member of its Senior Preferred Units to one or more Subsidiaries of CSX.

7.2.2 Other than a Transfer to a Subsidiary pursuant to the proviso in clause (iii) of Section 7.2.1, no Senior Preferred Member will Transfer any Senior Preferred Units or any right, title or interest therein, unless the Senior Preferred Member shall have first made the offers to sell set forth herein and in accordance with the following restrictions and procedures:

(a) If the Senior Preferred Member desires to sell or otherwise transfer any right, title or interest in any Senior Preferred Units, the Senior Preferred Member shall deliver to the Company a written notice (the "Sale Notice") of its intention to sell such number of Senior Preferred Units as are designated in the Sale Notice to the Company or its designee.

(b) Within fifteen (15) business days after the Sale Notice is delivered to the Company, the Company may, by written notice delivered to the Senior Preferred Member proposing to sell (an "Offer Notice"), propose to acquire all, but not less than all, of the Senior Preferred Units proposed to be sold

as set forth in the Sale Notice for sale on such terms as described in the Offer Notice. If the Senior Preferred Member does not agree to accept the offer set forth in the Offer Notice, then the Senior Preferred Member shall be prohibited from accepting any other third party offers on terms materially worse in the aggregate (in the Senior Preferred Member's reasonable discretion) than those in the Acceptance Notice for ninety (90) days after the Senior Preferred Members' rejection of the offer set forth in the Offer Notice. Transfers of the Senior Preferred Units to the Company pursuant to offers made and accepted in accordance with this Section 7.2.2 shall occur simultaneously on a business day not more than thirty (30) business days after the date on which the offer set forth in the Offer Notice is accepted by the Senior Preferred Member or such later date as may be necessary or advisable in light of legal or regulatory requirements. If the Company delivers an Offer Notice, it may, at its option, cause another designee to purchase all or any part of the Senior Preferred Units subject to the Offer Notice in lieu of the Company.

(c) In the event that the Company does not deliver an Offer Notice within the period specified above, the Senior Preferred Member shall have the right at its election to Transfer such Senior Preferred Units to a third party. If such Transfer transaction with a third party is not agreed within ninety (90) days following the date the Offer Notice is received by the Company, the Senior Preferred Member shall not Transfer any Senior Preferred Units without again complying with this Section 7.2.2

(d) Notwithstanding any other provision in this Agreement, upon an Initial Public Offering, the Senior Preferred Member shall be allowed to freely transfer its Membership Interests without restriction other than with respect to U.S. Citizenship requirements.

7.3 *Restrictions on Transfer of Common Units*. No Common Member shall Transfer any Common Units (other than Transfers to Carlyle Partners III, L.P., any Carlyle Investment Fund, Craddock, LLC or their Affiliates that do not constitute an Acceleration Event) without the prior written consent of the holders of a majority of the Senior Common Units and the holders of a majority of the Senior Preferred Units then outstanding, each voting as a separate class. No Common Member shall Transfer any Common Unit if such Transfer will cause the Company to cease to be a U.S. Citizen.

7.4 *Further Restrictions*. Notwithstanding any contrary provision in this Agreement, any otherwise permitted Transfer shall be null and void if:

(a) such Transfer would cause a termination of the Company for federal or state, if applicable, income tax purposes;

(b) such Transfer would, in the opinion of counsel to the Company, cause the Company to cease to be classified as a partnership for federal or state income tax purposes;

(c) such Transfer requires the registration of such Transferred Interest pursuant to any applicable federal or state securities laws;

(d) such Transfer causes the Company to become a "Publicly Traded Partnership," as such term is defined in Sections 469(k)(2) or 7704(b) of the Code;

(e) such Transfer subjects the Company to regulation under the Investment Company Act of 1940, the Investment Advisers Act of 1940 or the Employee Retirement Income Security Act of 1974, each as amended;

(f) such Transfer results in a violation of applicable laws; or

(g) such Transfer is made to any Person who lacks the legal right, power or capacity to own such Interest.

7.5 *Admissions and Withdrawals.* No Person shall be admitted to the Company as a Member except in accordance with Section 3.2 (in the case of Persons obtaining an Interest in the Company directly from the Company) or this Article 7 (in the case of transferees of a permitted Transfer of an Interest in the Company by any Member). Except as otherwise specifically set forth in Section 7.7, no Member shall be entitled to retire or withdraw from being a Member of the Company without the consent of the holders of a majority of each class of Membership Units then outstanding. No admission or withdrawal of a Member shall cause the dissolution of the Company. Any purported admission or withdrawal that is not in accordance with this Agreement shall be null and void.

7.6 *Admission of Assignees as Substitute Members.*

7.6.1 A transferee of any Membership Units shall become a Substitute Member only if and when each of the following conditions are satisfied:

(a) the assignor of the Interest transferred sends written notice to the Company requesting the admission of the transferee as a Substitute Member, setting forth the name and address of the transferee, the number and class of Membership Units proposed to be transferred, and the effective date of the Transfer;

(b) any consent of any other Member required to be obtained pursuant to this Article 7 is obtained in writing;

(c) the Company receives from the transferee (i) such information concerning the transferee as may be reasonably requested, and (ii) written instruments of Transfer including, without limitation such transferee's consent to be bound by this Agreement as a Substitute Member; and

(d) evidence, satisfactory to the Company in its sole discretion, that such transferee is a U.S. Citizen or that the Company will not cease to be a U.S. Citizen by reason of such transfer.

7.6.2 Upon the admission of any Substitute Member, Exhibit A shall be amended to reflect the name, address and number of Membership Units of such

Substitute Member and to eliminate or adjust, if necessary, the name, address and number of Membership Units of the predecessor of such Substitute Member.

7.7 *Withdrawal of Members*. If a Member has transferred all of its Membership Interest to one or more transferees in accordance with this Agreement then such Member shall be deemed to have withdrawn from the Company for all purposes hereunder if and when all such transferees have been admitted as Substitute Members in accordance with this Agreement.

7.8 *Compliance With IRS Safe Harbor*. The Board of Directors shall monitor the Transfers of Interests in the Company to determine (i) if such Interests are being traded on an "established securities market" or a "secondary market (or the substantial equivalent thereof)" within the meaning of Section 7704 of the Code, and (ii) whether additional transfers of Interests would result in the Company being unable to qualify for at least one of the "safe harbors" set forth in Regulations Section 1.7704-1 (or such other guidance subsequently published by the Internal Revenue Service setting forth safe harbors under which Interests will not be treated as "readily tradable on a secondary market (or the substantial equivalent thereof)" within the meaning of Section 7704 of the Code) (the "Safe Harbors"). The Members shall take all steps reasonably necessary or appropriate to prevent any trading of Interests or any recognition by the Company of Transfers made on such markets and, except as otherwise provided herein, to ensure that the terms and conditions of at least one of the Safe Harbors is met.

ARTICLE 8
REDEMPTION

8.1 *Generally*. In accordance with the provisions of this Article 8, the Senior Preferred Units held by SL Service, and the Senior Preferred Units and Common Units held by CSX Domestic Shipping, or their transferees (and successive transferees), shall respectively be redeemable as of the date of any such redemption described herein (the "Redemption Date").

8.2 *Senior Preferred Units*.

8.2.1 The Senior Preferred Units shall be redeemable, in whole but not in part, by the Company, at its option, exercisable in the sole and absolute discretion of the Company, at any time after the Limitation Date.

8.2.2 The Senior Preferred Units shall be mandatorily redeemable by the Company on the earliest of (i) the 7th anniversary of the date hereof, (ii) the consummation of any transaction or series of related transactions that constitutes an Acceleration Event or (iii) if the holders of majority of the Senior Preferred Units deliver a Redemption Election Notice in accordance with Section 4.2.2, the date on which the Company makes such Proposed Distribution to the Common Members and the Senior Common Members or such earlier date as may be specified by the Company.

8.2.3 The amount payable by the Company per Senior Preferred Unit to be redeemed in accordance with Sections 8.2.1 or 8.2.2 (the "Senior Preferred Redemption Price") shall be equal to the Senior Preferred Liquidation Preference as of the Redemption Date, divided by the total number of Senior Preferred Units then outstanding.

8.3 *Common Units.*

8.3.1 So long as the Senior Preferred Units have been redeemed, the Common Units held by CSX Domestic Shipping or its transferee (and successive transferees), shall be redeemable, in whole but not in part, by the Company, at its option, exercisable in the sole and absolute discretion of the Company, at any time after the earlier to occur of (i) the 7th anniversary of the date hereof or (ii) upon the consummation of any transaction or series of related transactions that constitutes an Acceleration Event.

