

TOP SHIPS INC.  
Form 6-K  
July 02, 2009

FORM 6-K

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Report of Foreign Private Issuer  
Pursuant to Rule 13a-16 or 15d-16 of  
the Securities Exchange Act of 1934

For the month of July 2009

Commission File Number: 000-50859

TOP SHIPS INC.  
(Translation of registrant's name into English)

1 VAS. SOFIAS & MEG. ALEXANDROU STREET  
151 24, MAROUSSI  
ATHENS, GREECE  
(Address of principal executive offices)

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40-F.  
Form 20-F [ X ] Form 40-F [ ]

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1): \_\_\_\_\_.

Note: Regulation S-T Rule 101(b)(1) only permits the submission in paper of a Form 6-K if submitted solely to provide an attached annual report to security holders.

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7): \_\_\_\_\_.

Note: Regulation S-T Rule 101(b)(7) only permits the submission in paper of a Form 6-K if submitted to furnish a report or other document that the registrant foreign private issuer must furnish and make public under the laws of the jurisdiction in which the registrant is incorporated, domiciled or legally organized (the registrant's "home country"), or under the rules of the home country exchange on which the registrant's securities are traded, as long as the report or other document is not a press release, is not required to be and has not been distributed to the registrant's security holders, and, if discussing a material event, has already been the subject of a Form 6-K submission or other Commission filing on EDGAR.

INFORMATION CONTAINED IN THIS FORM 6-K REPORT

Attached to this report on Form 6-K as Exhibit 1 is the Standby Equity Distribution Agreement entered into on July 1, 2009, by and between Top Ships Inc. and YA Global Master SPV Ltd.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

TOP SHIPS INC.  
(registrant)

Dated: July 1, 2009

By: /s/ Evangelos J. Pistiolis  
Evangelos J. Pistiolis  
Chief Executive Officer

Execution Copy

STANDBY EQUITY DISTRIBUTION AGREEMENT

THIS AGREEMENT dated as of the 1st day of July 2009 (this "Agreement") is made by and between YA GLOBAL MASTER SPV LTD., a Cayman Islands exempt limited partnership (the "Investor"), and TOP SHIPS INC., a corporation organized and existing under the laws of the Marshall Islands (the "Company").

WHEREAS, the parties desire that, upon the terms and subject to the conditions contained herein, the Company shall issue and sell to the Investor, from time to time as provided herein, and the Investor shall purchase from the Company up to \$200,000,000 of the Company's common stock, par value \$0.01 per share (the "Common Stock"); and

WHEREAS, such investments will be made in reliance upon the exemption from registration contained in Section 4(2) of the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the "Securities Act"), or upon such other exemption from the registration requirements of the Securities Act as may be available with respect to any or all of the transactions to be made hereunder.

NOW, THEREFORE, the parties hereto agree as follows:

Article I.  
Certain Definitions

Section 1.01 "Advance" shall mean the purchase and sale of Shares pursuant to this Agreement.

Section 1.02 "Advance Notice" shall mean a written notice in the form of Exhibit A attached hereto to the Investor executed by an officer of the Company and setting forth the number of Shares that the Company desires to sell to the Investor pursuant to an Advance.

Section 1.03 "Advance Pricing Date" shall mean (a) the Trading Day the Investor receives any Advance Notices with respect to any Advance Notices received by the Investor prior to 9:30 am (New York City time), and (b) the Trading Day immediately succeeding the Trading Day the Investor receives an Advance Notice with respect to any Advance Notice received by the Investor on or after 9:30 am (New York City time); provided, however, that with respect to any Advance Notice received by the Investor on or after 9:30 am (New York City time), the Company may request that the Advance Pricing Date for such Advance Notice be the Trading Day it was received by the Investor, and the Investor, in its sole discretion, may choose to honor such request. For the avoidance of doubt, if the Investor chooses not to honor the Company's request to have the Advance Pricing Date for a particular Advance Notice received on or after 9:30 am (New York City time) be the Trading Day received: (i) the Investor shall promptly Notify the Company of its decision not to honor the Company's request; (ii) the Advance Notice will remain in full force and effect; (iii) the Advance Pricing Date for such Advance Notice will be the Trading Day immediately succeeding the Trading Day it was received; and (iv) the Investor will remain obligated to purchase such number of Shares set forth in the Advance Notice in accordance with the terms of the Agreement.

