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INTERSTATE COMMERCE COMMISSION

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**BAREBOAT CHARTER PARTY**

dated as of  
*November 30, 1971*

between

**BANKERS TRUST COMPANY,**

AS TRUSTEE,

OWNER,

and

**PYRAMID SUGAR TRANSPORT, INC.,**

OPERATOR.

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## BAREBOAT CHARTER PARTY

This BAREBOAT CHARTER PARTY dated as of November 30, 1971, between BANKERS TRUST COMPANY, as Trustee under the Trust Agreement referred to in Article 1 hereof (herein in such capacity called "Owner"), and PYRAMID SUGAR TRANSPORT, INC., a Louisiana corporation (herein called "Operator").

### WITNESSETH:

WHEREAS, the capitalized terms in the following recital clauses are defined in Article 1 hereof;

WHEREAS, the Vessel is being constructed by the Builder in accordance with the specifications provided for in the Purchase Agreement;

WHEREAS, upon completion of the construction of the Vessel, Owner will purchase the Vessel from the Builder and desires simultaneously to charter the Vessel to Operator hereunder for Time Charter of the Vessel to Charterer pursuant to the Time Charter, and for this purpose Owner and Charterer have entered into the Participation Agreement, pursuant to which, among other things and subject to the terms and conditions of the Participation Agreement, (i) the Loan Participants have agreed to make a loan to Owner to finance up to 80% of Owner's Cost of the Vessel, but not more than \$13,000,000, which loans are to be evidenced by the Equipment Trust Certificates, and (ii) the Owner Participant has agreed to provide Owner with an investment equal to the remaining balance of Owner's Cost of the Vessel;

NOW, THEREFORE, in reliance on the foregoing recitals and in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE 1

#### Defined Terms

The following terms shall have the following meaning for all purposes of this Charter:

"*Basic Hire*" shall mean (i) if the Vessel shall have been delivered prior to the Deposit Date, an amount equal to .02292% of Owner's Cost for each day elapsed from the Delivery Date to and including the Deposit Date plus an amount sufficient to pay interest on any interim construction financing and (ii) from and after the later of the Delivery Date or the Deposit Date, an amount equal to 1.9586% of Owner's Cost but including in any event an amount sufficient to assure the amortization of instalments of principal, together with accrued interest, on the Equipment Trust Certificates in accordance with the terms thereof.

"*Basic Hire Payment Date*" shall mean and include (i) the Deposit Date, if the Vessel shall have been delivered prior to the Deposit Date and (ii) the Business Day next preceding the day of the end of each of the 80 quarterannual periods next following the later of the Delivery Date or the Deposit Date.

"*Builder*" shall mean Lockheed Shipbuilding and Construction Company, a Nevada corporation.

"*Business Day*" means a calendar day other than Saturday, Sunday or a public holiday under the laws of the State of New York, or any other day on which banking institutions in The City of New York are authorized to close.

"*Charterer*" shall mean California and Hawaiian Sugar Company, as Charterer under the Time Charter.

*"Delivery Date"* shall mean the date (not later than November 30, 1974) the Vessel is delivered by the Builder to Owner pursuant to the Purchase Agreement, upon completion of the construction of the Vessel and Vessel is simultaneously bareboat chartered by Owner to Operator hereunder and time chartered by Operator to the Charterer pursuant to the Time Charter.

*"Deposit Date"* shall mean the Deposit Date for Loan Participants under the Participation Agreement, which date shall not be later than May 31, 1974.

*"Equipment Trust Certificates"* shall mean the certificates issuable by Owner pursuant to the Trust Agreement, and shall include as well any certificate or certificates from time to time issued in exchange for or replacement of said certificates.

*"Event of Default"* shall mean any of the events referred to in Article 18 hereof.

*"Hire"* shall mean Basic Hire and Supplemental Hire collectively.

*"Loan Participants"* shall mean the institutional investors referred to in Schedule A to the Participation Agreement.

*"Owner's Cost"* for all purposes, except the computation of amount of Equipment Trust Certificates to be acquired by the Loan Participants, shall mean the sum of the following elements: (a) The total cost of the Vessel including the aggregate amount of the payments made to the Builder pursuant to Article 10 of the Purchase Agreement prior to the Delivery Date, and (b) The amount of the fees of J. J. Henry Company, Inc., or other persons entitled thereto for design and supervision of construction of the Vessel, and (c) The amount of the Commitment Fee paid or payable by Charterer to the Loan Participants pursuant to Section 11 of the Participation Agreement, (d) The amount of interest paid or payable by Charterer pursuant to an agreement dated as of December 20, 1971, between Owner Participant as Lender and Charterer as Borrower whereunder Owner Participant is lending Charterer the funds with which to make progress payments to the Builder during the construction of the Vessel, (e) The amount of the fees paid or payable by Charterer to Salomon Brothers for their services in connection with the Participation Agreement and arrangements for financing the Vessel, (f) The amount of the fees paid or payable by Charterer for legal services, in connection with the construction and financing of the Vessel, to Messrs. Cravath, Swaine & Moore, special counsel for the Loan Participants, to Messrs. Haight, Gardner, Poor & Havens, special admiralty counsel for the Loan Participants, to Messrs. White and Case, counsel for the Trustee, and to Messrs. Brobeck, Phleger & Harrison, counsel for Charterer, (g) The amount of the printing costs paid or payable by Charterer in connection with the Purchase Agreement, Participation Agreement, Equipment Trust Agreement, Charters and related documents. The term "Owner's Cost" for the purpose of calculating the amount of Equipment Trust Certificates to be acquired by each Loan Participant and their respective participations in "Owner's Cost" under the Participation Agreement, and for no other purpose, shall be understood to mean only the total of the elements described as (a) and (b) in the preceding sentence and, for that purpose only, the elements described as (c), (d), (e), (f) and (g) in the preceding sentence shall be excluded.

*"Owner Participant"* shall mean Security Pacific National Bank, as the Owner Participant under the Trust Agreement.

*"Participant"* shall mean and include the Owner Participant and each Loan Participant.

*"Participation Agreement"* shall mean that certain Participation Agreement dated as of the date hereof, among the Charterer, Trustee and the Participants, as modified by the Supplement thereto, also dated as of the date hereof.

*"Purchase Agreement"* shall mean that certain Agreement dated as of August 13, 1971, by and between the Builder and Owner, as nominee for the Charterer (together with the plans and specifications referred to therein as "Contract Specifications for 28,115 DWT Bulk Carrier

for California and Hawaiian Sugar Company" prepared by J. J. Henry Co., Inc.), providing, among other things, for the construction of the Vessel by the Builder at its shipyard and the sale of the Vessel by the Builder to Owner, as trustee under an interim trust agreement with Charterer (the "Interim Trustee"), as said Agreement or said specifications may hereafter be amended, modified or supplemented from time to time to the extent permitted by the terms of the Purchase Agreement and the Purchase Agreement Assignment.

"Purchase Agreement Assignment" shall mean the Purchase Agreement Assignment dated as of the date hereof, between the Owner and the Interim Trustee, as said Assignment may hereafter be amended, modified or supplemented from time to time.

"Stipulated Loss Value" of the Vessel as of any Basic Hire Payment Date as listed in Exhibit A hereto shall mean an amount determined by multiplying Owner's Cost by the percentage specified in Exhibit A hereto opposite such Basic Hire Payment Date; *provided that* Stipulated Loss Value shall at all times include an amount at least sufficient to pay principal of and accrued interest on the Equipment Trust Certificates.

"Supplemental Hire" shall mean any and all amounts, liabilities and obligations which Operator assumes or agrees to pay hereunder to Owner or others, including Termination Value and Stipulated Loss Value, but excluding Basic Hire.

"Term" shall mean the period during which the Vessel is chartered hereunder as provided in Article 2(a) hereof.