8.3.2 The Common Units held by CSX Domestic Shipping or its transferee (and successive transferees), shall be mandatorily redeemable by the Company on the 9th anniversary of the Closing.

8.3.3 The amount payable by the Company per Common Unit to be redeemed in accordance with Sections 8.3.1 or 8.3.2 (the "Common Redemption Price") shall be an amount equal to the greater of (i) $1,000 and (ii) the amount of Common Capital attributable to such Common Unit.

8.4 *Redemption Notice.* Notice of any redemption (the "Redemption Notice") shall be given by or on behalf of the Company to each holder of record of the Senior Preferred Units and/or of the Common Units to be redeemed pursuant to the foregoing provisions (as applicable, the "Redemption Units") at least ten (10) days prior to the Redemption Date at their respective last addresses as they shall appear on the books of the Company. In addition to any information required by law, the Redemption Notice shall state the Redemption Date. Any redemption contemplated by any Redemption Notice may be conditioned upon the occurrence of one or more transactions or other events and the Redemption Date in the Redemption Notice may be defined as the date on which such transaction is consummated or such other event occurs.

8.5 *Payment of Redemption Price.* If a Redemption Notice has been mailed in accordance with the foregoing provision, on or before the Redemption Date, the Company shall pay the Common Redemption Price or the Senior Preferred Redemption Price, as the case may be, to each holder of the Redemption Units by wire transfer of immediately available funds to an account designated to the Company in writing at least two business days prior to the Redemption Date by the holder of the Redemption Units to be redeemed or, if no such notice shall have been given, shall have been set aside by the Company so as to be available therefor upon delivery of such wiring instructions. Then, from and after the Redemption Date (i) in the case of any redemption of Senior Preferred Units, the Base Preferred Return and the Puerto Rico Preferred Return shall cease to accrue, (ii) no Net Profits or Net Losses shall be allocated to the holder of the Redeemed Units on account of such Redeemed Units with respect to any time on or after the Redemption Date, (iii) the Redemption Units shall be deemed to be no longer outstanding and shall not have the status of Membership Units and (iv) all rights of the holders of such Redemption Units in their capacity as Members shall cease with respect to the Redemption Units, other than the right to receive from the Company the Redemption Price.

8.6 *No Redemption of Other Units.* So long as the Senior Preferred Units remain outstanding, no other Membership Units then outstanding (including, without limitation, the Senior Common Units) shall be redeemed, otherwise repurchased or cancelled for consideration in any similar transaction or series of transactions by the Company.

ARTICLE 9
REGISTRATION RIGHTS

9.1 *Demand Registrations.*

9.1.1 Subject to Section 9.1.2 below, (i) at any time after the date that is six (6) months after the consummation of an Initial Public Offering, the holders of a majority of the Registrable Securities may request registration, whether underwritten or otherwise, under the Securities Act of all or part of the Registrable Securities held by such holders on Form S-1 or any similar long-form registration (collectively, "Long-Form Registrations") or, if available, on Form S-3 or any similar short-form registration ("Short-Form Registrations"). Each request for a Long-Form Registration or Short-Form Registration shall specify the approximate number of Registrable Securities requested to be registered and the anticipated price range for such offering. Within twenty (20) days after receipt of any such request for a Long-Form Registration or Short-Form Registration regarding Registrable Securities, the Company will give written notice of such requested registration to all other holders of Registrable Securities and will include (subject to the provisions of this Article 9) in such registration, all Registrable Securities with respect to which the Company has received written requests for inclusion therein within ten (10) days after the receipt of such notice by such holders of Registrable Securities from the Company. All registrations requested pursuant to this Section 9.1 are referred to herein as "Demand Registrations."

9.1.2 There shall be, in the aggregate, no more than two (2) Demand Registrations (whether by Long-Form Registration or Short-Form Registration). A registration will not count as a Demand Registration hereunder until such registration has been declared effective by the SEC.

9.1.3 If a Demand Registration is an underwritten offering and the managing underwriters advise the Company in writing that, in their opinion, the number or class of Registrable Securities and other securities proposed to be included in such offering exceeds the number or class of Registrable Securities and other securities, if any, which can be sold therein without adversely affecting the marketability of the offering, the Company will include in such registration (i) first, the number of Registrable Securities requested to be included in such registration pro rata, if necessary, among the holders of Registrable Securities based on the number of Registrable Securities owned by each such holder and (ii) second, any other securities of the Company proposed to be included in such registration pro rata, if necessary, on the basis of the number of such other securities owned by each such holder. In the event the number or class of Registrable Securities is reduced in accordance with this Section 9.1.3, the holders of Registrable Securities, at their sole discretion may rescind their Demand Registration, and such registration will not count as a Demand Registration hereunder.

9.1.4 In no event shall the Company be obligated to effect any Demand Registration (i) within twelve (12) months after the effective date of a previous Demand Registration for Registrable Securities; (ii) after the second Demand Registration; or (iii) after twenty-four (24) months following the consummation of the Initial Public Offering. The Company may postpone for up to one hundred twenty (120) days in any 365 day period the filing or the effectiveness of a registration statement for a Demand

Registration, if the Company determines in good faith that such Demand Registration might reasonably be expected to have an adverse effect on any proposal or plan to engage in any acquisition or disposal of stock or assets or any merger, consolidation, tender offer or similar transaction.

9.2 *Piggyback Registrations.*

9.2.1 Whenever the Company proposes to register any of its securities under the Securities Act (other than pursuant to an Initial Public Offering, a registration statement on Form S-4, Form S-8 or any successor forms thereto), and the registration form to be used may be used for the registration of Registrable Securities (each, a "Piggyback Registration"), the Company shall (i) give prompt written notice to all holders of Registrable Securities of its intention to effect such a registration and (ii) include in any such registration by it all Registrable Securities with respect to which it has received within 20 days after the receipt of such written notice by such holders the written requests of such holders for the inclusion of such Registrable Securities in such Piggyback Registration.

9.2.2 If a Piggyback Registration is an underwritten primary registration, the Company will include in such registration all securities requested to be included in such registration; provided, however, that if the managing underwriters advise the Company in writing that in their opinion the number or class of such securities requested to be included in such registration exceeds the number or class which can be sold in such offering without adversely affecting the marketability of the offering, the Company will include in such registration (i) first, any securities to be included in such registration by any person other than a Senior Preferred Member exercising a "demand registration" right granted by the Company at any time hereafter, (ii) second, any other securities of the Company proposed to be included in such registration, and (iii) third, other securities, including Registrable Securities, if any, requested to be included in such registration, pro rata among the holders of such securities on the basis of the aggregate fair market value of the securities proposed to be included in such registration.

9.3 *Registration Expenses.* Subject to the limitations contained in this Article 9, the Registration Expenses of the holders of Registrable Securities will be paid by the Company in all permitted Demand Registrations and Piggyback Registrations involving Registrable Securities.

9.4 *Registration Procedures.* Whenever the holders of Registrable Securities have requested that any Registrable Securities be registered pursuant to this Agreement, the Company will use commercially reasonable efforts to effect the registration and pursuant thereto the Company will (i) prepare and file with the SEC (A) a registration statement with respect to such Registrable Securities and use commercially reasonable efforts to cause such registration statement to become effective and (B) such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a reasonable time; (ii) furnish to each seller of Registrable Securities such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus) and such other documents as such seller may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such seller; (iii) use

commercially reasonable efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions as any seller reasonably requests (provided, that the Company will not be required solely as a result of this subsection to (A) qualify generally to do business, (B) subject itself to taxation, or (C) consent to general service of process); (iv) cause all such Registrable Securities to be listed on each securities exchange on which similar securities issued by the Company are then listed; (v) obtain (for the benefit of such holders and any applicable underwriters) a "cold comfort" letter from the independent public accountants of the Company in customary form and covering such matters of the type customarily covered by "cold comfort" letters as the holders of Registrable Securities reasonably request; (vi) obtain (for the benefit of such holders and any applicable underwriters) legal opinions as are customarily given to underwriters in an offering; and (vii) otherwise facilitate such registration and related offering, subject to the good faith cooperation of each of the holders of Registrable Securities.

9.5 *Indemnification.*

9.5.1 The Company agrees to indemnify, to the extent permitted by law, (i) each holder of Registrable Securities, (ii) such holder's managers, members, directors and officers and (iii) each Person who controls (within the meaning of the Securities Act) such holder against all losses, claims, damages, liabilities, and expenses arising out of or based upon any untrue or alleged untrue statement of material fact contained in any registration statement, prospectus, or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, and shall reimburse such holder for any legal or other expenses reasonably incurred by such holder in connection with the investigation or defense of such loss, claim, damage, liability or expense, except insofar as the same are caused by or contained in any information furnished in writing to the Company by such holder expressly for use therein or by such holder's failure to deliver a copy of the registration statement or prospectus or any amendments or supplements thereto.