Section 1.04 "Advance Settlement Date" shall mean the 3rd Trading Day after the relevant Pricing Period, or such earlier day as may be available for settlement.

Section 1.05 "Articles of Incorporation" shall have the meaning set forth in Section 4.04.

Section 1.06 "By-laws" shall have the meaning set forth in Section 4.04.

Section 1.07 "Closing" shall mean one of the closings of a purchase and sale of Shares pursuant to Section 2.02.

Section 1.08 "Commitment Amount" shall mean the aggregate amount of up to \$200,000,000 of Common Stock which the Investor has agreed to purchase from the Company pursuant to the terms and conditions of this Agreement.

Section 1.09 "Commitment Period" shall mean the period commencing on the Effective Date, and expiring upon the termination of this Agreement in accordance with Section 10.02.

Section 1.10 "Common Stock" shall have the meaning set forth in the recitals of this Agreement.

Section 1.11 "Company Periodic Report Date" shall have the meaning set forth in Section 6.14(a).

Section 1.12 "Condition Satisfaction Date" shall have the meaning set forth in Article VII.

Section 1.13 "Consolidation Event" shall have the meaning set forth in Section 6.06.

Section 1.14 "Daily Maximum Advance Shares" shall mean, for each Advance Pricing Date, the greater of (i) the number of Shares equal to \$1,500,000 divided by the VWAP of the Common Stock on the Trading Day immediately prior to the Advance Pricing Date or (ii) the number of shares equal to 20% of the average of the volume traded on each of the 5 Trading Days immediately prior to the Advance Pricing Date.

Section 1.15 "Daily Value Traded" shall mean, for any Trading Day, the product obtained by multiplying the trading volume for such day (as reported by Bloomberg L.P.) by the VWAP for such day.

Section 1.16 "Discount Percentage" shall initially mean 97.25% and is subject to adjustment in accordance with Section 2.04 hereof.

Section 1.17 "Effective Date" shall mean, as applicable, the date of filing a prospectus supplement covering the resale of the Shares, or the date on which the SEC first declares effective a Registration Statement registering the resale of the Shares.

Section 1.18 "Environmental Laws" shall have the meaning set forth in Section 4.09.

Section 1.19 "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

Section 1.20 "Inspectors" shall have the meaning set forth in Section 6.14(b).

Section 1.21 "Market Price" shall mean the VWAP of the Common Stock on the Advance Pricing Date.

Section 1.22 "Material Adverse Effect" shall mean any condition, circumstance, or situation that may result in, or reasonably be expected to result in (i) a material adverse effect on the legality, validity or enforceability of this Agreement or the transactions contemplated herein, (ii) a material adverse effect on the results of operations, assets, business or condition (financial or otherwise) of the Company, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under this Agreement.

Section 1.23 "Ownership Limitation" shall have the meaning set forth in Section 2.01(a).

Section 1.24 "Person" shall mean an individual, a corporation, a partnership, an association, a trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

Section 1.25 "Plan of Distribution" shall have the meaning set forth in Section 6.01(a).

Section 1.26 "Principal Market" shall mean the Nasdaq Global Market.

Section 1.27 "Purchase Price" shall mean the price per share obtained by multiplying the Market Price by the Discount Percentage.

Section 1.28 "Records" shall have the meaning set forth in Section 6.14(b).

Section 1.29 "Registrable Securities" shall mean (i) the Shares and (ii) any securities issued or issuable with respect to the Shares by way of exchange, stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization or otherwise. As to any particular Registrable Securities, once issued such securities shall cease to be Registrable Securities when (a) the Registration Statement has been declared effective by the SEC and such Registrable Securities have been disposed of pursuant to the Registration Statement, (b) such Registrable Securities are eligible to be resold in a ninety-day period without limitation pursuant to Rule 144 under the Securities Act ("Rule 144") (or any similar provision then in force). For the avoidance of doubt, for so long as the Company is current in its reporting obligations under the Exchange Act, any requirement that the Company be current in its reporting obligations under the Exchange Act will not be deemed a limitation for purposes of clause (b) above.

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Section 1.30 "Registration Statement" shall mean a registration statement on Form F-1 or Form F-3 or on such other form promulgated by the SEC for which the Company then qualifies and which counsel for the Company shall deem appropriate, and which form shall be available for the registration of the resale by the Investor of the Registrable Securities under the Securities Act.

Section 1.31 "Registration Period" shall have the meaning set forth in Section 6.01(b).