"Termination Value" of a Vessel as of any Basic Hire Payment Date listed in Exhibit B hereto shall mean an amount determined by multiplying Owner's Cost by the percentage specified in Exhibit B hereto opposite the number of such Basic Hire Payment Date; *provided that* Termination Value shall at all times include amounts at least sufficient to pay principal of and accrued interest on the Equipment Trust Certificates.

"Time Charter" shall mean that certain Time Charter Party to be dated as of the date hereof and to be entered into by the Operator and the Charterer in substantially the form of Exhibit C to the Supplement to the Participation Agreement, as said Time Charter Party may from time to time be supplemented or amended, or the terms thereof waived or modified, to the extent permitted by, and in accordance with, the terms thereof and of the Trust Agreement.

"Time Charter Assignment" shall mean the Time Charter Assignment dated as of the date hereof and entered into by the Operator and the Owner concurrently with the execution and delivery of the Trust Agreement in substantially the form of Exhibit D to the Supplement to the Participation Agreement, together with the Consent and Agreement to said Time Charter Assignment to be executed by the Charterer in substantially the form set forth in said Exhibit D, as said Time Charter Assignment and Consent and Agreement may from time to time be supplemented or amended, or the terms thereof waived or modified, to the extent permitted by, and in accordance with, the terms thereof and of the Trust Agreement.

"Total Loss" shall mean: (i) the actual total loss of the Vessel or the loss or theft of the Vessel or the destruction or damage of the Vessel to such extent as shall make repair thereof uneconomical or as shall permanently render the same unfit for normal use for any reason whatsoever or (ii) the condemnation, confiscation, requisition, purchase or other taking of title to or use of, or seizure or forfeiture of, the Vessel other than a requisition of the Vessel by the United States Government for use on a bareboat or time charter basis or otherwise.

"Trust Agreement" shall mean that certain Trust Agreement dated as of the date hereof among the Owner Participant, the Owner, as Trustee and the Charterer, as Guarantor, whereby, among other things, Owner (i) agrees to issue to the Loan Participants Equipment Trust Certificates in amount not to exceed \$13,000,000 and (ii) agrees to hold all of its right, title

and interest in and to the Vessel, this Charter, the Time Charter Assignment and the Purchase Agreement Assignment, in accordance with the terms of said Trust Agreement, *first*, for the use and benefit of the holders of the Equipment Trust Certificates and, *second*, for the use and benefit of the Owner Participant.

"Trustee" shall mean the Owner in its capacity as Trustee under the Trust Agreement.

"Vessel" shall mean the steel, single screw, twin diesel driven bulk carrier vessel of approximately 28,115 deadweight tons being constructed at Builder's shipyard in Seattle, Washington, known during construction as Hull No. 139, and with the home port of New York, New York, which Vessel is being constructed by the Builder under the Purchase Agreement. For all purposes hereof the term "Vessel" shall include said Vessel and all of her engines, boilers, machinery, masts, spars, boats, anchors, cables, chains, rigging, tackle, fittings, tools, pumps, pumping equipment, gear, apparel, furniture, appliances, equipment, spare parts and all other appurtenances thereunto appertaining or belonging whether now owned or hereafter acquired, whether on board or not, and whether installed by Operator or others, and also any and all additions, improvements, renewals and replacements at any time during the term made in or to said Vessel or any part thereof or in or to her equipment and appurtenances aforesaid, excepting, however, any pump, gear or equipment from time to time removed to the extent such removal is permitted by the terms of Article 7(a) hereof.

## ARTICLE 2

### Term, Redelivery

(a) Owner hereby lets and demises, and Operator hires, the Vessel for a period beginning on the Delivery Date and continuing for a period of twenty years after the later of the Delivery Date and the Deposit Date, upon the terms and conditions hereinafter set forth in this Charter, *provided that* this Charter shall automatically terminate upon the termination of the Time Charter.

(b) Operator shall redeliver the Vessel at the time of the expiration of the Term, except that the Term shall be extended for the duration of any voyage of the Vessel in progress at such time of expiration and for such additional time as shall be required to effect redelivery; and Operator will pay Hire for the period of such extension at a rate to be mutually agreed upon at such time. Operator shall make such redelivery of the Vessel to Owner at any port on the United States Pacific or Gulf Coast, at Owner's option, and Operator shall notify Owner at least 60 days in advance of such approximate time of redelivery. Operator agrees that at the time of such redelivery the Vessel shall be free and clear of all liens, charges and encumbrances (except liens, if any, arising as the result of claims against Owner not related to its ownership of the Vessel) and shall be in the same good order and condition as when delivered hereunder, ordinary wear and tear excepted; it being understood that if Operator shall have fully performed all of its obligations under this Charter and the Term shall have terminated in accordance with the terms hereof, Operator shall not be required to put the Vessel through special survey or to make any repairs or take any other action to qualify the Vessel for operation. At the time of redelivery, provided no Event of Default shall have occurred and then be continuing, Owner will pay over to Operator any monies then held by Owner which would have been required by the terms hereof to have been paid to Operator but for the occurrence of an Event of Default.

## ARTICLE 3

### Delivery

Notwithstanding any other provision of this Charter, simultaneously with the delivery of the Vessel by the Builder to Owner pursuant to the Purchase Agreement Assignment, Owner shall tender, and Operator shall unconditionally accept delivery of, the Vessel under this Charter for all purposes hereof. As between Owner and Operator, acceptance of the Vessel by Owner from the Builder shall

be conclusive proof of the Vessel's compliance with all requirements of this Charter, and Owner makes no representation or warranty, express or implied, as to the title, seaworthiness, condition, design, operation or fitness for use of such Vessel or as to the eligibility of such Vessel for any particular trade or any other representation or warranty whatsoever, express or implied, with respect to such Vessel. In addition, such acceptance by Operator of the Vessel under this Charter shall be conclusive proof, as between Owner and Operator, that the Vessel is seaworthy, in accordance with specifications, in good working order and repair and without defect or inherent vice in title, condition, design, operation or fitness for use, whether or not discoverable by Operator as of the date of such tender, and free and clear of all liens, charges and encumbrances; *provided, however*, that nothing contained herein shall in any way diminish or otherwise affect any right Owner or Operator may have against the Builder, and Owner hereby assigns to Operator, for so long as this Charter shall be in effect and no Event of Default shall have occurred and be continuing, all rights which Owner may have with respect to the Vessel under any warranty or indemnity made by the Builder.

#### ARTICLE 4

##### Use and Operation of the Vessel

(a) Operator shall have the full use of the Vessel but, without prior written consent of Owner, will not operate the Vessel, or permit the Vessel to be operated, except in the United States coastwise trade other than as provided under paragraph (a) of Article 4 of the Time Charter. Operator also agrees that the Vessel shall not be used contrary to applicable laws or in any area in which any insurance required by the terms of Article 10 hereof shall not be in effect.

(b) Operator shall man, victual, navigate and operate the Vessel at its own expense or by its own procurement until redelivery at the termination of this Charter Party. All salvage moneys earned and received by the Vessel shall belong to Operator. Operator assumes and shall satisfy all costs and liabilities incurred in connection with all salvage services rendered by the Vessel.

(c) Concurrently with the delivery to Operator hereunder, the Vessel shall be documented in the name of Owner at Operator's expense under the laws of the United States. Operator shall throughout the Term maintain at Operator's expense such documentation of the Vessel and will not change the same without the prior written consent of Owner. Owner will duly execute all instruments required by law to be executed by Owner in order to accomplish such documentation.

#### ARTICLE 5

##### Maintenance of Classification, Repairs

(a) From and after the Delivery Date of the Vessel to Operator, Operator, always at its own expense, procurement and risk, shall have exclusive control of the Vessel and shall be charged with full responsibility for its possession, maintenance and repair, use and operation throughout the Term. Operator shall at all times maintain and preserve the Vessel in accordance with good commercial maintenance practice, shall keep the Vessel in such condition as will entitle her to the highest classification and rating of the American Bureau of Shipping for vessels of the same age and type and shall furnish to Owner photostatic copies of all certificates issued by the American Bureau of Shipping evidencing the maintenance of such classification. The Vessel shall, and Operator covenants that it will, at all times comply with all applicable laws, treaties and conventions, and rules and regulations issued thereunder, and shall have on board, when required thereby, valid certificates showing compliance therewith.