9.5.2 In connection with any registration statement in which a holder of Registrable Securities is participating, each such holder will furnish to the Company in writing such information and affidavits as the Company shall request for use in connection with any such registration statement or prospectus and, to the extent permitted by law, will indemnify the Company in connection with any registration of Registrable Securities, and its managers, members, directors and officers and each Person who controls the Company against any losses, claims, damages, liabilities and expenses resulting from any untrue or alleged untrue statement of material fact contained in such registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or omission is contained in any information or affidavit so furnished in writing by such holder expressly for use therein.

9.5.3 Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) unless in such indemnified party's reasonable judgment a

conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party will not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent will not be unreasonably withheld). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim.

9.5.4 The indemnification provided for under this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any manager, member, officer, director, or controlling Person of such indemnified party and will survive the transfer of securities. The Company, to the extent so liable, also agrees to make such provisions, as are reasonably requested by any indemnified party, for contribution to such party in the event the indemnification provided by the Company pursuant to the terms and conditions of this Agreement is unavailable for any reason.

ARTICLE 10
DISSOLUTION, LIQUIDATION, AND TERMINATION OF THE COMPANY

10.1 *Termination and Dissolution.* The Company shall be dissolved and its affairs shall be wound up upon the occurrence of any of the following events:

(a) the entry of a decree of judicial dissolution under Section 18-802 of the Act;

(b) the written consent of all Members; or

(c) the consummation of a Terminating Capital Transaction.

10.2 *Liquidation.* Upon the occurrence of an event described in Section 10.1, the Members shall designate a Person (who may be a Member) to act as a liquidator without compensation. The liquidator shall proceed to wind up the affairs of the Company and to make final distributions as provided in this Section 10.2. The liquidator shall continue to operate the Company until all of the Company's assets, net of payments to the Company's creditors, have been distributed to the Members. The liquidator shall:

(a) cause a proper accounting to be made by a recognized firm of certified public accountants of the assets, liabilities, and operations of the Company through the last day of the calendar month in which an event described in Section 10.1 occurs, and again as of the date of the liquidating distribution (taking into account all relevant transactions subsequent to the initial accounting;

(b) use its reasonable best efforts to sell all of the assets of the Company and to collect all amounts owing to the Company;

(c) pay from Company funds all Company debts and liabilities (including all expenses incurred in liquidation) or otherwise make adequate provision therefor (including the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and

(d) distribute the Company's assets remaining after compliance with the preceding provisions of this Section 10.2 to the Members in accordance with Section 4.2 hereof; provided, however, that in the event that distributions pursuant to this Section 10.2(d) would not otherwise be identical to distributions in accordance with the positive balances in the Members' Capital Accounts, then in accordance with such positive balances.

10.3 *Capital Account Adjustments.* Any income, gain, loss and deduction realized by the Company in the fiscal year it consummates a Terminating Capital Transaction and/or in the fiscal year of its final liquidation shall be allocated to the Members in such amounts and priorities as may be necessary to make the Capital Account of each Member, as measured immediately after such allocation and any adjustment to the Capital Accounts under this Agreement, equal as nearly as possible to the distributions that are to be made to such Member under this Article 10.

10.4 *Cancellation of Certificate.* Upon completion of the distribution of the assets of the Company as provided in Section 10.2, the Certificate shall be cancelled, and the Members shall take all such other actions as may be necessary to terminate the Company in accordance with the Act.

ARTICLE 11
MISCELLANEOUS

11.1 *Amendments.*

11.1.1 This Agreement may be amended only by a written instrument executed by the holders of a majority of each class of Membership Units then outstanding, each voting separately as a single class, (i.e., Senior Preferred Units, Senior Common Units and Common Units). Notwithstanding the foregoing, in no event shall this Agreement be amended without the consent of each Member to be adversely affected so as to (i) modify the limited liability of a Member, (ii) adversely affect the interest of a Member in Net Profits, Net Losses, Cash Available for Distribution (other than to reflect the admission of an Additional Member) or allocations or (iii) change in form or status the treatment of the Company as a partnership for federal and state income tax purposes.

11.1.2 Each Additional Member and Substitute Member shall become a signatory hereto by signing such number of counterpart signature pages to this Agreement, and such other instruments, in such manner, as the Board of Directors shall reasonably determine. By so signing, each Additional Member and Substitute Member, as the case may be, shall be deemed to have adopted and to have agreed to be bound by all of the provisions of this Agreement.

11.1.3 In making any amendments, there shall be prepared and filed by the Board of Directors, such documents and certificates as may be required under the Act and under the laws of any other jurisdiction applicable to the Company.

11.2 *Representations and Warranties*. Each Member hereby represents and warrants to all of the other Members as follows:

11.2.1 Such Member is (i) if a corporation, duly incorporated, validly existing, and in good standing under the laws of the jurisdiction of its incorporation and is duly qualified as a foreign corporation in the jurisdiction of its principal place of business (if not incorporated therein); and (ii) if a limited liability company, partnership, trust, or other entity, (A) duly organized, validly existing, and (if applicable) in good standing under the laws of the jurisdiction of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed therein), and (B) with respect to each partner (other than limited partners), trustee, or other member thereof, the representations and warranties in clauses (i) and (ii)(A) of this Section 11.2.1 are true and correct.

11.2.2 Such Member has full corporate, limited liability company, partnership, trust, or other power and authority to enter into this Agreement and to perform such Member's obligations hereunder, and all necessary actions by such Member's board of directors, shareholders, partners, trustees, or other persons necessary for the due authorization, execution, delivery, and performance of this Agreement by such Member have been duly taken, and does not conflict with any other agreement, indenture or arrangement to which such Member is a party or by which such Member is bound.

11.2.3 Such Member (i) is an "accredited investor" within the meaning of Rule 501 under the Securities Act of 1933, as amended, (ii) is acquiring Membership Units for investment purposes and not with a view to, or in connection with, the distribution thereof, and (iii) has no knowledge that it is prohibited by any applicable law to hold its Membership Units.

11.2.4 The execution, delivery and performance by each Member of this Agreement are within the Member's legal right, power and capacity, require no action by or in respect of, or filing with, any governmental body, agency, or official (except as disclosed in writing to the Board of Directors), and do not and will not contravene, or constitute a default under, any provision of applicable law or regulation or of any agreement, judgment, injunction, order, decree or other instrument to which the Member is a party or by which the Member or any of his or her properties is bound. This Agreement, when executed and delivered, will constitute a valid and binding agreement of the Member, enforceable against the Member in accordance with its terms.

11.3 *Accounting and Fiscal Year*. Subject to Code Section 448, the books of the Company shall be kept on such method of accounting for tax and financial reporting purposes as may be determined by the Board of Directors. The fiscal year of the Company shall end on December 31 of each year, or on such other date permitted under the Code as the Board of Directors shall determine.

11.4 *Entire Agreement*. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and fully supersedes any and all prior or contemporaneous agreements or understandings between the parties hereto pertaining to the subject matter hereof, including, without limitation, the Newco LLC Term Sheet (as defined in, and attached to, the Transaction Agreement).

11.5 *Further Assurances*. Each of the parties hereto does hereby covenant and agree on behalf of itself, its successors, and its assigns, without further consideration, to prepare, execute, acknowledge, file, record, publish, and deliver such other instruments, documents and statements, and to take such other action as may be required by law or reasonably necessary to effectively carry out the purposes of this Agreement.

11.6 *Notices*. Any notice, consent, payment, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be (i) delivered personally to the Person or to an officer of the Person to whom the same is directed, or (ii) sent by facsimile, registered or certified mail, or by FedEx or any other nationally recognized overnight courier service, addressed as follows: if to the Company or the Board of Directors, c/o Horizon Lines, LLC, 2101 Rexford Road, Suite #350 West, Charlotte, North Carolina 28211, Attention: Charles Raymond, or to such other address as the Company or the Board of Directors may from time to time specify by notice to the Members with a copy to Latham & Watkins LLP, 555 Eleventh Street, NW, Washington, DC 20004, Attn: David S. Dantzic; if to a Member, to such Member's address listed on Exhibit A hereto, or to such other address as such Member may from time to time specify by notice to the Company. Any such notice shall be deemed to be delivered, given and received for all purposes as of (x) the date so delivered, if delivered personally, (y) receipt, if sent by facsimile, or (iii) the date of delivery if sent by registered or certified mail or by courier.

11.7 *Governing Law*. This Agreement, including its existence, validity, construction, and operating effect, and the rights of each of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law.

11.8 *Choice of Forum*. Any questions, dispute, or other difference relating to this Agreement shall be resolved in the state courts of the State of Delaware, provided that such court or courts have subject matter jurisdiction, and if for any reason such court or courts do not have subject matter jurisdiction, in a federal court in the State of Delaware. The parties shall and hereby do consent to the jurisdiction of the state and federal courts of the State of Delaware and acknowledge that such a forum shall be a convenient forum for resolution of these questions, disputes, and other differences.

11.9 *Construction*. This Agreement shall be construed as if all parties prepared this Agreement.

11.10 *Captions; Pronouns*. Any titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the text of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as appropriate.

11.11 *Binding Effect.* Except as otherwise expressly provided herein, this Agreement shall be binding on and inure to the benefit of the Members, their heirs, executors, administrators, successors and all other Persons hereafter holding, having or receiving an Interest in the Company, whether as Substitute Members or otherwise.

11.12 *Severability.* In the event that any provision of this Agreement as applied to any party or to any circumstance, shall be adjudged by a court to be void, unenforceable or inoperative as a matter of law, then the same shall in no way affect any other provision in this Agreement, the application of such provision in any other circumstance or with respect to any other party, or the validity or enforceability of the Agreement as a whole.

11.13 *Counterparts.* This Agreement may be executed in any number of multiple counterparts, each of which shall be deemed to be an original copy and all of which shall constitute one agreement, binding on all parties hereto.

11.14 *Special Provisions with Respect to Senior Debt.* In connection with the transactions contemplated by the Transaction Agreement, the Company has borrowed $175,000,000 in senior secured term loans (such loans, together with any senior secured revolving credit borrowings under the Credit Agreement related thereto, the "Senior Debt") and has distributed $175,000,000 of the proceeds to SL Service. In recognition that the Subsidiaries of the Company are obligated to provide guarantees under the senior credit agreement with respect to the Senior Debt (the "Senior Credit Agreement") and to provide collateral in respect thereof (as provided therein or in agreements required to be executed pursuant thereto), the Company and each of the Members agree that, so long as any Senior Preferred Units remain outstanding, each Subsidiary of the Company shall be a Person that is either (i) disregarded as an entity separate from the Company under Regulations Sections 301.7701-3 or (ii) not related to any Member within the meaning of Regulations Sections 1.752-4(b). Accordingly, so long as any Senior Preferred Units remain outstanding, no Member of the Company or a Person related to such Member within the meaning of Regulations Section 1.752-4(b) (other than a Person that is disregarded as an entity separate from the Company under Regulations Section 301.7701-3) shall bear the economic risk of loss within the meaning of Regulations Section 1.752-2 with respect to the Senior Debt or any borrowing obtained to refinance such Senior Debt. Notwithstanding the foregoing, upon an Event of Default under (and as defined in) the Senior Credit Agreement, and after considering in good faith any alternatives proposed by the holders of a majority of the Senior Preferred Units, any Member or Person related to such Member may, but shall not be required to, provide a guaranty and recourse with respect to the Senior Debt; provided, however, that no such guaranty or other actions shall be permitted without the consent of the holders of a majority of the Senior Preferred Units if it would prevent the Senior Debt (or any borrowing obtained to refinance such Senior Debt) from being allocated entirely to the Senior Preferred Members for federal income tax purposes.

11.15 *Acknowledgements Relating to Senior Debt.*

11.15.1 Each Member, including, without limitation, the Initial Members, acknowledges that all of its rights under this Agreement with respect to distributions and redemption payments and all other rights to payment hereunder (including, without limitation, any payments upon an Acceleration Event or upon any breach of this Agreement) are, vis-á-vis the lenders under the Company's Senior Credit Agreement, rights in the nature of

equity, and are therefore subject to any limitations the law may impose on the rights of equity during any period when the Company is incapable of satisfying its debt obligations.

11.15.2 Each Member, including, without limitation, the Initial Members, further acknowledges that prior to the earlier of (x) the 7th anniversary of the Closing and (y) the payment in full of the Senior Debt, the terms of the Senior Credit Agreement shall, in certain circumstances, prohibit or restrict the Company and its Subsidiaries from making distributions and redemption payments and all other payments under this Agreement (including, without limitation, any payments upon an Acceleration Event or upon any breach of this Agreement) in respect of the equity interests of the Company and its Subsidiaries, including the Senior Preferred Units, the Senior Common Units and the Common Units.

11.16 *Purchase Price Allocation*. Pursuant to Section 2.4 of the Transaction Agreement, the parties hereto agree that $3,000,000 of the Purchase Amount is allocated to the shares of Lines of Puerto Rico, $675,000 is allocated to the Common Units acquired by Delian from SL Service and the remainder of the Purchase Amount is allocated to the Senior Common Units.

* * *

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

DELIAN HOLDINGS, L.L.C.

By: _____
Name: _____
Title: _____

SL SERVICE, INC.

By: _____
Name: _____
Title: _____

CSX DOMESTIC SHIPPING CORPORATION

By: _____
Name: _____
Title: _____

HORIZON LINES, LLC

By: _____
Name: _____
Title: _____

FORM OF SIGNATURE PAGE FOR ADMISSION OF NEW MEMBERS

IN WITNESS WHEREOF, the undersigned Member has caused this counterpart signature page to the Limited Liability Company Agreement of Horizon Lines, LLC to be duly executed as of the date first written above.

MEMBER:

_____
(Type or Print Name of Member)

By: _____
Name:
Title:

EXHIBIT A

MEMBERS, ADDRESS, INITIAL CAPITAL ACCOUNT BALANCE,[1]
AND MEMBERSHIP UNITS
OF
HORIZON LINES, LLC

Member (Name and Address)	Senior Preferred Units	Senior Common Units	Common Units	Initial Capital Account
Delian Holdings, L.L.C. c/o The Carlyle Group 1001 Pennsylvania Avenue, NW Suite 200S Washington, DC 20004 Attn: Greg Ledford Fax: (202) 347-9250 with copies (which shall not constitute actual or constructive notice) to: Latham & Watkins, LLP 555 Eleventh Street, NW Suite 1000 Washington, DC 20004 Attn: David S. Dantzic, Esq. Fax: (202) 637-2201	0	1000	900	$65,725,518 Senior Common Capital equals $65,050,518 Common Unit Capital equals $675,000

1 The Members have agreed that $750 will be allocated to each Common Unit.

Member (Name and Address)	Senior Preferred Units	Senior Common Units	Common Units	Initial Capital Account
SL Service, Inc. c/o CSX Corporation 500 Water Street, 15th Floor Jacksonville, Florida 32202 Attn: General Counsel, Corporate Fax: (904) 359-3597 with copies (which shall not constitute actual or constructive notice) to: Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, New York 10019 Attn: Steven A. Cohen, Esq. Fax: (212) 403-2000	54,000	0	0	$54,000,000 Senior Preferred Capital equals $54,000,000
CSX Domestic Shipping Corporation c/o CSX Corporation 500 Water Street, 15th Floor Jacksonville, Florida 32202 Attn: General Counsel, Corporate Fax: (904) 359-3597 with copies (which shall not constitute actual or constructive notice) to: Wachtell, Lipton, Rosen & Katz 51 West 52nd Street New York, NY 10019 Attn: Steven A. Cohen, Esq. Fax: (212) 403-2000	6,000	0	100	$6,075,000 Senior Preferred Capital equals $6,000,000 Common Capital equals $75,000

EXHIBIT B

PROJECTED OPERATING INCOME

EXHIBIT C

PUERTO RICO EBITDA TARGET

HORIZON LINES, LLC

Members: Delian Holdings, LLC (84.5%), SL Service, Inc. (13.5%); CSX Domestic Shipping Corporation (2.0%)
Formed in the State of Delaware on July 31, 1998 as Sea-Land Domestic Shipping, LLC;
name changed to Sea-Logix LLC on October 26, 1999;
name changed to CSX Lines, LLC on November 18, 1999;
name changed to present name on February 24, 2003

(Qualified to do business in Alaska, California, Georgia, Guam, Hawaii, Florida, Louisiana, New Jersey, North Carolina, Texas and Washington)

DESCRIPTION: Containerized ocean transportation and affiliated activities.