Section 1.32 "Registration Statement Amendment Date" has the meaning set forth in Section 6.14(a).

Section 1.33 "Regulation D" shall have the meaning set forth in Section 3.05 of this Agreement.

Section 1.34 "SEC" shall mean the U.S. Securities and Exchange Commission.

Section 1.35 "SEC Documents" shall have the meaning set forth in Section 4.01.

Section 1.36 "Securities Act" shall have the meaning set forth in the recitals of this Agreement.

Section 1.37 "Settlement Document" shall have the meaning set forth in Section 2.02(a).

Section 1.38 "Shares" shall mean the shares of Common Stock to be issued from time to time hereunder pursuant to Advances.

Section 1.39 "Trading Day" shall mean any day during which the Principal Market shall be open for business.

Section 1.40 "Upward Adjustment" shall have the meaning set forth in Section 2.04.

Section 1.41 "VWAP" means, for any Trading Day, the daily dollar volume-weighted average price for such security as reported by Bloomberg L.P. (based on a regular trading hours of 9:30 a.m. (New York City time) to 4:00 p.m. (New York City time)).

Article II.  
Advances

Section 2.01 Advances; Mechanics. On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein, the Company, at its sole and exclusive option, may, from time to time, issue and sell to the Investor, and the Investor shall purchase from the Company, shares of Common Stock on the following terms:

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- (a) **Advance Notice.** At any time during the Commitment Period, the Company may require the Investor to purchase Shares by delivering an Advance Notice to the Investor, containing the number of Shares it desires to sell, a form of which is attached hereto on Exhibit A. The Company has the sole right to decide when to deliver Advance Notices and may deliver multiple Advance Notices on the same day. With respect to each Advance the Company shall issue and sell to the Investor and the Investor shall purchase such number of Shares set forth in the Advance Notices at a price per share equal to the Purchase Price, provided however, (i) the number of Shares purchased in any particular Pricing Period pursuant to Advance Notices shall not exceed the Daily Maximum Advance Shares, (ii) the number of Shares shall not cause the aggregate number of shares of Common Stock beneficially owned (as calculated pursuant to Section 13(d) of the Exchange Act) by the Investor and its affiliates to exceed 9.99% of the then outstanding Common Stock (the "Ownership Limitation"), (iii) the number of Shares or the aggregate offering price shall not exceed the aggregate number of shares of Common Stock or the aggregate offering price, as the case may be, registered and then available for resale under the Registration Statement, and (iv) no Advance shall cause the aggregate Market Price of the Shares issued pursuant to this Agreement to exceed the Commitment Amount.
- (b) **Date of Delivery of Advance Notice.** Advance Notices shall be delivered in accordance with the instructions set forth on the bottom of Exhibit A. If an Advance Notice is delivered on a day that is not a Trading Day it will be deemed to be received prior to 9:30 am (New York City time) on the next Trading Day.
- (c) **Ownership Limitation.** In connection with each Advance Notice delivered by the Company, any portion of an Advance that would cause the Investor to exceed the Ownership Limitation shall automatically be deemed to be withdrawn by the Company with no further action required by the Company.
- (d) **Registration Limitation.** In connection with each Advance Notice, any portion of an Advance that would cause the aggregate number of Shares or the aggregate offering price to exceed the aggregate number of Shares or the aggregate offering price, as the case may be, available for resale under the Registration Statement, shall automatically be deemed to be withdrawn by the Company with no further action required by the Company. At the Company's request from time to time, the Investor shall report to the Company the total amount of Shares offered and sold pursuant to this Agreement and the portion of the total Commitment Amount remaining.
- (e) **Resale of Shares.** During the Pricing Period, the Investor shall use its reasonable efforts, to the extent market conditions allow, to resell the Shares to the public.

Section 2.02 Closings. The closing of each Advance with respect to each Pricing Period shall take place on each Advance Settlement Date in accordance with the following procedures:

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- (a) By 10:30 am on the Trading Day immediately following each Pricing Period, the Investor shall deliver to the Company a written document (each a "Settlement Document") setting forth (i) the number of Shares to be purchased by the Investor pursuant to the Advance (taking into account any adjustments pursuant to Section 2.01(c) or Section 2.01(d), (ii) the Market Price for such Advance, (iii) the Purchase Price for such Advance, and (iv) the amount payable to the Company (which shall equal the number of Shares to be purchased pursuant to such Advance (as specified in the relevant Advance Notices and taking into account any adjustments pursuant to Section 2.01(c) or Section 2.01(d), multiplied by the Purchase Price). The Settlement Document shall be in the form attached hereto as Exhibit B.
- (b) On each Advance Settlement Date the Company will, or will cause its transfer agent to, electronically transfer the Shares being issued and sold pursuant to the Advance by crediting the Investor's account or its designee's account at the Depository Trust Company through its Deposit Withdrawal Agent Commission System or by such other means of delivery as may be mutually agreed upon by the parties hereto (which in all cases shall be registered shares, freely available for resale, in good deliverable form) against payment of the Purchase Price in same day funds to an account designated by the Company.