(b) The Vessel shall be repaired and overhauled by Operator at its expense, whenever necessary. The Vessel shall likewise be drydocked, cleaned and bottom painted by Operator, at its expense, whenever necessary, but in any event at least as often as may be required by the American Bureau of

Shipping during the Term for the maintenance of the classification referred to in paragraph (a) of this Article 5. Operator will promptly and duly comply with all recommendations resulting from each Special Survey of the Vessel made under the rules of the American Bureau of Shipping. Operator shall, at its expense, furnish Owner and each Participant with written information as to any casualty involving any loss or damage to the Vessel in excess of \$100,000 and all survey reports in connection therewith.

(c) Owner or its authorized representatives may at any time, upon reasonable notice, and at its own expense, inspect the Vessel at drydocking or otherwise and inspect the Vessel's log, but Owner shall have no duty to do so.

## ARTICLE 6

### Equipment and Stores

(a) Operator shall purchase from Owner at the current market price therefor, such fuel, diesel oil, fresh water, unused lubricating oil and unbroached consumable stores as may be on board at the time the Vessel is delivered to Operator. On redelivery of the Vessel at the expiration of the Term in the absence of a purchase pursuant to Article 12 or 13 hereof, Owner shall accept, and, provided no Event of Default shall have occurred and be continuing, pay to Operator the then current market price at the port of redelivery or retaking for, the fuel, diesel oil, fresh water, unused lubricating oil and unbroached consumable stores remaining on board.

(b) Operator shall have the use, without payment to Owner, of such equipment, outfit, furniture, furnishings, appliances, spare or replacement parts and nonconsumable stores as shall have been on board the Vessel at the time of delivery thereof to Operator. To the extent included in Owner's Cost, the same or their substantial equivalent shall be returned to Owner on redelivery or retaking of the Vessel, or upon any sale of the Vessel pursuant to Article 12 hereof, in the same good order and condition as received, ordinary wear and tear excepted.

(c) Operator shall at its own expense provide such additional equipment, outfit, tools, replacement parts, crockery, linen, etc., as may be required for operation of the Vessel, and such equipment shall remain the property of Operator, except that any such equipment, etc., which was included in Owner's Cost shall be (and any replacement thereof, immediately upon such replacement, shall become) the property of Owner and included as part of the "Vessel" for all purposes of this Charter.

(d) Prior to delivery and again prior to redelivery or retaking there shall be an agreed inventory of fuel, diesel oil, fresh water, unused lubricating oil, unbroached consumable stores, equipment, outfit, appliances, tools, replacement parts, nonconsumable stores, crockery, linen, etc., on board the Vessel, and the rights of the parties under the foregoing paragraphs of this Article 6 shall be determined in accordance with such inventories.

## ARTICLE 7

### Operator's Changes, Additions and Replacements

(a) Operator may make structural changes or alterations in the Vessel or changes or alterations in the Vessel's machinery or boilers but only to the extent that any such change or alteration is made at Operator's expense and risk and does not diminish the value, utility or seaworthiness of the Vessel below the value, utility and seaworthiness of the Vessel immediately prior to such change if the Vessel was then in the condition and seaworthiness required to be maintained by the terms of this Charter. In addition, Operator may install any pumps, gear or equipment it may require in addition to that on board the Vessel, on delivery, provided that such installations are accomplished at Operator's expense and risk. Pumps, gear and equipment so installed shall, without necessity of further act, become part of the Vessel and the property of Owner; *provided, however*, that so long as no Event

of Default shall have occurred and be continuing, any such pumps, gear or equipment not required to be installed in order to meet the requirements of Article 5 hereof and not installed as replacements for property included in Owner's Cost may be removed by Operator, at its own expense and risk, at any time during, or at the expiration of, the Term, whereupon such pumps, gear or equipment shall, without necessity of further act, become the property of Operator.

(b) In addition to the structural changes or alterations and the addition of pumps, gear and equipment referred to in paragraph (a) above, Operator may, in the ordinary course of maintenance, repair or overhaul of the Vessel, remove any item of property constituting a part of the Vessel provided such item is replaced as promptly as possible by an item of property which is free and clear of all liens, encumbrances and rights of others and is in as good operating condition, is as seaworthy and has a value and utility at least equal to the item of property being replaced. Any item of property removed from the Vessel as provided in the preceding sentence shall remain the property of Owner until replaced in accordance with the terms of said sentence, but shall then, without further act, become the property of Operator. Any such replacement item of property shall, without further act, become the property of Owner and be deemed part of the "Vessel" as defined herein for all purposes hereof.

(c) Operator shall have the right at its expense to name and to change the name of the Vessel, to paint the Vessel in its own colors, to install and display its stack insignia and to fly its own house flag.

## ARTICLE 8

### Liens

(a) Neither Operator nor the master of the Vessel nor any other person shall have any right, power or authority to create, incur or permit to exist upon the Vessel any lien whatsoever other than liens for crew's wages and salvage. Operator agrees to carry a true copy of this Charter and the Trust Agreement with the ship's papers on board the Vessel, and to exhibit the same to any person having business with the Vessel which may give rise to any lien upon the Vessel (other than for crew's wages or salvage) or to the sale, conveyance or mortgage thereof, and on demand, to any person having business with the Vessel or to any representative of Owner. Operator shall also place and keep prominently displayed in the master's cabin or office and the chart room of the Vessel a notice, framed under glass, printed in plain type of such size that the paragraph of reading matter shall cover a space not less than six inches wide by nine inches high, reading as follows:

#### "NOTICE OF OWNERSHIP AND CHARTER

"This Vessel is owned by Bankers Trust Company, as trustee under a Trust Agreement, and is under demise charter to Pyramid Sugar Transport, Inc., and time charter to California and Hawaiian Sugar Company. Under the terms of said Trust Agreement and of said charters, neither the charterers, the master of this Vessel nor any other person has the right, power or authority to create, incur or permit to exist upon this Vessel any lien whatsoever other than for crew's wages and salvage."

(b) Without limitation of the generality of Operator's indemnity in favor of Owner contained in Article 15 hereof, Operator agrees that if a libel shall be filed against the Vessel, or if the Vessel shall be otherwise levied upon or taken into custody or detained or sequestered by virtue of proceedings in any court or tribunal or by any government or other authority because of any liens, claims or liabilities arising from any claims other than any liens, charges or encumbrances whatsoever arising as a result of claims against Owner not arising as a result of its ownership of the Vessel or its administration of the Trust Estate as defined in the Trust Agreement, Operator shall at its own expense within fifteen days thereafter cause the Vessel to be released and all such liens and (except to the extent that the same shall currently be contested by Operator in good faith by appropriate proceedings and shall not affect the continued release of the Vessel) claims and liabilities to be discharged. Operator

agrees forthwith to notify Owner by telegram, confirmed by letter, of each such event and of each such release and discharge. Operator agrees to advise Owner in writing at least once in each three-month period as to the status and merits of all such excepted claims and liabilities not discharged within fifteen days as provided above.

## ARTICLE 9

### Charter Hire

(a) Operator hereby agrees to pay to the Owner, Basic Hire for the Vessel throughout the Term, payable on each Basic Hire Payment Date.