DIRECTORS

Daniel Ajamian
Gregory S. Ledford
F. Mark Fariborz
Charles G. Raymond
Paul R. Goodwin (Non-Voting)
Christoph M. Widmer (Non-Voting)

OFFICERS

Charles G. Raymond	Chairman, President and Chief Executive Officer
John V. Keenan	Senior Vice President, and Chief Operating Officer
Ricky A. Kessler	Vice President, and Chief Information Officer
Frank Peake II	Vice President, Strategy & Planning
Karen H. Richards	Vice President, Sales and Marketing
Christoph M. Widmer	Vice President, Finance and Administration; Chief Financial Officer and Treasurer
Robert S. Zuckerman	Vice President, General Counsel and Secretary
Kenneth L. Privratsky	Division Vice President and General Manager, Alaska
Gabriel Serra	Division Vice President and General Manager, Puerto Rico
Brian Taylor	Division Vice President and General Manager, Hawaii/Guam
Dennis R. McCarthy	Staff Vice President, Human Resources
Mark R. Blankenship	Controller and Assistant Treasurer
Sandra L. Frazier	Assistant Secretary

Claudette T. Hilbun	Assistant Treasurer
I.R.S. EMPLOYER IDENTIFICATION NO.:	56-2098440
NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) NO.:	483111
BUSINESS ADDRESS:	2101 Rexford Road, Suite 350 West Charlotte, North Carolina 28211
ANNUAL MEETING DATE:	As designated from time to time by the member(s)
MEMBERS:	Delian Holdings, LLC SL Service, Inc. CSX Domestic Shipping Corporation
UNITS:	See Limited Liability Company Agreement

As of June, 2003

Delaware

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "DELIAN HOLDINGS, L.L.C.", FILED IN THIS OFFICE ON THE TWELFTH DAY OF DECEMBER, A.D. 2002, AT 10 O'CLOCK A.M.

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3601383 8100

020763223

AUTHENTICATION: 2141612

DATE: 12-12-02

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 10:00 AM 12/12/2002
020763223 - 3601383

CERTIFICATE OF FORMATION

OF

DELIAN HOLDINGS, L.L.C.

The undersigned, an authorized natural person, for the purpose of forming a limited liability company, under the provisions and subject to the requirements of the State of Delaware (particularly Chapter 18, Title 6 of the Delaware Code and the acts amendatory thereof and supplemental thereto, and known, identified, and referred to as the "Delaware Limited Liability Company Act"), hereby certifies that:

FIRST: The name of the limited liability company (hereinafter called the "limited liability company") is:

Delian Holdings, L.L.C.

SECOND: The address of the registered office and the name and the address of the registered agent of the limited liability company required to be maintained by Section 18-104 of the Delaware Limited Liability Company Act are:

The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, New Castle County, Delaware 19801

Executed on December 11, 2002

Debra Bhaumik

Debra Bhaumik
Authorized Person

DC\559850.1

LIMITED LIABILITY COMPANY AGREEMENT

OF

DELIAN HOLDINGS, L.L.C.,

a Delaware Limited Liability Company

LIMITED LIABILITY COMPANY AGREEMENT
OF
DELIAN HOLDINGS, L.L.C.

This **LIMITED LIABILITY COMPANY AGREEMENT** (the *"Agreement"*) of Delian Holdings, L.L.C. (the *"Company"*) is effective as of December 18, 2002.

1. Formation of Limited Liability Company. Carlyle-Horizon Holdings Corp., a corporation (the *"Member"*) hereby forms the Company as a limited liability company pursuant to the provisions of the Delaware Limited Liability Company Act, 6 Del. C §18-101, *et seq.*, as it may be amended from time to time, and any successor to such statute (the *"Act"*). The rights and obligations of the Member and the administration and termination of the Company shall be governed by the Agreement and the Act. The Agreement shall be considered the "Limited Liability Company Agreement" of the Company within the meaning of Section 18-101(7) of the Act. To the extent this Agreement is inconsistent in any respect with the Act, this Agreement shall control.

2. Members. Carlyle-Horizon Holdings Corp. is the sole member of the Company.

3. Purpose. The purpose of the Company is to engage in any and all other lawful businesses or activities in which a limited liability company may be engaged under applicable law (including, without limitation, the Act).

4. Name. The name of the Company shall be *"Delian Holdings, L.L.C."*.

5. Registered Agent and Principal Office. The registered agent of the Company in the State of Delaware shall be The Corporation Trust Company whose address is 1209 Orange Street, Wilmington, New Castle County, Wilmington, Delaware 19801 The mailing address of the Company shall be 1001 Pennsylvania Avenue, NW, Suite 220 South, Washington, D.C. 20004. The Company may have such other offices as the Member may designate from time to time.

6. Term of Company. The Company shall commence on the date a Certificate of Formation is properly filed with the Secretary of State of the State of Delaware and shall continue in existence in perpetuity unless its business and affairs are earlier wound up following dissolution at such time as this Agreement may specify.

7. Management of Company. All decisions relating to the business, affairs and properties of the Company shall be made by the Member which shall have authority to bind the Company by its signature or by the signature of any person authorized to act on its behalf. The Member may appoint a Manager, Chairman, President and one or more Executive Vice Presidents and such other officers of the Company as the Member may deem necessary or advisable to manage the day-to-day business affairs of the Company (the *"Officers"*). To the extent delegated by the Member, the Officers shall have the authority to act on behalf of, bind and execute and deliver documents in the name and on behalf of the Company. No such

delegation shall cause the Member to cease to be a Member. The initial Officers of the Company are set forth on Schedule A hereto.

8. Distributions. Each distribution of cash or other property by the Company shall be made 100% to the Member. Each item of income, gain, loss, deduction and credit of the Company shall be allocated 100% to the Member.

9. Capital Accounts. A capital account shall be maintained for each Member in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv).

10. Dissolution and Winding Up. The Company shall dissolve and its business and affairs shall be wound up upon the written consent of the Member.

11. Amendments. This Agreement may be amended or modified from time to time only by a written instrument executed by the Member.

12. Governing Law. The validity and enforceability of this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law.

Carlyle-Horizon Holdings Corp.,
its sole Member

By:_____
Name: Gregory S. Ledford
Title: President

SCHEDULE A

Officers

Name	Title
Gregory S. Ledford	President and Manager
F. Mark Fariborz	Vice President and Secretary
Mbago Kaniki	Assistant Secretary

Delaware

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "CARLYLE-HORIZON HOLDINGS CORP.", FILED IN THIS OFFICE ON THE EIGHTEENTH DAY OF DECEMBER, A.D. 2002, AT 6 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

3604413 8100

020782100

AUTHENTICATION: 2160406

DATE: 12-19-02

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 06:00 PM 12/18/2002
020782100 - 3604413

CERTIFICATE OF INCORPORATION

OF

CARLYLE-HORIZON HOLDINGS CORP.

FIRST: The name of the corporation (hereinafter sometimes referred to as the "Corporation") is:

Carlyle-Horizon Holdings Corp.

SECOND: The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, New Castle County, Wilmington, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The aggregate number of all classes of shares which the Corporation shall have the authority to issue is one thousand (1,000) shares of common stock, par value of $0.01 per share (the "Common Stock").

FIFTH: The rights, preferences, privileges and restrictions granted or imposed upon the Common Stock are as follows:

1. Dividends. The holders of the Common Stock shall be entitled to the payment of dividends when and as declared by the board of directors of the Corporation (the "Board") out of funds legally available therefore and to receive other distributions from the Corporation, including distributions of contributed capital, when and as declared by the Board. Any dividends declared by the Board to the holders of the then outstanding Common Stock shall be paid to the holders thereof pro rata in accordance with the number of shares of Common Stock held by each such holder as of the record date of such dividend.

2. Liquidation, Dissolution or Winding Up. Subject to the rights of any holders of any class of preferred stock which may from time-to-time come into existence and which are then outstanding, in the event of any liquidation, dissolution or

winding up of the Corporation, whether voluntary or involuntary, the funds and assets of the Corporation that may be legally distributed to the Corporation's stockholders shall be distributed among the holders of the then outstanding Common Stock pro rata, in accordance with the number of shares of Common Stock held by each such holder.

3. Voting. Each holder of Common Stock shall have full voting rights and powers equal to the voting rights and powers of each other holder of Common Stock and shall be entitled to one (1) vote for each share of Common Stock held by such holder. Each holder of Common Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation (as in effect at the time in question) and applicable law, on all matters put to a vote of the stockholders of the Corporation.

At all times, each holder of Common Stock of the Corporation shall be entitled to one vote for each share of Common Stock held by such stockholder standing in the name of such stockholder on the books of the Corporation.

SIXTH: The name and address of the Incorporator is as follows:

Eleanor R. Horsley
Latham & Watkins
555 Eleventh Street, NW
Suite 1000
Washington, D.C. 20004

SEVENTH: In furtherance and not in limitation of the power conferred by statute, the Board of Directors is expressly authorized to make, alter or repeal the Bylaws of the Corporation subject to any limitations contained therein.

EIGHTH: No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for the breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transactions from which the director derived an improper personal benefit.

NINTH: Election of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

TENTH: The Corporation reserves the right to amend, alter, change or repeal any provisions contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the General Corporation Law of the State of Delaware. All rights conferred upon stockholders herein are granted subject to this reservation.

ELEVENTH: To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) agents of the Corporation (and any other persons to which the DGCL permits the Corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, by vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the DGCL, subject only to limits created by the DGCL and applicable decisional law, with respect to actions for breach of duty to the Corporation, its stockholders, and others.

I, THE UNDERSIGNED, being the sole Incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, herein declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 18th day of December, 2002.

Eleanor R. Horsley
Incorporator

Delaware

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "CARLYLE-HORIZON HOLDINGS CORP.", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF MAY, A.D. 2003, AT 3:14 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 2425050

DATE: 05-19-03

3604413 8100

030323411

CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
CARLYLE-HORIZON HOLDINGS CORP.

Pursuant to Section 242 of the General Corporation Law of the State of Delaware, Carlyle-Horizon Holdings Corp., a Delaware corporation (the "Corporation"), hereby certifies that:

1. The Certificate of Incorporation of the Corporation is hereby amended by deleting the first paragraph of the present Article FOURTH and inserting in lieu thereof the following:

> FOURTH: The aggregate number of all classes of shares which the Corporation shall have authority to issue is One Million (1,000,000) shares of common stock, par value of $.01 per share (the "Common Stock"). Upon the effectiveness of this Certificate of Amendment to the Certificate of Incorporation of the Corporation, each share of the Corporation's Common Stock outstanding as of May 1, 2003 shall be converted into, and shall thereafter represent 800 shares of the Corporation's Common Stock with a par value of $.01 per share.

2. The Directors of the Corporation, by unanimous written consent, declared the foregoing amendment advisable and referred it to the stockholders of the Corporation for a vote and approval.

3. The sole stockholder of the Corporation has adopted and approved the foregoing amendment.

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:38 PM 05/19/2003
FILED 03:14 PM 05/19/2003
SRV 030323411 - 3604413 FILE

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Certificate of Incorporation of the Corporation to be signed and executed in its corporate name by Gregory S. Ledford, its President this 19th day of May, 2003.

/s/ Gregory S. Ledford

By: Gregory S. Ledford
Title: President

BYLAWS

OF

CARLYLE-HORIZON HOLDINGS CORP.

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ARTICLE I.
OFFICES

Section 1. The registered office of Carlyle-Horizon Holdings Corp. (the "Corporation") shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 2. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II.
MEETINGS OF STOCKHOLDERS

Section 1. Meetings of stockholders shall be held at any place within or outside the State of Delaware designated by the Board of Directors. In the absence of any such designation, stockholders' meetings shall be held at the principal executive office of the Corporation.

Section 2. The annual meeting of stockholders shall be held each year on a date and a time designated by the Board of Directors. At each annual meeting directors shall be elected and any other proper business may be transacted.

Section 3. A majority of the stock issued and outstanding and entitled to vote at any meeting of stockholders, the holders of which are present in person or represented by proxy, shall constitute a quorum for the transaction of business except as otherwise provided by law, by the Certificate of Incorporation, or by these Bylaws. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum and the votes present may

continue to transact business until adjournment. If, however, such quorum shall not be present or represented at any meeting of the stockholders, a majority of the voting stock represented in person or by proxy may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote thereat.

Section 4. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes, or the Certificate of Incorporation, or these Bylaws, a different vote is required in which case such express provision shall govern and control the decision of such question.

Section 5. At each meeting of the stockholders, each stockholder having the right to vote may vote in person or may authorize another person or persons to act for him by proxy appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than three years prior to said meeting, unless said instrument provides for a longer period. All proxies must be filed with the Secretary of the Corporation at the beginning of each meeting in order to be counted in any vote at the meeting. Each stockholder shall have one vote for each share of stock having voting power, registered in his name on the books of the Corporation on

the record date set by the Board of Directors as provided in Article V, Section 6 hereof. All elections shall be had and all questions decided by a plurality vote.

Section 6. Special meetings of the stockholders, for any purpose, or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the President and shall be called by the President or the Secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of stockholders owning a majority in amount of the entire capital stock of the Corporation, issued and outstanding, and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 7. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which notice shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. The written notice of any meeting shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the Corporation.

Section 8. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the

meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 9. Unless otherwise provided in the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

ARTICLE III.
DIRECTORS

Section 1. The number of directors which shall constitute the whole Board shall be not less than one (1) and not more than nine (9). The exact number of directors shall be determined by resolution of the Board, except that in all instances, a majority of the directors comprising the entire Board shall be United States citizens. The initial number of directors shall be one (1). The directors need not be stockholders. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 2 of this Article, and each director elected shall hold office until his successor is elected and qualified; provided, however, that

unless otherwise restricted by the Certificate of Incorporation or by law, any director or the entire Board of Directors may be removed, either with or without cause, from the Board of Directors at any meeting of stockholders by a majority of the stock represented and entitled to vote thereat.

Section 2. Vacancies on the Board of Directors by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. The directors so chosen shall hold office until the next annual election of directors and until their successors are duly elected and shall qualify, unless sooner replaced by a vote of the shareholders. If there are no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole Board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office.

Section 3. The property and business of the Corporation shall be managed by or under the direction of its Board of Directors. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

Section 4. The directors may hold their meetings and have one or more offices, and keep the books of the Corporation outside of the State of Delaware.

Section 5. Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board.

Section 6. Special meetings of the Board of Directors may be called by the Chairman of the Board or the President on forty-eight hours' notice to each director, either personally or by mail or by telegram; special meetings shall be called by the President or the Secretary in like manner and on like notice on the written request of two directors.

Section 7. At all meetings of the Board of Directors a majority of the authorized number of directors who are United States citizens shall be necessary and sufficient to constitute a quorum for the transaction of business, and the vote of a majority of the directors who are United States citizens present at any meeting at which there is a quorum, shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute, by the Certificate of Incorporation or by these Bylaws. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. If only one director is authorized, such sole director shall constitute a quorum. At any meeting, a director shall have the right to be accompanied by counsel provided that such counsel shall agree to any confidentiality restrictions reasonably imposed by the Corporation.

Section 8. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or

committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

Section 9. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

Section 10. The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each such committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a

dissolution of the Corporation or a revocation of a dissolution, or amending the Bylaws of the Corporation; and, unless the resolution or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

Section 11. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 12. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 13. The Corporation shall indemnify every person who is or was a party or is or was threatened to be made a party to any action, suit, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer of the Corporation or, while a director or officer or employee of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including counsel fees), judgments, fines and amounts paid in settlement

actually and reasonably incurred by him in connection with such action, suit or proceeding, to the full extent permitted by applicable law.

ARTICLE IV.
OFFICERS

Section 1. The officers of this corporation shall be chosen by the Board of Directors and shall include a President, a Secretary, and a Treasurer. The Corporation may also have, at the discretion of the Board of Directors, such other officers as are desired, including a Chairman of the Board, one or more Vice Presidents, one or more Assistant Secretaries and Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 hereof. In the event there are two or more Vice Presidents, then one or more may be designated as Executive Vice President, Senior Vice President, or other similar or dissimilar title. At the time of the election of officers, the directors may by resolution determine the order of their rank. Any number of offices may be held by the same person unless the Certificate of Incorporation or these Bylaws otherwise provide.

Section 2. The Board of Directors, at its first meeting after each annual meeting of stockholders, shall choose the officers of the Corporation.

Section 3. The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 4. The salaries of all officers and agents of the Corporation shall be fixed by the Board of Directors.

Section 5. The officers of the Corporation shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. If the office of any officer or officers becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 6. Chairman of the Board. The Chairman of the Board, if such an officer be elected, shall, if present, preside at all meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by these Bylaws. If there is no President, the Chairman of the Board shall in addition be the Chief Executive Officer of the Corporation and shall have the powers and duties prescribed in Section 7 of this Article IV.

Section 7. President. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman of the Board, if there be such an officer, the President shall be the Chief Executive Officer of the Corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Corporation. He shall preside at all meetings of the stockholders and, in the absence of the Chairman of the Board, or if there be none, at all meetings of the Board of Directors. He shall be an ex-officio member of all committees and shall have the general powers and duties of management usually vested in the office of President and Chief Executive Officer of corporations, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

Section 8. Vice Presidents. In the absence or disability of the President, the Vice Presidents in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents shall have such other duties as from time to time may be prescribed for them, respectively, by the Board of Directors.

Section 9. Secretary. The Secretary shall attend all sessions of the Board of Directors and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose; and shall perform like duties for the standing committees when required by the Board of Directors. He shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

He shall keep in safe custody the seal of the Corporation, and when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by his signature or by the signature of an Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature.

Section 10. Assistant Secretary. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors, or if there be no such determination, the Assistant Secretary designated by the Board of Directors, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

Section 11. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys, and other valuable effects in the name and to the credit of the Corporation, in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, he shall give the Corporation a bond, in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors, for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 12. Assistant Treasurer. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors, or if there be no such determination, the Assistant Treasurer designated by the Board of Directors, shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

ARTICLE V.
CERTIFICATES OF STOCK

Section 1. Every holder of stock of the Corporation shall be entitled to have a certificate signed by, or in the name of the Corporation by, the Chairman or Vice Chairman of

the Board of Directors, or the President or a Vice President, and by the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer of the Corporation, certifying the number of shares represented by the certificate owned by such stockholder in the Corporation.

Section 2. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 3. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 4. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation

alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 5. Upon surrender to the Corporation, or the transfer agent of the Corporation, of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, the Corporation shall issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its book.

Section 6. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders, or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date which shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 7. The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of the State of Delaware.

ARTICLE VI.
GENERAL PROVISIONS

Section 1. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 2. Before payment of any dividend there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the directors shall think conducive to the interests of the Corporation, and the directors may abolish any such reserve.

Section 3. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.

Section 4. The fiscal year of the Corporation shall be the calendar year.

Section 5. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 6. Whenever, under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telegram.

Section 7. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 8. The Board of Directors shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the Corporation.

ARTICLE VII.
AMENDMENTS

Section 1. These Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the stockholders or by the Board of Directors at any regular meeting of the

stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such special meeting. If the power to adopt, amend or repeal Bylaws is conferred upon the Board of Directors by the Certificate of Incorporation, it shall not divest or limit the power of the stockholders to adopt, amend or repeal Bylaws.

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

(1) That I am the duly elected and acting Secretary of Carlyle-Horizon Holdings Corp., a Delaware corporation; and

(2) That the foregoing Bylaws, comprising seventeen (17) pages, constitute the Bylaws of said corporation as duly adopted by the Board of Directors of said corporation as of December 18, 2002.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 18th day of December, 2002.

F. Mark Fariborz, Secretary

David S. Dantzic

555 Eleventh Street, N.W., Suite 1000
Washington, D.C. 20004-1304
Tel (202) 637-2200 Fax: (202) 637-2201
www.lw.com

LATHAM & WATKINS LLP

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
2003 AUG 15 P 4:59

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File No. 036655-0001

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August 15, 2003

Rosemary C. Smith
Acting Associate General Counsel
Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

Re: Horizon Lines, LLC Request for an Advisory Opinion

Dear Ms. Smith:

In a June 20, 2003 letter from Thomas F. Walls to Lawrence H. Norton, our client, Horizon Lines, LLC ("Horizon Lines") requested an advisory opinion for guidance related to its political action committee known as the Horizon Lines Associates Good Government Fund. By letter of June 30, 2003, you responded that additional information would be needed before an advisory opinion could be issued, and requested several documents. The requested documents were transmitted to your office under cover of a July 28, 2003 letter from Mr. Walls. On August 1, 2003 Michael Marinelli of your office contacted Mr. Walls to request an additional document. Specifically, based upon your review of the Horizon Lines limited liability company operating agreement, he requested a copy of the Guarantee and Indemnity Agreement ("GIA") between guarantors Horizon Lines and Delian Holdings, LLC ("Delian") and beneficiaries CSX Corporation and its affiliates ("CSX") which is referenced therein. On Friday, August 8, 2003 Mr. Walls and I had a telephone conference with Mr. Marinelli during which we discussed your request for the GIA. That conference concluded with the agreement that we would provide you this letter to describe the GIA., in order to inform your determinations on the issues raised in Horizon Lines' pending Advisory Opinion request, and to help you to determine whether further information regarding the GIA is necessary to your analysis.

The GIA contains sensitive, proprietary and confidential information that could be damaging to the business interests of Horizon Lines in the event it were made publicly available. Accordingly, we are writing this letter on behalf of Horizon Lines to summarize the portions of this agreement that are relevant to your review of the issues raised in Horizon Lines' request for an Advisory Opinion. To the extent you deem it necessary, Horizon Lines would be happy to certify to the information contained herein and we, of course, are available to further clarify any questions you may have.

In addition to being a minority partner in Horizon Lines, CSX is also a creditor by reason of the fact that it guarantees approximately $315 million of future obligations under certain ship charter agreements to which Horizon Lines is a party. If Horizon Lines were to default on those

obligations, CSX would be liable to the owners of those ships and accordingly, as part of the transaction in which Delian acquired its majority interest in Horizon Lines, the parties entered into the GIA. The GIA establishes reimbursement obligations in the event that the guaranties are drawn upon. Additionally the GIA also contains certain covenants that are typical of a bond indenture or a senior credit agreement that are meant to protect the creditworthiness of Horizon Lines. For example, the GIA prohibits Horizon Lines from incurring excessive debt for the purpose of making a distribution to its equity holders, in the same way that a senior credit agreement prohibits a borrower from incurring new debt without the consent of the lenders.

The provisions in Section 6.3 of Horizon Lines' Limited Liability Company Agreement which you cite, require the consent of CSX in the event that Horizon Lines wishes to take certain actions that are already prohibited by the GIA. Specifically, the holders of the Senior Preferred Units (i.e. CSX and its affiliates) have consent rights over (i) certain "Tested Transactions" that are prohibited by the GIA and (ii) certain affiliate transactions prohibited by Section 11.05 of the GIA. Notably, this consent right does not in any way expand the rights that CSX already has as a creditor of Horizon Lines under the GIA.

The "Tested Transactions" referred to in the GIA include transactions that result in a change of control of Horizon Lines, a transfer of one or more of the chartered vessels that are guaranteed by CSX and a transfer of all or substantially all of the assets connected with one of Horizon Lines' three major shipping routes. Under the GIA, these transactions are not prohibited outright. Instead, they are only prohibited if certain conditions are not met. Specifically:

- No default may exist under any of the guaranteed vessel charters or the GIA;
- Horizon Lines and the transferee must comply with certain financial covenants that restrict their total indebtedness;
- The transferee must make certain basic representations and warranties regarding its due authorization of the transaction, the absence of defaults under its material agreements, the absence of consent requirement, its solvency and its citizenship;
- The tested transaction may not be with an affiliate of Delian that is not itself bound by the GIA; and
- Horizon Lines must deliver a certification and a legal opinion that the tested transaction meets the requirements of the GIA.

Section 11.05 outlines restrictions on certain transactions between Horizon Lines and any affiliate of Delian that is not itself a party to the GIA unless such transactions are on arms length terms or are not otherwise exempted from Section 11.05. Section 11.05 states in full:

> "New Member [a/k/a Delian] and each other Guarantor covenant to the Beneficiaries that they will not, and will not permit any of their Restricted Subsidiaries to, directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or lease any property to, or otherwise deal with, whether in the ordinary course of business or otherwise, any Affiliate of any Guarantor (each such transaction, an "Affiliate Transaction"); provided that (A) New Member and

its Restricted Subsidiaries may enter into such transactions on terms no less favorable to New Member or its Restricted Subsidiaries than if no such relationship existed and (B) if any single transaction or series of related transactions has an aggregate value in excess of $5,000,000, then New Member and its Restricted Subsidiaries may enter into such transactions only upon delivery to the Beneficiary Representative on behalf of the Beneficiaries of an Officers' Certificate certifying that such transaction complies with clause (A) above and that such transaction has been approved by a majority of the members of the Board of Directors. Notwithstanding the foregoing, the following items shall not be deemed to be Affiliate Transactions: (i) any employment agreement entered into by any of the Guarantors in the ordinary course of business, (ii) payment of reasonable directors' fees and payments in respect of indemnification obligations owing to directors, officer or other individuals under the charters or by-laws of the Guarantors or pursuant to written agreements with any such Person, (iii) any tax distributions, provided such distributions are in accordance with the [Horizon Lines] LLC Agreement . . . , (iv) management, support, service and consulting arrangements with any Affiliate of any Guarantor; provided that such payments pursuant to this clause (iv) shall not exceed $3 million in the aggregate per annum plus reimbursement of actual out-of-pocket expenses and the satisfaction of any indemnification obligations, in each case incurred in the performance of duties thereunder, and that such payments shall not be made (but such expenses may be reimbursed and indemnity obligations satisfied) in any period if the Interest Coverage Ratio of the Guarantors shall be less than 1.90 to 1.00 on a pro forma basis after giving effect to such proposed payment and reimbursement as if made at the commencement of the period of four consecutive fiscal quarters then most recently ended, (v) transactions between New Member and any of its wholly-owned Restricted Subsidiaries or between wholly-owned Restricted Subsidiaries of New Member, (vi) any Restricted Payment permitted under Section 11.03, and (vii) the issuance and sale of Capital Stock of New Member."

Thank you for the opportunity to submit information relevant to your advisory opinion. We look forward to receiving your guidance.

Truly yours,

David S. Dantzic
of LATHAM & WATKINS LLP

cc: Bob Zuckerman
Claudia Stone
Tom Walls

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September 23, 2003

2003 SEP 24 P 3: 13
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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Federal Election Commission
Office of the General Counsel
999 E Street NW
Washington, DC 20463
Attn: Rosemary Smith

RE: Horizon Lines LLC Request for Advisory Opinion

Dear Ms. Smith:

Enclosed is the affidavit of Robert S. Zuckerman, the Vice President, General Counsel and Secretary of Horizon Lines, LLC ("Horizon Lines"). This affidavit is provided at the suggestion of Michael Marinelli of your office.

In order to inform your deliberations regarding Horizon Lines' pending request for an Advisory Opinion, the enclosed affidavit attests to the terms of the General Indemnity Agreement ("GIA") between guarantors Horizon Lines and Delian Holdings, LLC ("Delian") and beneficiaries CSX Corporation and its affiliates ("CSX").

Please contact me if I can provide any further information regarding Horizon Lines and its request for an Advisory Opinion. We appreciate the efforts of your office to work with us to address Horizon Lines' concerns. Thank you very much.

Sincerely,

Thomas F. Walls

AFFIDAVIT

BEFORE ME, the undersigned Notary, Christine Purser, on this 22nd day of September, 2003, personally appeared Robert S. Zuckerman, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

1. I am Vice President, General Counsel and Secretary of Horizon Lines, LLC ("Horizon Lines"). Horizon Lines has requested that an advisory opinion be issued by the Federal Election Commission ("FEC") with regard to the administration of the Horizon Lines Associates Good Government Fund, a non-connected committee.
2. In order to complete its determinations with regard to Horizon Lines' Advisory Opinion Request, the FEC has requested information regarding the Guarantee and Indemnity Agreement ("GIA") between guarantors Horizon Lines and Delian Holdings, LLC ("Delian") and beneficiaries CSX Corporation and its affiliates ("CSX").
3. CSX is a minority member in Horizon Lines, and is also a creditor by reason of the fact that it guarantees approximately $315 million of future obligations under certain ship charter agreements to which Horizon Lines is a party. If Horizon Lines were to default on those obligations, CSX would be liable to the owners of those ships and accordingly, as part of the transaction in which Delian acquired its majority interest in Horizon Lines, the parties entered into the GIA. The GIA establishes reimbursement obligations in the event that the guaranties are drawn upon. Additionally the GIA also contains certain covenants that are typical of a bond indenture or a senior credit agreement that are meant to protect the creditworthiness of Horizon Lines. For example, the GIA prohibits Horizon Lines from incurring excessive debt for the purpose of making a distribution to its equity holders, in the same way that a senior credit agreement prohibits a borrower from incurring new debt without the consent of the lenders.
4. Provisions of Section 6.3 of Horizon Lines' Limited Liability Company Agreement require the consent of CSX in the event that Horizon Lines wishes to take certain actions that are already prohibited by the GIA. Specifically, the holders of the Senior Preferred Units (i.e. CSX and its affiliates) have consent rights over (i) certain "Tested Transactions" that are prohibited by the GIA and (ii) certain affiliate transactions prohibited by Section 11.05 of the GIA. Notably, this consent right does not in any way expand the rights that CSX already has as a creditor of Horizon Lines under the GIA.
5. The "Tested Transactions" referred to in the GIA include transactions that result in a change of control of Horizon Lines, a transfer of one or more of the chartered vessels that are guaranteed by CSX and a transfer of all or substantially all of the assets connected with one of Horizon Lines' three major shipping routes. Under

the GIA, these transactions are not prohibited outright. Instead, they are only prohibited if certain conditions are not met. Specifically:

- No default may exist under any of the guaranteed vessel charters or the GIA;
- Horizon Lines and the transferee must comply with certain financial covenants that restrict their total indebtedness;
- The transferee must make certain basic representations and warranties regarding its due authorization of the transaction, the absence of defaults under its material agreements, the absence of consent requirement, its solvency and its citizenship;
- The tested transaction may not be with an affiliate of Delian that is not itself bound by the GIA; and
- Horizon Lines must deliver a certification and a legal opinion that the tested transaction meets the requirements of the GIA.

6. Section 11.05 outlines restrictions on certain transactions between Horizon Lines and any affiliate of Delian that is not itself a party to the GIA unless such transactions are on arms length terms or are not otherwise exempted from Section 11.05. Section 11.05 states in full:

"New Member [a/k/a Delian] and each other Guarantor covenant to the Beneficiaries that they will not, and will not permit any of their Restricted Subsidiaries to, directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or lease any property to, or otherwise deal with, whether in the ordinary course of business or otherwise, any Affiliate of any Guarantor (each such transaction, an "Affiliate Transaction"); provided that (A) New Member and its Restricted Subsidiaries may enter into such transactions on terms no less favorable to New Member or its Restricted Subsidiaries than if no such relationship existed and (B) if any single transaction or series of related transactions has an aggregate value in excess of $5,000,000, then New Member and its Restricted Subsidiaries may enter into such transactions only upon delivery to the Beneficiary Representative on behalf of the Beneficiaries of an Officers' Certificate certifying that such transaction complies with clause (A) above and that such transaction has been approved by a majority of the members of the Board of Directors. Notwithstanding the foregoing, the following items shall not be deemed to be Affiliate Transactions: (i) any employment agreement entered into by any of the Guarantors in the ordinary course of business, (ii) payment of reasonable directors' fees and payments in respect of indemnification obligations owing to directors, officer or other individuals under the charters or by-laws of the Guarantors or pursuant to written agreements with any such Person, (iii) any tax distributions, provided such distributions are in accordance with the [Horizon Lines] LLC Agreement . . . , (iv)

management, support, service and consulting arrangements with any Affiliate of any Guarantor; provided that such payments pursuant to this clause (iv) shall not exceed $3 million in the aggregate per annum plus reimbursement of actual out-of-pocket expenses and the satisfaction of any indemnification obligations, in each case incurred in the performance of duties thereunder, and that such payments shall not be made (but such expenses may be reimbursed and indemnity obligations satisfied) in any period if the Interest Coverage Ratio of the Guarantors shall be less than 1.90 to 1.00 on a pro forma basis after giving effect to such proposed payment and reimbursement as if made at the commencement of the period of four consecutive fiscal quarters then most recently ended, (v) transactions between New Member and any of its wholly-owned Restricted Subsidiaries or between wholly-owned Restricted Subsidiaries of New Member, (vi) any Restricted Payment permitted under Section 11.03, and (vii) the issuance and sale of Capital Stock of New Member."

7. The GIA also provides that in the event that Horizon defaults under any of the ship charter agreements that are guaranteed by CSX, or if there is a default under one of the covenants in the GIA, that CSX, like a lender, is entitled to foreclose on the collateral (i.e. the vessels that are guaranteed). Except for the right to foreclose on the collateral, the GIA does not give CSX any additional rights to manage or control the business and any damages in excess of the value of the collateral would be an unsecured claim against Horizon.

Robert S. Zuckerman

[signature of affiant]

Robert S. Zuckerman

Vice President, General Counsel and Secretary

Horizon Lines, LLC
2101 Rexford Road, Suite 350 West
Charlotte, NC 28211

Subscribed and sworn to before me, this 22nd *[day of month]* day of September *[month]*, 2003.

[Notary Seal:]

CHRISTINE P
MECKLENBURG CO

Christine Purser
[signature of Notary]

Christine Purser
[typed name of Notary]

NOTARY PUBLIC

My commission expires: June 20, 2005.