Section 2.03 Hardship. If the Company defaults in its obligations to deliver the Shares on the Advance Settlement Date, the Company agrees that in addition to and in no way limiting the rights and obligations set forth in Section 5.01 hereto and in addition to any other remedy to which the Investor is entitled at law or in equity, including, without limitation, specific performance, it will hold the Investor harmless against any loss, claim, damage, or expense (including reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company and acknowledges that irreparable damage would occur in the event of any such default. It is accordingly agreed that Investor shall be entitled to an injunction or injunctions to prevent such breaches of this Agreement and to specifically enforce, without the posting of a bond or other security, the terms and provisions of this Agreement.

Section 2.04 Discount Percentage. The Discount Percentage shall initially be 97.25%. Thereafter, if at any time or from time to time the sum obtained by adding the Daily Volume Traded for any consecutive 20 Trading Day period is equal to or greater than \$40,000,000, the Discount Percentage from and following the first Trading Day following such 20 Trading Day period shall be adjusted (an "Upward Adjustment") to 97.75%; provided however, that following an Upward Adjustment, if the sum obtained by adding the Daily Volume Traded for any subsequent consecutive 20 Trading Day period is less than \$40,000,000, the Discount Percentage from and following the first Trading Day following such subsequent consecutive 20 Trading Period shall be adjusted to 97.25%.

Article III.  
Representations and Warranties of Investor

Investor hereby represents and warrants to, and agrees with, the Company that the following are true and correct as of the date hereof:

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Section 3.01 Organization and Authorization. The Investor is duly organized and validly existing and in good standing under the laws of the Cayman Islands and has all requisite power and authority to perform its obligations under this Agreement. The decision to invest and the execution and delivery of this Agreement by such Investor, the performance by such Investor of its obligations hereunder and the consummation by the Investor of the transactions contemplated hereby have been duly authorized and requires no other proceedings or actions on the part of the Investor. The undersigned has the right, power and authority to execute and deliver this Agreement and all other instruments on behalf of the Investor. This Agreement has been duly executed and delivered by the Investor and, assuming the execution and delivery hereof and acceptance thereof by the Company, will constitute the legal, valid and binding obligations of the Investor, enforceable against the Investor in accordance with its terms.

Section 3.02 Evaluation of Risks. The Investor has such knowledge and experience in financial, tax and business matters as to be capable of evaluating the merits and risks of, and bearing the economic risks entailed by, an investment in the Company and of protecting its interests in connection with this transaction. It recognizes that its investment in the Company involves a high degree of risk.

Section 3.03 No Legal Advice From the Company. The Investor acknowledges that it had the opportunity to review this Agreement and the transactions contemplated by this Agreement with its own legal counsel and investment and tax advisors. The Investor is relying solely on such counsel and advisors and not on any statements or representations of the Company or any of the Company's representatives or agents for legal, tax or investment advice with respect to this investment, the transactions contemplated by this Agreement or the securities laws of any jurisdiction.

Section 3.04 Investment Purpose. The securities are being purchased by the Investor for its own account, and for investment purposes. The Investor agrees not to assign or in any way transfer the Investor's rights to the securities or any interest therein and acknowledges that the Company will not recognize any purported assignment or transfer except in accordance with applicable federal and state securities laws. No other person has or will have a direct or indirect beneficial interest in the securities. The Investor agrees not to sell, hypothecate or otherwise transfer the Investor's securities unless the securities are registered under federal and applicable state securities laws or unless, in the opinion of counsel satisfactory to the Company, an exemption from registration is available.

Section 3.05 Accredited Investor. The Investor is an "Accredited Investor" as that term is defined in Rule 501(a)(3) of Regulation D under the Securities Act.