(b) In addition to its obligation to pay Basic Hire hereunder, Operator also hereby agrees to pay to Owner, or to whosoever shall be entitled thereto, any and all Supplemental Hire promptly as the same shall become due and owing, but in any event within ten days after demand therefor shall have been made by Owner, and in the event of any failure on the part of Operator to pay any Supplemental Hire, Owner shall have all rights, powers and remedies provided for herein or at law or in equity or admiralty or otherwise as in the case of nonpayment of Basic Hire. Operator also agrees to pay to Owner, on demand, as Supplemental Hire, to the extent permitted by applicable law, interest at the rate of 8¾% per annum (computed on the basis of a 360-day year) on any part of any installment of Basic Hire not paid when due for any period for which the same shall be overdue and on any payment of Supplemental Hire not paid when demanded by Owner for the period until the same shall be paid. If Operator fails to make any payment of Supplemental Hire required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, Owner may itself, but shall be under no obligation to, make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the reasonable expenses of Owner incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the rate of 8¾% per annum, shall be deemed Supplemental Hire, payable by Operator upon demand.

(c) All Hire shall be paid by Operator to the Owner at its Corporate Trust Office in the Borough of Manhattan, City and State of New York, in New York Clearing House funds. Operator's obligation to pay all Hire payable hereunder shall be absolute and unconditional, subject to the provisions of Article 22 hereof, under any and all circumstances and shall not be affected by any circumstance of any character, including, without limitation (i) any setoff, counterclaim, recoupment, defense and other right which Operator may have against Owner, any Participant, the Builder or anyone else for any reason whatsoever, or any claim or charge which Operator may have against Charterer for payment of any amount constituting Operator's Charges, Pre-Operation Charges or Cargo Brokerage, in each case as defined in the Time Charter Party, (ii) any defect in the title, seaworthiness, condition, design, operation or fitness for use of the Vessel or the ineligibility of the Vessel for any particular trade, (iii) any loss or destruction of, or damage to, the Vessel or interruption or cessation in the use or possession thereof by Operator for any reason whatsoever and of whatever duration, (iv) any ineligibility of the Vessel, or the denial of the Vessel's right, to engage in the coastwise trade or the ineligibility of the Vessel for documentation under the United States flag by reason of any law or regulation of the United States or otherwise, (v) any insolvency, bankruptcy, reorganization or similar proceeding by or against Operator, (vi) any failure to obtain any required governmental consent for a transfer of rights or title to Operator pursuant to Article 11(b) hereof or (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing. Operator hereby waives, to the extent permitted by applicable law, any and all rights which it may have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Charter except in accordance with the express terms hereof. If for any reason whatsoever this Charter shall be terminated in whole or in part by operation of law or otherwise except as specifically provided herein, Operator nonetheless agrees to pay to the Owner an amount equal to

each Basic Hire payment at the time such payment would have become due and payable in accordance with the terms hereof had this Charter not been terminated in whole or in part. Each Hire payment made by the Operator shall be final, subject to the provisions of Article 22 hereof and the Time Charter Assignment, and Operator will not seek to recover all or any part of such payment from the Owner for any reason whatsoever.

## ARTICLE 10

### Insurance

(a) Operator, at its own cost and expense, will provide and maintain (and will obtain renewal at least five full business days prior to the expiration date thereof) hull and machinery and protection and indemnity insurance (and such other insurance as may be reasonably required by Owner considering comparable commercial ventures, to the extent, if any, obtainable, including without limitation, war risks), in such form, with such deductible amounts and with such companies, underwriters or funds, as shall be acceptable to Owner (which acceptance by Owner shall not be unreasonably withheld), which insurance shall be maintained through one or more recognized independent marine insurance brokers. Subject to the terms of paragraph (b) below, all such insurance shall be in amounts at least sufficient to protect the interests of Owner and the Participants. All hull and machinery and protection and indemnity policies shall name Owner and the Owner Participants as additional insureds without liability for premiums. All policies required hereby covering loss or damage to the Vessel shall provide that payment thereunder as the result of the Total Loss or the constructive Total Loss of the Vessel will be made to Owner and that all other amounts payable thereunder will be applied in payment of the cost of repairs or for replacement of property in accordance with the provisions of Article 5 hereof and any balance remaining after compliance with said Article 5 will be payable to Operator as between Owner and Operator. As between Owner and Operator it is agreed that in the case of all insurance payments received as the result of the occurrence of a Total Loss, so much of such payments as shall not exceed the sum of the Stipulated Loss Value required to be paid by Operator pursuant to Article 11(b) hereof and any other Hire then due and owing by Operator hereunder shall be applied, *first*, in reduction of Operator's obligation to pay such other Hire, if any, then due and owing and, *second*, in reduction of Operator's obligation to pay such Stipulated Loss Value if not already paid by Operator or, if already paid by Operator and provided no Event of Default shall have occurred and be continuing, to reimburse Operator for its payment of such Stipulated Loss Value; and as between Owner and Operator the balance, if any, of such payments remaining thereafter will be paid over to, or retained by, Operator provided no Event of Default shall have occurred and be continuing. As between Owner and Operator it is also agreed that the proceeds of any insurance for damage to the Vessel not constituting a Total Loss, after compliance with said Article 5, shall be paid to the order of Operator provided no Event of Default shall have occurred and be continuing.

(b) For the purpose of insurance against total loss, the Vessel shall at all times be insured for no less than the Stipulated Loss Value computed as of the immediately preceding Basic Hire Payment Date. Protection and indemnity insurance shall be not less than the higher of the full commercial value of the Vessel or \$207 per gross registered ton.

(c) Operator will not permit the Vessel to undertake any voyage or participate in any venture or transport any cargo which may not be permitted by the insurance then in effect.

(d) Operator will deliver to Owner copies of all certificates and, if requested by Owner, all binders and policies with respect to insurance from time to time carried on the Vessel. In addition, on or before the Delivery Date and thereafter at intervals of not more than 12 months Operator will furnish to Owner an insurance certificate with respect to each insurance policy on or with respect to the Vessel, issued by the insurer under such policy (or, in case any insurer does not issue such a certificate, issued by a broker who customarily issues such certificates on behalf of such

insurer), showing the types of risk covered by such policy, the amount insured thereunder and the expiration date thereof. Operator will cause each broker for each such policy to agree to advise Owner promptly of any default in the payment of any premium and of any other act or omission on the part of Operator of which such broker has knowledge and which might invalidate or render unenforceable, in whole or in part, such policy. Operator will also cause each such broker to agree to advise Owner, by telegram or cable, at least 10 full business days prior to the expiration date of each such policy placed with such broker, if the insurance thereunder has not been renewed or replaced with new insurance which complies with the provisions of this Article.

(e) In the event that Operator shall fail to maintain insurance as herein provided, Owner may at its option, but shall be under no obligation to, maintain such insurance and, in such event, Operator shall, upon demand, reimburse Owner, as Supplemental Hire, for the cost thereof.

## ARTICLE 11

### Loss, Requisition or Seizure

(a) Requisition of the Vessel by the United States Government for use on a bareboat or on a time charter basis or otherwise shall not terminate this Charter, but Operator shall remain liable for all its obligations hereunder in respect thereof, including its liability for payment of Hire, until the expiration of the Term. If, at the expiration of the Term, such Vessel shall be under requisition for use, Operator shall not be obligated to (i) redeliver such Vessel pursuant to Article 2(b) hereof or (ii) make any payment under paragraph (b) of this Article 11 with respect to a Total Loss occurring after such expiration or (iii) except for any liabilities or obligations arising, or resulting from events occurring, prior to the expiration of the Term, have any further liability or obligation hereunder, including liability for payment of Hire, and (except as aforesaid) this Charter shall terminate as of such expiration. All payments received by Owner or Operator from the Government for the use of such Vessel during the Term shall be paid over to or retained by Operator except if an Event of Default shall have occurred and be continuing, in which event such payments shall be payable to Owner subject to an accounting between Owner and Operator at the termination of the Charter. All payments received by Owner or Operator from the Government for the use of such Vessel after the expiration of the Term shall be paid over to, or retained by, Owner.

(b) Upon the occurrence of a Total Loss, Operator shall forthwith give Owner written notice of such Total Loss and within 180 days after the date of the occurrence of such Total Loss, shall pay to the Owner (i) the Stipulated Loss Value, computed as of the Basic Hire Payment Date next occurring after the date of the occurrence of such Total Loss (or if such Total Loss occurs on or after the last Basic Hire Payment Date, computed as of the last day of the Term), and (ii) if the date such Stipulated Loss Value is paid is later than the Basic Hire Payment Date next occurring after the date of the occurrence of such Total Loss, an amount equal to interest at the rate of 8¼% per annum computed on the amount of such Stipulated Loss Value for the period from such Basic Hire Payment Date to the date such Stipulated Loss Value is paid. In the event of payment in full of such Stipulated Loss Value, the obligation of Operator to pay Basic Hire in respect of the Vessel on each Basic Hire Payment Date shall continue to and include the Basic Hire Payment Date occurring on, or immediately before, the date of the occurrence of such Total Loss, but shall then terminate. In the case of all payments (other than insurance proceeds) received by Owner or Operator from any governmental authority or otherwise as compensation for a Total Loss, so much of such payments as shall not exceed the sum of the Stipulated Loss Value required to be paid by Operator as above provided and any other Hire then due and owing by Operator hereunder shall be applied, *first*, in reduction of Operator's obligation to pay such other Hire, if any, then due and owing and, *second*, in reduction of Operator's obligation to pay such Stipulated Loss Value if not already paid by Operator or, if already paid by Operator and provided no Event of Default shall have occurred and be continuing, to reimburse Operator for its payment of such Stipulated Loss Value; and the balance, if any, of such payments remaining thereafter will

be paid over to, or retained by, Owner. For the purpose of this Charter, the date of the occurrence of a Total Loss shall be the date of the casualty or other occurrence giving rise to such Total Loss, and if the date of such casualty or other occurrence shall be uncertain, such date shall be deemed the date the Vessel was last heard from. In the event that Operator shall make payment as provided above, Operator, subject to Operator's obtaining any governmental consent required by reason of its citizenship, (i) shall be subrogated to all rights which Owner shall have with respect to the Vessel, (ii) shall receive assignments and bills of sale from Owner (in such form as Operator shall require, but without any representation or warranty of any character on the part of Owner) of any or all such rights, together with all of Owner's right, title and interest in and to the Vessel and all machinery and equipment pertaining thereto, and (iii) shall have the right to abandon the Vessel to underwriters on behalf of Owner as well as itself. In such case, Owner shall execute such documents and take such other action as Operator shall require to effect the surrender to the insurance underwriters of the Vessel as a constructive Total Loss.

## ARTICLE 12

### Operator's Option to Terminate Upon Vessel Becoming Obsolete or Surplus

Notwithstanding any provision herein contained to the contrary, in the event that Charterer shall in its discretion determine that the Vessel has become obsolete or surplus to its requirements and shall have elected to terminate the Time Charter, Operator shall by at least 60 days prior written notice to Owner, terminate this Charter in respect of the Vessel on the date (for the purpose of this Article 12 called the "termination date") specified in such notice provided that (i) the termination date is not earlier than ten years after the Delivery Date and (ii) on the termination date no Event of Default shall have occurred and be continuing. During the period from the giving of such notice until the termination date, Operator, as agent for Owner, shall use its best efforts to obtain bids for the purchase of the Vessel, and Operator shall certify to Owner the amount of each such bid and the name and address of the party (which shall not be a corporation or individual affiliated with Operator) submitting such bid. On the termination date (or such later date as Owner and Operator may mutually agree) Owner shall, unless Charterer considers the highest bid to be below fair market value, sell the Vessel for cash to the bidder who shall have submitted the highest bid prior to the termination date. The total sales price realized at such sale shall be paid to, and retained by, Owner, and, in addition, on the date of such sale, Operator shall pay to Owner the excess, if any, of the Termination Value in respect of such Vessel, computed as of the Basic Hire Payment Date occurring on or next following the date of sale, over the net sales price of the Vessel after deducting from such sales price any and all costs and expenses whatsoever incurred by Owner in connection with such sale. If no sale shall occur on the date scheduled therefor as above provided or if no bids shall have been received, this Charter shall continue in full force and effect. In the event of such sale, the obligation of Operator to pay Basic Hire in respect of the Vessel on each Basic Hire Payment Date shall continue to and include the Basic Hire Payment Date occurring immediately prior to the date of sale, but shall then terminate. Owner shall be under no duty to solicit bids, to inquire into the efforts of Operator to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale pursuant to this Article 12 other than to transfer to the purchaser named in the highest bid certified by Operator to Owner as above provided all of Owner's right, title and interest in and to the Vessel. Any sale pursuant to this Article 12 shall be free and clear of all of Operator's rights to the Vessel, but shall be made without any representation, recourse or warranty whatsoever on the part of Owner except that Owner shall warrant to the purchaser that the Vessel is free and clear of all liens, charges and encumbrances arising as the result of claims against Owner not related to its ownership of the Vessel.

**ARTICLE 13****Operator's Purchase Option and Right of First Refusal**

(a) Upon not less than 180 days' prior written notice from Operator to Owner, Operator shall, if Charterer shall have elected to exercise its purchase option under the Time Charter, on the last business day of the Term, provided no Event of Default hereunder shall have occurred and then be continuing and provided Operator and Charterer shall have obtained any governmental consent required by reason of the citizenship of Charterer or its nominee, purchase the Vessel from Owner by paying to Owner in cash on such day an amount equal to the then fair market value of the Vessel. For the purpose of this paragraph (a), the "fair market value" of the Vessel shall be determined on the basis of an appraisal mutually agreed to by two independent marine appraisers, one chosen by Owner and one chosen by Operator, or, if such appraisers cannot agree on the amount of such appraisal, determined on the basis of an appraisal made by a third independent marine appraiser chosen by the mutual consent of such first two appraisers.

(b) In the event Operator shall not have exercised its option to purchase the Vessel pursuant to paragraph (a) above, Owner agrees that, provided no Event of Default shall have occurred and be continuing, it will not sell the Vessel for a period of one month following the expiration of the Term unless Owner shall have given Operator and Charterer at least five business days' prior written notice of such sale, specifying the sales price and terms of such sale, and Charterer shall have had the opportunity to purchase the Vessel at the same price and on the same terms as specified in such notice, subject to Charterer obtaining any governmental consent required by reason of its citizenship.

(c) Any sale pursuant to this Article 13 shall be made without any representation, recourse or warranty on the part of Owner except that Owner shall warrant that the Vessel is free and clear of all liens, charges and encumbrances arising as a result of claims against Owner not related to its ownership of the Vessel. The cost of all appraisals and any other costs or expenses incurred in connection with a sale pursuant to this Article 13 shall be borne by Charterer.

**ARTICLE 14****Taxes**

Operator agrees to pay, and to indemnify and hold Owner and each Participant harmless from, all documentation, registration, license and other fees and all taxes, levies, imposts, duties, charges or withholding of any nature whatsoever (together with any penalties, fines or interest thereon) imposed against Owner, any Participant, Operator or the Vessel by any federal, state or local government or taxing authority in the United States or by any taxing authority or governmental subdivision of a foreign country upon or with respect to the Vessel, or upon the purchase, ownership, delivery, charter, possession, use, operation, return or other disposition thereof, or upon the hire, receipts or earnings arising therefrom, or upon or with respect to this Charter, the Trust Agreement, the issuance of the Equipment Trust Certificates or Owner Certificate or the income received with respect to any of the property held in trust under the Trust Agreement, unless, and only to the extent that, any such tax, levy, impost, duty, charge or withholding is being contested by Operator in good faith and by appropriate proceedings so long as such proceedings do not involve any danger of the sale, forfeiture or loss of such Vessel or any interest therein; *provided, however*, that notwithstanding the foregoing, Operator does not agree to pay, or to indemnify and hold any person harmless from, any tax (or any penalties, fines or interest thereon) on, or measured by, the net income of such person imposed by (i) any federal, state or local government or taxing authority in the United States or (ii) the government of any foreign country or any political subdivision or taxing authority within such foreign country except to the extent such foreign tax is not available as a credit with respect to such person's United States income tax. All of the obligations of Operator under this Article 14 shall survive the expiration or earlier termination of this Charter and are expressly made for the benefit of, and shall be enforceable by, Owner and each Participant.

**ARTICLE 15****Indemnification and Expenses**

Operator does hereby assume liability for, and does hereby agree (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless Owner and each Participant, and their respective successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including legal fees and expenses) of whatsoever kind and nature (except liabilities for taxes which Operator has not agreed to indemnify against pursuant to Article 14 hereof) which may be imposed on, incurred by or asserted at any time (whether before, after or during the Term) against Owner or any Participant (whether or not, in the case of Owner also indemnified against by any Participant under the Trust Agreement or, in the case of Owner or any Participant, also indemnified against by the Builder or any other person) and in any way relating to or arising out of the Purchase Agreement, the Purchase Agreement Assignment, the Charters or Time Charter Assignments, or the construction, purchase, acceptance or rejection under the Purchase Agreement, ownership, documentation, registry, mortgaging, delivery, non-delivery, possession, use, operation, chartering, subchartering, condition, maintenance, repair, sale, return or other disposition of the Vessel (including, without limitation, claims or penalties arising from any violation of the laws of any foreign country or political subdivision thereof, as well as any claim as the result of latent and other defects, whether or not discoverable by Owner or Operator, and any claim for patent, trademark or copyright infringement) or in any way relating to or arising out of the Trust Agreement or the action or inaction of Owner in connection therewith, except only that Operator shall not be required to indemnify (i) Owner or any Participant for loss or liability resulting from its own gross negligence or wilful misconduct or, so long as no Event of Default shall have occurred or be continuing, for loss or liability arising as a result of any act or omission on the part of Operator occurring after the redelivery of the Vessel pursuant to Article 12 or Article 13 hereof or (ii) any Participant for any liability which it may incur as a result of a default by it under the Participation Agreement. Without limitation of the foregoing, Operator agrees, whether or not any of the transactions contemplated hereby are consummated, (i) to pay to the Builder any amounts owing under the Purchase Agreement not included in Owner's Cost and (ii) to pay all of the costs and expenses incurred by Owner and the Participants in connection with the preparation, execution and delivery of this Charter, the Time Charter, the Time Charter Assignment, the Participation Agreement, the Trust Agreement and the Purchase Agreement Assignment or any consent or waiver in respect of any thereof, including printing expenses, all expenses in connection with the recording of any document pursuant thereto and the reasonable fees and disbursements of Messrs. Haight, Gardner, Poor & Havens, special maritime counsel for the Participants, Messrs. Cravath, Swaine & Moore, special counsel for the Loan Participants, and Messrs. White & Case, counsel for Owner. The obligations of Operator under this Article 15 shall survive the expiration or earlier termination of this Charter and are expressly made for the benefit of, and shall be enforceable by, Owner and each Participant. Nothing contained in this Article 15 or elsewhere in this Charter shall be deemed to confer any right in favor of, or create any obligation of Operator to, anyone whatsoever except Owner and each Participant. No provision of this Charter shall be construed to be a waiver on the part of Owner or Operator of the benefit of any limitation of, or exemption from, liability accorded the owner of vessels by any statute or rule of law, provided that the terms of this sentence shall not in any way affect the full obligation of Operator to Owner or the Participants under the indemnities provided for in this Article 15.

**ARTICLE 16****Operator's Representations and Warranties**

Operator represents and warrants to Owner that: (i) Operator is a corporation duly organized and existing in good standing under the laws of the State of Louisiana, is a citizen of the United States qualified to engage in the coastwise trade within the meaning of the Shipping Act, 1916, as amended, and is duly qualified to do business wherever necessary to perform its obligations under

this Charter; (ii) this Charter has been duly authorized by all necessary corporate action on the part of Operator and does not require any stockholder approval and does not contravene any law binding on Operator or contravene Operator's certificate of incorporation or by-laws or any indenture, credit agreement or other contractual agreement to which Operator is a party or by which it is bound; (iii) neither the execution and delivery by Operator of this Charter nor any of the transactions by Operator contemplated hereby or thereby require the consent or approval of, or the giving of notice to, any federal, state or foreign governmental authority; (iv) this Charter constitutes the legal, valid and binding obligation of Operator enforceable against Operator in accordance with the respective terms thereof; (v) Operator is not a "national" of any foreign country designated in Executive Order No. 8389, as amended, or of any "designated enemy country" as defined in Executive Order No. 9193, as amended, of the President of the United States, within the meaning of said Executive Orders, as amended, or of any regulations, interpretations or rulings issued thereunder, or a "national" of any designated foreign country within the meaning of the Foreign Assets Control Regulations or the Cuban Assets Control Regulations of the United States Treasury Department, 31 Code of Federal Regulations, Subtitle B, Chapter V, or of any regulations, interpretations or rulings issued thereunder; (vi) Operator is a United States person within the meaning of the Interest Equalization Tax Act, as extended and amended, and the transactions contemplated by, and the performance of the obligations under, this Charter and the documents referred to herein are not subject to the provisions of the Foreign Direct Investment Regulations of the Secretary of Commerce (15 C.F.R. 1000), as amended; (vii) the entering into and consummation by the Operator of this Charter and the Time Charter will not violate Section 10 of the Clayton Act (15 U.S.C. § 20); (viii) as of the Delivery Date, Operator will not have engaged in any activity which would subject it to the jurisdiction of the Interstate Commerce Commission as a water carrier within the meaning of Part III of the Interstate Commerce Act (49 U.S.C. Chapter 12).

#### **ARTICLE 17**

##### **Assignments**

Operator shall not have the right to assign this Charter without the written consent of Owner. Subject to the terms of applicable law, Operator shall have the right, so long as no Event of Default shall have occurred and be continuing, to subcharter the Vessel to Charterer pursuant to the Time Charter provided that (i) the Time Charter shall be consistent with the terms of this Charter and the rights of the Charterer shall be subject and subordinate to all of the terms of this Charter, including, without limitation, Operator's covenants contained in Article 4(a) hereof, and to Owner's right to redelivery or retaking of the Vessel pursuant to Article 19(a) hereof, and (ii) the Charterer shall comply with all applicable laws and regulations.

#### **ARTICLE 18**

##### **Events of Default**

The following events shall constitute Events of Default (whether any such event shall be voluntary or involuntary or come about or be affected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (a) An Event of Default under the Time Charter; or
- (b) Operator shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder and such failure shall continue unremedied for a period of 60 days after written notice thereof by Owner; or
- (c) Operator shall become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver; or a trustee or a receiver shall be appointed for Operator or for a substantial part of its property without its consent and shall not be dismissed for a period of 60 days; or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Operator and, if instituted against Operator, shall not be dismissed for a period of 60 days.

**ARTICLE 19****Action Following an Event of Default**

Upon the occurrence of any Event of Default under the Time Charter and at any time thereafter so long as the same shall be continuing, Owner may, at its option, declare this Charter to be in default; and at any time thereafter, so long as all outstanding Events of Default shall not have been remedied, Owner may do, and Operator shall comply with, one or more of the following, as Owner in its sole discretion shall so elect, to the extent permitted by, and subject to compliance with, any mandatory requirements of applicable law then in effect:

(a) Upon written demand, Owner may cause Operator at Operator's expense to, and Operator hereby agrees that it will, promptly redeliver the Vessel, or cause the Vessel to be redelivered, to Owner with all reasonable dispatch and in the same manner and in the same condition as if the Vessel were being redelivered at the expiration of the Term in accordance with all of the provisions of Article 2(b) hereof, and all obligations of Operator under said Article shall apply to such redelivery; or Owner or its agent, at Owner's option, without further notice, may, but shall be under no obligation to, retake the Vessel wherever found, whether upon the high seas or at any port, harbor or other place and irrespective of whether Operator, any subcharterer or any other person may be in possession of the Vessel, all without prior demand and without legal process, and for that purpose Owner or its agent may enter upon any dock, pier or other premises where the Vessel may be and may take possession thereof, without Owner or its agent incurring any liability by reason of such retaking, whether for the restoration or damage to property caused by such retaking or otherwise. The exercise by Owner of its remedies under this paragraph (a) shall be without prejudice, and in addition, to any of Owner's other remedies referred to below in this Article 19.

(b) Owner, by written notice to Operator specifying a payment date not earlier than 10 days, or more than 30 days, from the date of such notice, may require Operator to pay to Owner, and Operator hereby agrees that it will pay to Owner, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty, all unpaid Basic Hire payable on each Basic Hire Payment Date occurring prior to the payment date specified in such notice, plus an amount (together with interest on such amount at the rate of 8¼% per annum for the period, if any, from the payment date specified in such notice to the date of actual payment) equal to the excess of:

(i) the Termination Value of the Vessel computed as of the Basic Hire Payment Date occurring on or next following the payment date specified in such notice, over

(ii) whichever of the following amounts Owner, in its sole discretion, shall specify in such notice: (A) the fair market sales value (determined as hereinafter in this paragraph (b) provided) of the Vessel as of the Basic Hire Payment Date occurring on or next following the payment date specified in such notice or (B) the fair market bareboat charter value (determined as hereinafter in this paragraph (b) provided) of the Vessel for the period from such Basic Hire Payment Date to what would have been the end of the Term in the absence of the termination of Operator's rights to the Vessel, after discounting such fair market charter value quarter annually (effective on each Basic Hire Payment Date which would have been payable under the Charter) to present worth as of the Basic Hire Payment Date occurring on or next following the payment date specified in such notice at the rate of 4% per annum.

For the purpose of this paragraph (b), the "fair market sales value" or "fair market bareboat charter value" shall be determined by appraisals conducted at Operator's expense in accordance

with the terms of Article 13(a) hereof, except that such determination shall be made by the appraiser chosen by Owner if Operator fails to furnish the appraisal of the appraiser selected by Operator within 10 days after the giving of the notice referred to above in this paragraph (b) or if a third appraiser is required and the first two appraisers cannot agree on the selection of a third appraiser; *provided, however*, that (x) the "fair market sales value" or the "fair market bareboat charter value", as the case may be, shall be zero if Owner is unable to recover possession of the Vessel in accordance with the terms of paragraph (a) above, (y) if Owner shall have sold the Vessel prior to the giving of the notice referred to above in this paragraph (b), the "fair market sales value" shall be the net proceeds of such sale after deducting all costs and expenses whatsoever incurred by Owner in connection therewith and (z) there shall be added to "fair market sales value" and to "fair market bareboat charter value", as the case may be, the net proceeds received by Owner (after deducting all costs and expenses whatsoever of Owner with respect thereto) from any charter of the Vessel to others pursuant to paragraph (c) below to the extent such proceeds are received by Owner prior to the giving of the notice referred to above in this paragraph (b). Nothing contained in the preceding sentence shall require Owner to sell or charter the Vessel at any time.

(c) Owner or its agent may sell the Vessel at public or private sale, with or without notice to Operator, advertisement or publication, as Owner may determine, or otherwise may dispose of, hold, use, operate, charter (whether for a period greater or less than the balance of what would have been the Term in the absence of the termination of Operator's rights to the Vessel) to others or keep idle the Vessel, all on such terms and conditions and at such place or places as Owner may determine and all free and clear of any rights of Operator and of any claim of Operator in admiralty, in equity, at law or by statute, whether for loss or damage or otherwise, and without any duty to account to Operator except to the extent specifically provided in paragraph (b) above.

In addition, Operator shall be liable for any and all Supplemental Hire payable hereunder before, during or after the exercise of any of the foregoing remedies and for all legal fees and any other costs and expenses whatsoever incurred by Owner by reason of the occurrence of any Event of Default or by reason of the exercise by Owner of any remedy hereunder, including, without limitation, any costs and expenses incurred by Owner in connection with any retaking of the Vessel or, upon the redelivery or retaking of the Vessel in accordance with this Article 19, the placing of the Vessel in the condition and seaworthiness required by the terms of Article 2(a) hereof. No remedy referred to in this Article 19 is intended to be exclusive, but each shall be cumulative and is in addition to, and may be exercised concurrently with, any other remedy which is referred to in this Article 19 or which may otherwise be available to Owner at law, in equity or in admiralty; *provided, however*, that liquidated damages having been agreed to by the parties hereto pursuant to paragraph (b) above, Owner shall not be entitled to recover from Operator as damages upon the occurrence of one or more Events of Default an amount in excess of such liquidated damages plus any Supplemental Hire, costs, expenses and other amounts referred to in the immediately preceding sentence hereof. There shall be deducted from the aggregate amount so recoverable by Owner the net balance, if any, remaining of any moneys held by Owner which would have been required by the terms hereof to have been paid to Operator but for the occurrence of an Event of Default. The rights of Owner and the obligations of Operator under this Article 19 shall be effective and enforceable regardless of the pendency of any proceeding which has or might have the effect of preventing Owner or Operator from complying with the terms of this Charter. No express or implied waiver by Owner of any Event of Default shall in any way be, or be construed to be, a waiver of any further or subsequent Event of Default. To the extent permitted by applicable law, Operator hereby waives any rights now or hereafter conferred by statute or otherwise which may require Owner to sell, charter or otherwise use the Vessel in mitigation of Owner's damages except to the extent expressly set forth in this Article 19.

**ARTICLE 20**  
**Governing Laws**

The interpretation of this Charter shall be governed by the maritime law of the United States of America when applicable, and otherwise by the law in effect in the State of New York, the place of the making of this Charter.

**ARTICLE 21**  
**Notices**

All notices required under the terms and provisions hereof shall be in writing, and any such notice shall become effective when deposited in the United States mail, with proper postage for ordinary mail prepaid (or, if by telegram, when dispatched), addressed (i) if to Owner, at its address at P.O. Box 318, Church Street Station, New York, N.Y. 10015, Attention: Corporate Trust Division, (ii) if to Operator, at its office at 1815 International Trade Mart Building, New Orleans, Louisiana 70130, Attention Donald C. Scafidi, President, or (iii) to either party hereto at such other address as such party may from time to time designate in writing to the other party.

**ARTICLE 22**  
**Limitation of Liability; Successor Operator**

(a) Owner hereby confirms its understanding, and agrees, that Operator's responsibilities, obligations, indemnifications, and liabilities under all the terms of this Charter including, without limitation, its covenants, agreements and obligations under Articles 10, 14 and 15 hereof, are expressly limited as to amount and conditioned upon its receipt from Charterer under the Time Charter, as a part of Operator's Charges, of a sum sufficient to discharge such responsibilities, obligations and liability hereunder.

(b) The Owner, with the consent of the Owner Participant and Charterer, may at any time on 60 days' notice remove Operator without cause by an instrument in writing delivered to Operator. In addition, Operator shall resign if at any time it ceases to be a citizen of the United States qualified to engage in the coastwise trade within the meaning of the Shipping Act, 1916, as amended. In the case of the resignation or removal of Operator, Owner may, with the consent of the Owner Participant and Charterer, appoint a successor Operator (acceptable to Charterer and Owner Participant as evidenced by their consent thereto) by an instrument signed by Owner. Operator may resign as Operator hereunder and under the Time Charter (i) immediately if California and Hawaiian Sugar Company shall at any time cease to be Charterer under the Time Charter or (ii) at any time after the second anniversary of the commencement of the Operating Period upon 60 days' prior written notice to Owner Charterer and Owner Participant. Any successor Operator shall execute and deliver to the predecessor Operator, Owner and Charterer an instrument accepting such appointment, agreeing to the terms and conditions of this Charter, the Time Charter and the Time Charter Assignment and assuming all responsibilities, obligations and liabilities as Operator hereunder and under the Time Charter and Time Charter Assignment, and thereupon such successor Operator, without further act, shall become vested with all the estates, properties, rights, powers and duties of the predecessor Operator hereunder and thereunder with like effect as if originally named as Operator herein and therein; but nevertheless upon the written request of such successor Operator, such predecessor Operator shall execute and deliver an instrument transferring to such successor Operator all the estates, properties, rights and powers of such predecessor Operator, and such predecessor Operator shall duly assign, transfer, deliver and pay over to such successor Operator any property or moneys then held by such predecessor Operator hereunder or under the Time Charter, including, but not limited to, all books, records and documents pertaining to its activities hereunder and under the Time Charter. Upon compliance with the foregoing the predecessor Operator shall be released from any obligations

under this Charter, the Time Charter and Time Charter Assignment so assumed by the successor Operator. Any successor Operator shall be a reputable vessel operator which is qualified and prepared to make the representations and warranties contained in Article 16 of this Charter and which is a citizen of the United States qualified to engage in the coastwise trade within the meaning of the Shipping Act, 1916, as amended.

(c) Any corporation into which the Operator may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Operator shall be a party, or any corporation to which substantially all the business of Operator may be transferred, shall, subject to the terms of paragraph (b) of this Article 22, be Operator under this Agreement without further act.

### **ARTICLE 23**

#### **Further Assurances**

Operator hereby agrees promptly and duly to execute and deliver to Owner such further documents and assurances and to take such further action as Owner may from time to time reasonably request in order to more effectively carry out the intent and purpose of this Charter and to establish and protect the rights and remedies created or intended to be created in favor of Owner hereunder.

### **ARTICLE 24**

#### **Successor Trustees and Rights of Trustee as Owner**

Operator agrees that in the case of the appointment of any successor trustee pursuant to the terms of the Trust Agreement, such successor trustee shall, upon written notice by such successor trustee to Operator, succeed to all the rights, powers and title of Owner hereunder and shall be deemed to be Owner and the owner of the Vessel for all purposes hereof, without the necessity of any consent or approval by Operator and without in any way altering the terms of this Charter or Operator's obligations hereunder. One such appointment and designation of a successor trustee shall not exhaust the right to appoint and designate further successor trustees pursuant to the Trust Agreement, but such right may be exercised repeatedly as long as this Charter shall be in effect. The trustee or any successor trustee from time to time serving as Owner hereunder may, but shall not be obligated to, appoint one or more attorneys-in-fact for such trustee or such successor trustee, as the case may be, to execute any and all notices, consents and approvals or other documents necessary or desirable to be executed in connection with this Charter or with the Vessel.

### **ARTICLE 25**

#### **Amendments and Miscellaneous**

(a) The terms of this Charter shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by Owner.

(b) This Charter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(c) All amounts and moneys referred to in this Charter shall be construed to mean money which at the time is lawful money of the United States of America.

(d) Article headings are for convenience only and shall not be construed as a part of this Charter.

(e) Each of the executed counterparts hereof shall be deemed to be an original hereof.

(f) Any provision of this Charter which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any

jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Operator hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

IN WITNESS WHEREOF, Owner and Operator have executed this Charter in several counterparts as of this 30th day of November, 1971.

Attest: *[Signature]*

BANKERS TRUST COMPANY,  
by *[Signature]*  
Authorized Officer

Attest: *[Signature]*

PYRAMID SUGAR TRANSPORT, INC.,  
by *[Signature]*  
Authorized Officer

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

On this 9 day of MAY, 1973, before me personally appeared L. E. VAN ETTEN, to me personally known, who, being by me duly sworn, deposes and says that he resides at LAKE HOPATCONG, N.J., that he is VICE PRESIDENT of BANKERS TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*[Signature]*  
Notary Public in and for the  
State of New York  
PHYLLIS BUCCHIERI  
Notary Public, State of New York  
No. 1264210  
Qualified in this County  
Certificate filed in New York County  
Commission Expires March 23, 1975

[NOTARIAL SEAL]

STATE OF LOUISIANA }  
PARISH OF ST. MARY } ss.:

On this 11<sup>th</sup> day of MAY, 1973, before me personally appeared DONALD C. SCAFIDI, to me personally known, who being by me duly sworn, says that he is PRESIDENT of Pyramid Sugar Transport, Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*[Signature]*  
Notary Public in and for the  
State of Louisiana

[NOTARIAL SEAL]

**EXHIBIT A**  
to  
**Bareboat Charter Party**

**STIPULATED LOSS VALUE SCHEDULE**

Basic Hire Payment Date	Percentage of Cost	Basic Hire Payment Date	Percentage of Cost
Deposit Date	100.0000	41	66.1987
1	100.7736	42	65.1505
2	101.2593	43	64.0985
3	101.6672	44	63.0162
4	101.9323	45	61.9313
5	102.1897	46	60.8160
6	102.3249	47	59.6965
7	102.4729	48	58.5565
8	102.4845	49	57.4181
9	102.4859	50	56.2568
10	102.3694	51	55.0932
11	102.2608	52	53.9107
12	96.9472	53	52.7280
13	96.6961	54	51.5238
14	96.3319	55	50.3150
15	95.9706	56	49.0891
16	95.5008	57	47.8609
17	95.0270	58	46.6129
18	94.5054	59	45.3577
19	93.9845	60	44.0875
20	88.3359	61	42.8127
21	87.7607	62	41.5199
22	87.1396	63	40.2172
23	86.5185	64	38.9025
24	85.8497	65	37.5812
25	85.1774	66	36.2443
26	84.4613	67	34.8951
27	83.7446	68	33.5360
28	77.9076	69	32.1677
29	77.1427	70	30.7857
30	76.3363	71	29.3882
31	75.5285	72	27.9833
32	74.6791	73	26.5663
33	73.8263	74	25.1378
34	72.9342	75	23.6902
35	72.0401	76	22.2380
36	71.1076	77	20.7705
37	70.1717	78	19.2939
38	69.1990	79	17.7945
39	68.2234	80	16.0350
40	67.2128		

**EXHIBIT B**  
to  
**Bareboat Charter Party**

**TERMINATION VALUE SCHEDULE**

Basic Hire Payment Date	Percentage of Cost	Basic Hire Payment Date	Percentage of Cost
Deposit Date	100.0000	41	59.7344
1	100.3304	42	58.5307
2	100.4707	43	57.3194
3	100.5555	44	56.0741
4	100.5403	45	54.8224
5	100.5161	46	53.5363
6	100.4054	47	52.2419
7	100.2987	48	50.9228
8	100.0966	49	49.6011
9	99.8847	50	48.2521
10	99.5896	51	46.8964
11	99.2964	52	45.5172
12	98.8370	53	44.1331
13	98.4427	54	42.7227
14	92.9685	55	41.3029
15	92.4942	56	39.8610
16	91.9401	57	38.4115
17	91.3801	58	36.9370
18	90.7701	59	35.4500
19	90.1587	60	33.9425
20	84.4176	61	32.4247
21	83.7475	62	30.8832
22	83.0293	63	29.3249
23	82.3089	64	27.7504
24	81.5384	65	26.1623
25	80.7618	66	24.5522
26	79.9390	67	22.9233
27	79.1131	68	21.2779
28	73.1643	69	19.6165
29	72.2849	70	17.9345
30	71.3613	71	16.2297
31	70.4335	72	14.5104
32	69.4612	73	12.7715
33	68.4825	74	11.0134
34	67.4617	75	9.2285
35	66.4357	76	7.4310
36	65.3682	77	5.6099
37	64.2940	78	3.7714
38	63.1798	79	1.9016
39	62.0593	80	0.0000
40	60.9003		