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Section 3.06 Information. The Investor and its advisors (and its counsel), if any, have been furnished with all materials relating to the business, finances and operations of the Company and information it deemed material to making an informed investment decision. The Investor and its advisors, if any, have been afforded the opportunity to ask questions of the Company and its management. Neither such inquiries nor any other due diligence investigations conducted by such Investor or its advisors, if any, or its representatives shall modify, amend or affect the Investor's right to rely on the Company's representations and warranties contained in this Agreement. The Investor understands that its investment involves a high degree of risk. The Investor is in a position vis a vis the Company, as a result of its economic bargaining power, such that the Investor has obtained and is able to obtain information from the Company in order to evaluate the merits and risks of this investment. The Investor has sought such accounting, legal and tax advice, as it has considered necessary to make an informed investment decision with respect to this transaction.

Section 3.07 No General Solicitation. Neither the Company, nor any of its affiliates, nor any person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D under the Securities Act) in connection with the offer or sale of the shares of Common Stock offered hereby.

Section 3.08 Not an Affiliate. The Investor is not an officer, director or a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Company or any "Affiliate" of the Company (as that term is defined in Rule 405 of the Securities Act).

Section 3.09 Short Position. Neither the Investor nor any affiliate of the Investor has an open short position in the Common Stock of the Company.

Section 3.10 Trading Activities. The Investor agrees that it shall not, and that it will cause its affiliates not to, (a) engage in any short sales of or hedging transactions with respect to the Common Stock, or (b) purchase any shares of Common Stock except for Common Stock purchased in connection with this Agreement, provided that the Company acknowledges and agrees that upon receipt of an Advance Notice the Investor has the right to sell the Shares to be purchased by the Investor pursuant to such Advance Notice prior to taking possession of such Shares.

Section 3.11 Non-Solicitation. For a period of two years from the date hereof, without the prior written consent of the Company, the Investor shall not directly or indirectly solicit for employment or employ any person who is employed by the Company on the date hereof. Notwithstanding the foregoing, the Investor shall not be prevented from hiring any such employee of the Company who contacts the Investor (a) in response to solicitation directed at the public in general through advertisement or similar means not targeted specifically at such employee or a general solicitation from a recruitment firm not targeted specifically at such employee or the Company or (b) on his or her own initiative and without any direct or indirect solicitation by the Investor.

Section 3.12 Standstill Agreement. The Investor agrees that for a period of one year from the date of this Agreement, it will not, unless (x) specifically consented to in advance in writing by the Board of Directors of the Company (the "Board") or (y) required in order to fulfill its obligations to purchase and sell the Shares as set forth in Article II of this Agreement, directly or indirectly, in any manner:

- (a) make, or in any way participate in, directly or indirectly, alone or in concert with others, any "solicitation" of "proxies" to vote (as such terms are used in the proxy rules promulgated pursuant to Section 14 of the Exchange Act), whether subject to or exempt from the proxy rules, or seek to advise or influence in any manner whatsoever any person or entity with respect to the voting of any equity securities of the Company;

- (b) form, join or in any way intentionally participate in a "group" within the meaning of Section 13(d)(3) of the Exchange Act with respect to any voting equity securities of the Company, other than a group comprised solely of the Investor and any of its controlling persons;
- (c) acquire, offer to acquire or agree to acquire, alone or in concert with others, by purchase, exchange or otherwise, (i) any of the assets, tangible and intangible, of the Company or any of its subsidiaries or (ii) direct or indirect rights, warrants or options to acquire any assets of the Company or any of its subsidiaries, in each case except for such assets as are then being offered for sale by the Company or any of its subsidiaries or otherwise are not material to the operations of the Company or any of its subsidiaries, either individually or in the aggregate;
- (d) otherwise act, alone or in concert with others, to seek to propose to the Company, any of its subsidiaries or any of their respective shareholders any merger, business combination, restructuring, recapitalization or other transaction involving the Company or any of its subsidiaries or otherwise seek, alone or in concert with others, to control, change or influence the management, the Board or the policies of the Company or any of its subsidiaries or nominate any person as a director who is not nominated by the then incumbent directors, or propose any matter to be voted upon by the shareholders of the Company or any of its subsidiaries; or
- (e) publicly announce an intention to do, or enter into any arrangement or understanding with others to do, any of the actions restricted or prohibited under this Section 3.12.

#### Article IV.

#### Representations and Warranties of the Company

Except as stated below, or in the SEC Documents, the Company hereby represents and warrants to, the Investor that the following are true and correct as of the date hereof:

Section 4.01 SEC Documents; Financial Statements. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act and the Company has filed all reports, schedules, forms, statements and other documents required to be filed by it with the SEC under the Exchange Act (all of the foregoing filed within the two years preceding the date hereof or amended after the date hereof and all exhibits included therein and financial statements and schedules thereto and documents incorporated by reference therein, being hereinafter referred to as the "SEC Documents"). The Company is current with its filing obligations under the Exchange Act and all SEC Documents have been filed on a timely basis or the Company has received a valid extension of such time of filing and has filed any such SEC Document prior to the expiration of any such extension. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto. Such financial statements have been prepared in accordance with generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments). No other information provided by or on behalf of the Company to the Investor which is not included in the SEC Documents contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstance under which they are or were made and not

misleading.

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Section 4.02 Organization and Qualification. The Company is duly incorporated and validly existing and in good standing under the laws of the Republic of the Marshall Islands and has all requisite corporate power to own its properties and to carry on its business as now being conducted. Each of the Company and its subsidiaries is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not have a Material Adverse Effect.

Section 4.03 Authorization, Enforcement, Compliance with Other Instruments. (a) The Company has the requisite corporate power and authority to enter into and perform this Agreement and any related agreements, in accordance with the terms hereof and thereof, (b) the execution and delivery of this Agreement and any related agreements by the Company and the consummation by it of the transactions contemplated hereby and thereby, have been duly authorized by the Board and no further consent or authorization is required by the Company, its Board or its stockholders, (c) this Agreement and any related agreements have been duly executed and delivered by the Company, (d) this Agreement and assuming the execution and delivery thereof and acceptance by the Investor and any related agreements constitute the valid and binding obligations of the Company enforceable against the Company in accordance with their terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of creditors' rights and remedies.

Section 4.04 Capitalization. The authorized capital stock of the Company consists of: (i) 100,000,000 shares of Common Stock, of which 29,537,700 are issued and outstanding, and (ii) 20,000,000 shares of Preferred Stock, \$0.01 par value per share ("Preferred Stock"), of which no shares are issued and outstanding. All of such outstanding shares have been validly issued and are fully paid and nonassessable. The Common Stock is currently listed on the Nasdaq Global Market under the trading symbol "TOPS." Except as disclosed in the SEC Documents, no shares of Common Stock are subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company. Except as disclosed in the SEC Documents, as of the date hereof, there are no outstanding options, warrants, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of capital stock of the Company or any of its subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its subsidiaries is or may become bound to issue additional shares of capital stock of the Company or any of its subsidiaries or options, warrants, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, any shares of capital stock of the Company or any of its subsidiaries. There are no securities or instruments containing anti-dilution or similar provisions that will be triggered by this Agreement or any related agreement or the consummation of the transactions described herein or therein. The Company has furnished to the Investor true and correct copies of the Company's Articles of Incorporation, as amended and as in effect on the date hereof (the "Articles of Incorporation"), and the Company's By-laws, as in effect on the date hereof (the "By-laws"), and the terms of all securities convertible into or exercisable for Common Stock and the material rights of the holders thereof in respect thereto.

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Section 4.05 No Conflict. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby will not (i) result in a violation of the Articles of Incorporation, any certificate of designations of any outstanding series of preferred stock of the Company or By-laws or (ii) conflict with or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its subsidiaries is a party, or result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations and the rules and regulations of the Principal Market on which the Common Stock is listed) applicable to the Company or any of its subsidiaries or by which any material property or asset of the Company or any of its subsidiaries is bound or affected and which would cause a Material Adverse Effect. Except as disclosed in the SEC Documents, neither the Company nor its subsidiaries is in violation of any term of or in default under its Articles of Incorporation or By-laws or their organizational charter or by-laws, respectively, or any material contract, agreement, mortgage, indebtedness, indenture, instrument, judgment, decree or order or any statute, rule or regulation applicable to the Company or its subsidiaries. The business of the Company and its subsidiaries is not being conducted in violation of any material law, ordinance, regulation of any governmental entity. Except as specifically contemplated by this Agreement and as required under the Securities Act and any applicable state securities laws, the Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court or governmental agency in order for it to execute, deliver or perform any of its obligations under or contemplated by this Agreement in accordance with the terms hereof or thereof, except as such consent, authorization or order has been obtained prior to the date hereof.

Section 4.06 No Default. Except as disclosed in the SEC Documents, the Company is not in default in the performance or observance of any material obligation, agreement, covenant or condition contained in any material indenture, mortgage, deed of trust or other material instrument or agreement to which it is a party or by which it is or its property is bound and neither the execution, nor the delivery by the Company, nor the performance by the Company of its obligations under this Agreement or any of the exhibits or attachments hereto will conflict with or result in the breach or violation of any of the terms or provisions of, or constitute a default or result in the creation or imposition of any lien or charge on any assets or properties of the Company under its Articles of Incorporation, By-Laws, any material indenture, mortgage, deed of trust or other material agreement applicable to the Company or instrument to which the Company is a party or by which it is bound, or any statute, or any decree, judgment, order, rules or regulation of any court or governmental agency or body having jurisdiction over the Company or its properties, which default, lien or charge is likely to cause in each case a Material Adverse Effect.

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Section 4.07 Intellectual Property Rights. The Company and its subsidiaries own or possess adequate rights or licenses to use all material trademarks, trade names, service marks, service mark registrations, service names, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and rights necessary to conduct their respective businesses as now conducted. The Company and its subsidiaries do not have any knowledge of any infringement by the Company or its subsidiaries of trademark, trade name rights, patents, patent rights, copyrights, inventions, licenses, service names, service marks, service mark registrations, trade secret or other similar rights of others, and, to the knowledge of the Company, there is no claim, action or proceeding being made or brought against, or to the Company's knowledge, being threatened against, the Company or its subsidiaries regarding trademark, trade name, patents, patent rights, invention, copyright, license, service names, service marks, service mark registrations, trade secret or other infringement; and the Company and its subsidiaries are unaware of any facts or circumstances which might give rise to any of the foregoing.

Section 4.08 Employee Relations. Neither the Company nor any of its subsidiaries is involved in any labor dispute nor, to the knowledge of the Company or any of its subsidiaries, is any such dispute threatened.

Section 4.09 Environmental Laws. The Company and its subsidiaries are (i) in compliance with any and all applicable material foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("Environmental Laws"), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance or nonreceipt would not, individually or in the aggregate, in each case have a Material Adverse Effect.

Section 4.10 Title. Except as set forth in the SEC Documents, the Company has good and marketable title to its properties and material assets owned by it, free and clear of any pledge, lien, security interest, encumbrance, claim or equitable interest other than such as are not material to the business of the Company. Any real property and facilities held under lease by the Company and its subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its subsidiaries.

Section 4.11 Insurance. The Company and each of its subsidiaries are insured against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its subsidiaries are engaged. Neither the Company nor any such subsidiary has been refused any insurance coverage sought or applied for and neither the Company nor any such subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect.

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Section 4.12 Regulatory Permits. The Company and its subsidiaries possess all material certificates, authorizations and permits issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct their respective businesses, and neither the Company nor any such subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit.

Section 4.13 Internal Accounting Controls. The Company and each of its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

Section 4.14 No Material Adverse Breaches, etc. Except as set forth in the SEC Documents, neither the Company nor any of its subsidiaries is subject to any charter, corporate or other legal restriction, or any judgment, decree, order, rule or regulation which in the judgment of the Company's officers has or is expected in the future to have a Material Adverse Effect on the business, properties, operations, financial condition, results of operations or prospects of the Company or its subsidiaries. Except as set forth in the SEC Documents, neither the Company nor any of its subsidiaries is in breach of any contract or agreement which breach, in the judgment of the Company's officers, has or is expected to have, individually or in the aggregate, a Material Adverse Effect on the business, properties, operations, financial condition, results of operations or prospects of the Company or its subsidiaries, taken as a whole.

Section 4.15 Absence of Litigation. Except as set forth in the SEC Documents, there is no action, suit, proceeding, inquiry or investigation before or by any court, public board, government agency, self-regulatory organization or body pending against or affecting the Company, the Common Stock or any of the Company's subsidiaries, wherein an unfavorable decision, ruling or finding would have a Material Adverse Effect.

Section 4.16 Subsidiaries. Except as disclosed in the SEC Documents, the Company does not presently own or control, directly or indirectly, any interest in any other corporation, partnership, association or other business entity.

Section 4.17 Tax Status. Except as disclosed in the SEC Documents, the Company and each of its subsidiaries has made or filed all federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject and (unless and only to the extent that the Company and each of its subsidiaries has set aside on its books provisions reasonably adequate for the payment of all unpaid and unreported taxes) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested i