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MAY 31 1991 -10 35 AM

May 30, 1991

INTERSTATE COMMERCE COMMISSION

7/36  
FILED 1425

MAY 31 1991 -10 35 AM

INTERSTATE COMMERCE COMMISSION

16 JUN 10 1991  
- A

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Secretary:

1-151A007

Enclosed for recordation under the provisions of 49 USC 11303(a) are the original and five counterparts of a Charter Agreement dated as of May 15, 1991 and a Charter Supplement No. 1 dated May 31, 1990. These documents together constitute a primary document.

A general description of the vessels covered by the enclosed document is set forth in Exhibit A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Owner: Cargill Leasing Corporation  
15407 McGinty Road West  
Wayzata, MN 55391  
Attn: General Manager

Charterer: Conoco Inc.  
600 North Dairy Ashford  
P.O. Box 4793  
Houston, TX 77252  
Attn: Managing Counsel, Refining,  
Marketing, Supply &  
Transportation

A fee of ~~\$10~~<sup>\$30</sup> is enclosed. Please return the original and four copies of the enclosed document to Ross D. Taylor, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

A short summary of the enclosed primary document to appear in the Index follows:

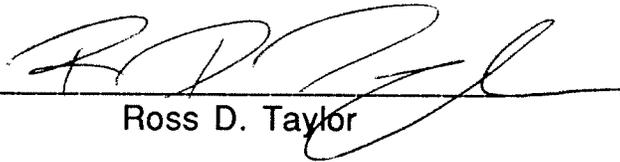
*(1) County of Cook - Ct. Reporter*

Charter Agreement and Charter Agreement Supplement  
No. 1 between Cargill Leasing Corporation, as Owner, 15407 McGinty  
Road West, Wayzata, MN 55391, and Conoco Inc., as Charterer, 600  
North Dairy Ashford, P.O. Box 4793, Houston, TX 77252, covering  
three oil barges and two hot oil barges.

Very truly yours,

CHAPMAN AND CUTLER

By

A handwritten signature in black ink, appearing to read "R.D. Taylor", is written over a horizontal line. The signature is fluid and cursive.

Ross D. Taylor

Enclosures

RDT:lam

**Interstate Commerce Commission**  
Washington, D.C. 20423

5/31/91

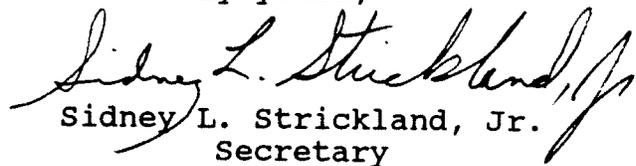
OFFICE OF THE SECRETARY

Ross D. Taylor  
Chapman & Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/31/91 at 10:30am, and assigned recordation number(s) W-36 & W-36-A W-37

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

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**CHARTER AGREEMENT**

71-36  
MAY 31 1991 - 10 35 AM

INTERSTATE COMMERCE COMMISSION

Dated as of May 15, 1991

Between

**CARGILL LEASING CORPORATION**

OWNER

and

**CONOCO INC.**

CHARTERER

---

All right, title and interest in and to this Charter Agreement and the Vessels of the Owner has been assigned to, and is subject to a security interest in favor of, CORESTATES BANK, N.A., under the Security Agreement-Trust Deed dated as of May 15, 1991. To the extent, if any, that this Charter Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Charter Agreement may be perfected through the transfer or possession of any counterpart other than the original counterpart, which shall be identified as the counterpart containing the receipt therefor executed by CORESTATES BANK, N.A., on the signature page thereof.

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Exhibit A	-	Description of Vessels
Exhibit B	-	Form of Charter Supplement
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Exhibit F	-	Schedule of Pricing Assumptions

## CHARTER AGREEMENT

THIS CHARTER AGREEMENT, dated as of May 15, 1991, between CARGILL LEASING CORPORATION, a Delaware corporation (the "*Owner*"), and CONOCO INC., a Delaware corporation (the "*Charterer*").

### R E C I T A L

The Owner intends to acquire two hot oil barges and three oil barges described in Exhibit A hereto, and pay, subject to the terms and conditions set forth in the Participation Agreement, 100% of the Acquisition Cost thereof as set forth in said Exhibit, on the date provided in the Participation Agreement and, upon the transfer of title of each Vessel to the Owner as provided in the Participation Agreement, the Charterer shall bareboat charter such Vessel from the Owner for the charter hire and on and subject to the terms and conditions herein set forth.

In consideration of the mutual covenants contained herein, the Owner and the Charterer covenant and agree as follows:

#### SECTION 1. INTERPRETATION OF THIS CHARTER AGREEMENT.

The capitalized terms used in this Charter Agreement shall have the respective meanings specified in Annex I attached hereto unless otherwise herein defined or the context hereof shall otherwise require.

#### SECTION 2. CHARTER.

The Charterer and the Owner agree that this Charter Agreement is, and is intended to be, a bareboat charter, that the Owner has title to and is the owner of the Vessels and that the relationship between the Owner and the Charterer pursuant hereto shall always be only that of owner and charterer. The Charterer does not hereby acquire any right, equity, title or interest in or to any Vessel, except the right to use the same under the terms hereof, subject to law and regulatory authority. The parties agree to treat this Charter Agreement as a bareboat charter under which the Owner is the owner of the Vessels for all purposes -- tax, accounting, regulatory and otherwise.

#### SECTION 3. AGREEMENT FOR CHARTER OF VESSELS.

Subject to satisfaction of all terms and conditions of this Charter Agreement, including, without limitation, the terms and conditions of the Participation Agreement, the Owner commits to charter to the Charterer and the Charterer commits to charter from the Owner, the Vessels as described in Exhibit A hereto. The Owner and the Charterer shall evidence their agreement to charter a Vessel under this Charter Agreement by executing (or causing to be executed) and, promptly upon execution, delivering to each other a Charter

Supplement covering such Vessel. Unless otherwise agreed in writing by the Owner and the Charterer, all Vessels shall be placed in service (as such term is used for Federal tax purposes) and subject to a Charter Supplement on or prior to May 31, 1991.

#### SECTION 4. ORDERING AND DELIVERY.

The Owner shall not be liable to the Charterer for any failure or delay in obtaining any Vessel or making delivery thereof. Upon acceptance for charter of a Vessel by the Charterer following the delivery of such Vessel to the Charterer and following receipt by the Owner of the invoice from the Charterer for such Vessel, together with an appropriate Charter Supplement with respect to such Vessel duly executed by the Charterer, the Owner shall review such invoice and such Charter Supplement and, subject to the conditions specified in the Participation Agreement, if they and the Vessel specified therein are acceptable to the Owner, pay, or cause to be paid, the invoice for such Vessel. AS BETWEEN THE OWNER AND THE CHARTERER, ACCEPTANCE FOR CHARTER OF ANY VESSEL UPON THE EXECUTION OF A CHARTER SUPPLEMENT THEREFOR SHALL CONSTITUTE THE CHARTERER'S ACKNOWLEDGMENT AND AGREEMENT THAT THE CHARTERER HAS FULLY INSPECTED SUCH VESSEL, THAT THE VESSEL IS IN GOOD ORDER AND CONDITION AND IS OF THE MANUFACTURE, DESIGN, SPECIFICATIONS AND CAPACITY SELECTED BY THE CHARTERER, THAT THE CHARTERER IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSE AND THAT THE OWNER IS NOT A MANUFACTURER OR ENGAGED IN THE SALE OR DISTRIBUTION OF VESSELS, AND HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATION, WARRANTY OR COVENANT WITH RESPECT TO MERCHANTABILITY, SEAWORTHINESS, CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE VESSEL IN ANY RESPECT OR IN CONNECTION WITH, OR FOR THE PURPOSES OR USES OF THE CHARTERER, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO.

#### SECTION 5. BASIC TERM; RENEWAL TERM.

(a) The Charterer shall charter each Vessel for the Term thereof. Following the Basic Term of the Vessels, the charter hereunder with respect to all but not less than all of the Vessels of any Class then subject to this Charter Agreement, if no Default or Event of Default has occurred and is continuing, may be extended for the Renewal Term, as hereinafter described, upon at least 180 days' irrevocable prior written notice from the Charterer to the Owner. All of the provisions of this Charter Agreement shall be applicable during the Renewal Term except that (a) the term of the Renewal Term shall be a period not in excess of four (4) years that is mutually agreed upon by the Charterer and the Owner; (b) the Renewal Term shall commence at the end of the Basic Term; (c) Renewal Charter Hire shall be payable in an amount equal to the fair market rental value of the Vessels of such Class as determined in accordance with Section 18(c) hereof for the Renewal Term, and (d) the Stipulated Casualty Value and Termination Value as of the commencement of the

Renewal Term shall be as agreed between the Owner and the Charterer with such values to be based on the then current fair market sales value of the Vessels of such Class.

(b) After the expiration or earlier termination of this Charter Agreement, or any Charter Supplement, or the Basic Term or the Renewal Term for any Vessel, and upon full performance by the Charterer of all of its obligations hereunder, and payment by the Charterer of all amounts then due and owing hereunder, the obligations of the Charterer under this Charter Agreement with respect to such Vessel shall terminate except for such obligations or events which occur or conditions which exist at or prior to, such expiration or early termination, and such obligations which by the express terms of this Charter Agreement survive the termination hereof or the Basic Term or the Renewal Term of such Vessel.

#### SECTION 6. CHARTER HIRE AND OTHER PAYMENTS; CHARTER HIRE ADJUSTMENT.

(a) The Charterer shall pay Basic Charter Hire for each Vessel during the Basic Term therefor quarterly in arrears commencing on the Charter Hire Payment Date first following the Basic Term Commencement Date for such Vessel and on each Charter Hire Payment Date thereafter in the amount specified in Exhibit C hereto. Anything in this Charter Agreement or the Participation Agreement to the contrary notwithstanding, each installment of Basic Charter Hire for the Vessels payable hereunder shall be, under any circumstances and in any event, in an amount at least sufficient to pay in full, as of the date of payment thereof, any payments to be made on account of the principal of, and interest on, the Notes then outstanding (other than in the event of acceleration of the principal of the Notes) and each payment of Stipulated Casualty Value, Termination Value and Option Purchase Price shall be in an amount at least sufficient to pay in full all amounts of principal and interest due to the holders of the Notes on such date.

(b) The Charterer also agrees to pay to the Owner, or to whomsoever shall be entitled thereto, any and all Supplemental Payments promptly as the same shall become due and owing. The Charterer shall also pay to the Owner, on demand, as Supplemental Payments, to the extent permitted by applicable law, interest at the Overdue Rate on any part of any installment of Charter Hire not paid when due for any period for which the same shall be overdue. The expiration or other termination of the Charterer's obligation to pay Basic Charter Hire hereunder shall not limit or modify the obligations of the Charterer with respect to Supplemental Payments.

(c) The Charterer shall pay (i) all installments of Basic Charter Hire and Renewal Charter Hire and, under the circumstances described under Section 9.11 of the Participation Agreement, the Advance Amount to be made to the Owner in funds which are immediately available on each Charter Hire Payment Date by wire transfer, and (ii) to whomever shall be entitled thereto under this Charter Agreement and the Participation Agreement all Supplemental Payments. The Owner or its assigns pursuant to Section 17 hereof shall give the Charterer written notice of the address and account number to which all payments of Charter Hire and other payments to be made hereunder shall be directed, and all such

payments shall be deemed to have been received by the Owner or any such assignee, as the case may be, when received at such address or account.

(d) The factors for Basic Charter Hire, Termination Value and Stipulated Casualty Value set forth in Exhibits C, D and E, respectively, and the factor used in calculating the Option Purchase Price, have been calculated on the assumptions (the "Pricing Assumptions") set forth in Exhibit F hereto. The Charterer and the Owner agree that, if any of the Pricing Assumptions prove to be incorrect, then the factors for Basic Charter Hire, Stipulated Casualty Value, Termination Value and Option Purchase Price hereunder shall be adjusted (upward or downward). Any such adjustments, upward or downward, as the case may be, shall be made by the Owner on the basis of the same methodology and assumptions originally used by the Owner in the determination of Basic Charter Hire, Termination Value, Stipulated Casualty Value and Option Purchase Price and in such a manner as will result, in the Owner's reasonable judgement, in maintaining for the Owner the same Net Economic Return that would have been realized by the Owner over the entire Interim Term and Basic Term had no changes in Basic Charter Hire, Stipulated Casualty Value, Termination Value or Option Purchase Price been made pursuant to this Section 6, and, to the extent consistent therewith, minimizing the net present value (computed utilizing a discount rate equal to the interest rate specified in the Notes compounded quarterly) of the Basic Charter Hire, with appropriate adjustments to Stipulated Casualty Value, Termination Value and Option Purchase Price based upon the adjusted schedule of Basic Charter Hire.

On or before the Basic Term Commencement Date with respect to any adjustment set forth in the first paragraph of this Section 6(d), the Owner and the Charterer shall execute and deliver an amendment to this Charter reflecting any revisions to the factors set forth in Exhibits C, D and E and the factor used in calculating the Option Purchase Price and the adjustments shall be effective as of said Basic Term Commencement Date or Charter Hire Payment Date, as the case may be. The Owner shall furnish the Charterer, each Noteholder and the Security Trustee with revised Exhibits C, D and E and the revised factor used to calculate the Option Purchase Price setting forth any adjustments pursuant to this Section 6 at least ten (10) days prior to such revised exhibits and factor becoming effective. If Charterer requests, at Charterer's expense, such adjusted exhibits and factor shall be verified by an independent third party mutually agreeable to Owner and Charterer. Notwithstanding this Section 6(d), each installment of Basic Charter Hire and, under the circumstances described in Section 9.11 of the Participation Agreement, the Advance Amount shall be in an amount at least sufficient to pay on each Charter Hire Payment Date the principal of and interest on the Notes due on each Charter Hire Payment Date and the Stipulated Casualty Value, Termination Value and Option Purchase Price, as of the due date thereof, shall not be reduced below amounts necessary to make full payments when due of all amounts due to the holder or holders of the Notes under the Security Agreement as of such date.

(e) The Charter Hire which the Charterer is or shall be obligated to pay shall be paid without notice or demand (except in the case of Supplemental Payments), and shall not be affected by any circumstances (except payment), including, without limitation:

(i) any setoff, counterclaim, recoupment, abatement, suspension, deduction or defense or other right, power, privilege, remedy or immunity which the Charterer may have against or in respect of the Owner, the holder of any Note, the Security Trustee, any Manufacturer or anyone else for any reason whatsoever (including, without limitation, any interference with the Charterer's use of the Vessels by any person);

(ii) any defect in the title, seaworthiness, merchantability, compliance with specifications, condition, design, operation or fitness for use of, or any damage or loss of possession or use or destruction of, any or all of the Vessels or any portion thereof, from whatsoever cause, including, without limitation, confiscation, requisition or other taking by any governmental authority, any person acting under governmental authority, any Liens with respect to any of the Vessels or otherwise or the ineligibility of any Vessel for any particular trade;

(iii) any failure to commence, or interruption or cessation in, the use, possession or operation by the Charterer of any or all of the Vessels or any portion thereof by reason of the action of any public or private person, whether by commandeering, confiscation, by paramount title or for any other reason whatsoever;

(iv) to the extent permitted by applicable law, any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or other proceeding by or against the Charterer or affecting any of its property;

(v) the prohibition of or other restriction against the Charterer's use of all or any of the Vessels, the interference with such use by any person or the invalidity, illegality or unenforceability of any of the Operative Agreements or any Notes, or any other infirmity hereunder or thereunder, or any lack of power or authority of the Owner or any other person to enter into, or perform in accordance with the terms of, any of the Operative Agreements or any Notes;

(vi) any ineligibility of any Vessel for documentation under the United States flag by reason of any law or regulation of the United States or otherwise; or

(vii) any other circumstances or happenings whatsoever, whether or not similar to any of the foregoing;

it being the intention, understanding and agreement of the parties hereto, and the basis of the bargain, that the obligations of the Charterer hereunder shall be absolute and unconditional, shall be separate and independent covenants and agreements and shall continue unaffected unless and until the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Charter Agreement. The Charterer hereby waives, to the extent permitted by applicable law, any and all rights, powers, privileges, remedies or immunities against or in respect of the Owner which it may now have or which at any time thereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Charter Agreement or any part or to the abatement, suspension, deferment,

diminution or reduction of Charter Hire, except in accordance with the express terms hereof. Each Charter Hire payment made by the Charterer shall be final and, absent error, the Charterer does not and shall not have any right or power, and will not seek, to recover all or any part of such payment for any reason whatsoever. Except as otherwise provided herein, any payment required to be made by the Charterer under this Section 6 shall be without prejudice to and shall not be construed as a waiver of, any rights or causes of action which the Charterer may have against the Cargill Leasing Corporation, as owner, or its successors and assigns pursuant to Section 3.5 of the Participation Agreement.

## SECTION 7. USE AND COMPLIANCE WITH LAWS.

(a) The Charterer may use the Vessels in the regular course of its business; *provided* that, such use shall be confined to such inland waters of the continental United States of America as allowed by the applicable coastwise trading laws and such use shall in no way impair or diminish the condition, value, utility or remaining useful life of the Vessels other than in such ways as would have occurred had the Vessels been used solely for the transportation of crude oil or petroleum products. The Charterer shall not abandon the Vessels at any place or port. The Charterer shall, at its expense, duly execute, deliver, file and record all such documents, statements, filings and registrations as may, at any time, be required by applicable law, and take such further action as the Owner may from time to time reasonably request, in order to establish, perfect and maintain the Owner's title to and interest in the Vessels as against the Charterer or any third party in any applicable jurisdiction and to create for the benefit of the Security Trustee a first priority security interest in each Vessel chartered hereunder.

(b) The Charterer agrees to comply with all governmental laws, regulations, requirements and rules (including, but not limited to, the rules of the United States Coast Guard, the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 *et seq.*), CERCLA (42 U.S.C. §9601-9675), Resource Conservation and Recovery Act (42 U.S.C. §6401 *et seq.*), the Oil Pollution Act of 1990 (Public Law 101-380) (104 Stat. 484) or any other law, statute, regulation or ordinance (federal, state or local) pertaining to the public health, safety or the environment or to releases or discharges of crude oil or petroleum derivatives or by-products or other environmentally toxic materials) with respect to the use, maintenance and operation of each Vessel subject to this Charter and shall have on board such Vessel, if required, valid certificates showing compliance therewith. In case any equipment or appliance on any such Vessel shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Vessel in order to comply with such laws, regulations, requirements and rules, the Charterer agrees to make such changes, additions and replacements, at its sole expense. The Charterer will not permit the Vessels to engage in any unlawful trade or violate any law or carry any unlawful cargo that will expose the Vessels to penalty, forfeiture or act or otherwise operate the Vessels in a manner which can or may cause the Owner to become subject to Part III of the Interstate Commerce Act (49 U.S.C. 10541 *et seq.*). The Charterer shall use the Vessels only in the manner for which they were designed and intended including the transportation of crude oil and petroleum products and Charterer shall not use any Vessel and shall not permit any Vessel to be used to transport hazardous or toxic substances or materials. The

Charterer shall have the exclusive right to possession and control of each Vessel and shall navigate and operate each Vessel and shall man (with a crew which has successfully completed all of the training, certification and licensing required by applicable law or customary industry practices), victual, supply and fuel each Vessel at its expense and by its own procurement throughout the Term. Subject to the provisions of this Charter and the prior written consent of Owner, which consent shall not be unreasonably withheld, the Charterer, at its expense, may name the Vessel and change its name from time to time, paint the Vessel with its colors and display its name thereon. The Charterer will not document any Vessel under the laws of any jurisdiction without the prior written consent of the Owner and the Security Trustee. The Charterer shall use every reasonable precaution to prevent loss or damage to the Vessels and to prevent injury to third persons or property of third persons.

(c) The Charterer and the Owner shall cooperate fully with all insurance companies providing insurance under Section 9 hereof in the investigation and defense of any claims and suits arising from the operation of the Vessels. The Charterer shall comply and shall cause all persons operating the Vessels to comply with the terms of any insurance policy required by the terms of Section 9.

(d) The Owner or any authorized representative of the Owner may, at Owner's expense and at such reasonable times as the Owner may request, during reasonable business hours from time to time, inspect the Vessels, registration certificates, maintenance procedures and manuals and related documents, if any, covering the Vessels wherever the same may be located. At the time of closing, all books and records relating to the Vessels are maintained at 3519 Patrick Street, Lake Charles, Louisiana 70605, and the Charterer shall promptly notify the Owner and the Security Trustee of any change in location of such books and records. If as a result of any such inspection by Owner, the Owner, or its representative or agent, has a substantial basis on which to believe that drydocking would disclose a condition that requires repair, then Owner may give Charterer a written request for such drydocking. The Vessels shall be drydocked for inspection within thirty (30) days of Owner's written request unless within ten (10) days of Owner's request Charterer objects to the drydocking as unnecessary. If Charterer so objects, an independent surveyor satisfactory to Charterer and Owner shall be appointed within ten (10) days of Charterer's objection. Charterer shall make the Vessels available for inspection within fifteen (15) days of the independent surveyor's appointment. If the surveyor determines that drydocking would disclose a condition that needs repair (i) Charterer shall pay all of the surveyor's costs (otherwise, all of the surveyor's costs shall be borne by Owner), and (ii) Charterer shall drydock the Vessels for inspection within thirty (30) days of the surveyor's decision. If Charterer does not object to Owner's request or the surveyor recommends drydocking, Charterer will provide Owner with five (5) business days notice of the time and place of such drydocking.

(e) The Charterer shall not, without the prior written consent of the Owner, which consent shall not be unreasonably withheld, subcharter any Vessel, *provided, however*, that (i) subject to receipt of any necessary regulatory approvals and (ii) so long as no Default or Event of Default shall have occurred and be continuing, the Charterer may without such

prior written consent of the Owner subcharter a Vessel for a term (including any possible renewals at the option of the subcharterer) not to exceed the lesser of (i) three years or (ii) the expiration of the Term, if Charterer gives written notice to Owner within 45 days after such subchartering. All subcharters relating to the Vessels entered into by the Charterer shall (A) be expressly subject and subordinate to the charter under this Charter Agreement and the rights and remedies of the Security Trustee, (B) contain use and maintenance provisions no less stringent than the use and maintenance provisions contained in Section 7 and Section 8 hereof, and (C) prohibit (i) modifications or alterations to the Vessels by the subcharterer and (ii) subchartering and assigning by the subcharterer. Charterer shall inspect each subchartered Vessel on an annual basis to determine compliance with the use and maintenance provisions of this Charter. The Charterer shall remain primarily liable hereunder and the Guarantor shall remain primarily liable under the Guaranty Agreement for the performance of all of the terms of this Charter to the same extent as if such subcharter had not occurred.

(f) The Charterer shall not, without the prior written consent of the Owner, which consent shall not be unreasonably withheld, assign or transfer any right or interest herein or in any Vessel, *provided, however*, that (i) subject to receipt of any necessary regulatory approvals and (ii) so long as no Default or Event of Default shall have occurred and be continuing, the Charterer may without such prior written consent of the Owner assign or transfer its rights and interest in and to the Vessels to (i) any Affiliate of the Company which participates in the filing of a consolidated federal income tax return with the Charterer or (ii) any entity which shall have become merged or consolidated with or which shall have acquired all or substantially all of the assets of the Charterer, in each such case, if Charterer gives written notice within 45 days after such assignment or transfer. Charterer shall inspect each assigned Vessel on an annual basis to determine compliance with the use and maintenance provisions of this Charter. The Charterer shall remain primarily liable hereunder and the Guarantor shall remain primarily liable under the Guaranty Agreement for the performance of all of the terms of this Charter to the same extent as if such assignment or transfer had not occurred.

#### SECTION 8. MAINTENANCE AND REPAIR OF VESSELS.

(a) The Charterer shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Vessels during the charter thereof. The Charterer shall at all times, at its own expense, maintain and preserve each Vessel in accordance with good commercial maintenance practices for Vessels of the same type and service so that such Vessel shall be (i) tight, staunch, strong and well and sufficiently tackled, appareled, furnished, equipped and in every respect seaworthy and suitable for their intended purpose, (ii) in as good repair and condition as when purchased from the applicable Manufacturer, ordinary wear and tear excepted, (iii) in compliance with all laws, regulations, requirements (including, without limitation, all insurance requirements) or rules, (iv) in compliance with all maintenance and warranty procedures recommended by the applicable Manufacturer, (v) in a condition suitable for its original intended use and (vi) at a standard of maintenance not less than the standard of maintenance performed in similar vessels owned or chartered by it. Charterer shall not operate the Vessels with

broken or missing parts or remove parts which will diminish the value, life or intended use of the Vessels. The Charterer hereby waives any right now or hereafter conferred by law to make repairs on Vessels at the expense of the Owner.

(b) (i) In case any Vessel (or any equipment, part or appliance therein) is required to be altered, added to, replaced or modified in order to comply with any laws, regulations, requirements or rules ("*Required Alterations*"), the Charterer shall promptly make such Required Alterations at its own expense. Any such Required Alterations shall immediately be and become the property of the Owner and subject to the terms of this Charter Agreement.

(ii) Any parts installed or replacements made by the Charterer upon any Vessel pursuant to its obligation to maintain and keep the Vessel in good running order, seaworthiness, operating condition and repair under this Section 8 ("*Replacement*") shall be considered accessions to such Vessel and title thereto shall be immediately vested in the Owner.

(iii) The Charterer may, without the prior written consent of the Owner, affix or install any accessory, equipment or device on any Vessel or make any improvement or addition thereto other than a Required Alteration or Replacement ("*Improvement*"); *provided that*, in the case of any such Improvement (1) the value, utility or useful life of such Vessel is not reduced thereby, (2) such Improvement will not cause such Vessel to become limited use property within the meaning of Revenue Procedure 76-30, or materially alter or reduce its general usefulness or its originally intended function and (3) such Improvement satisfies the conditions of Revenue Procedure 79-48. In the case of any readily removable Improvement, such Improvement shall be readily removable without causing material damage to or diminishing the seaworthiness of the Vessel or impairing the value, utility or condition which such Vessel would have had if such Improvement had not been so affixed or installed. Title to any non-readily removable Improvement shall vest in the Owner. Subject to the provisions of Section 8(b)(iv) hereof, title to any such readily removable Improvement shall remain with the Charterer and such Improvement may be removed at any time by the Charterer prior to the termination of the Term of any Vessel.

(iv) Upon written request of Owner at least 90 but not more than 120 days prior to the termination of the Term of any Vessel, the Charterer shall notify the Owner of all readily removable Improvements then affixed or installed on the Vessel. The Owner shall have the right, at its option exercisable upon written notice given to the Charterer not more than 90 days and not less than 30 days prior to the expiration or termination of the Term with respect to a Vessel, to purchase any such readily removable Improvement for a cash price equal to the fair market sales value thereof (determined in accordance with Section 18 hereof). If the Owner does not exercise such option, provided no Default or Event of Default shall have occurred and be continuing, the Charterer may remove such Improvement at its own expense without causing material damage to or diminishing the seaworthiness of such Vessel prior to

the return of such Vessel to the Owner hereunder. Title to any readily removable Improvement not removed by the Charterer prior the the termination of the Term of any Vessel shall immediately become the property of the Owner.

(v) Except as required or permitted by the provisions of this Section 8(b), the Charterer shall not modify a Vessel without the prior written authority and approval of the Owner.

(c) Until an Event of Default has occurred and is continuing, any payments made by any vendor or manufacturer pursuant to any vendor or manufacturer's warranty for any Vessel shall be payable to the Charterer only to the extent required to pay for, or reimburse payment for repairs. Such payment is to be used exclusively to repair or replace damaged components in accordance with this Section 8.

## SECTION 9. INSURANCE.

(a) Charterer will cause to be carried and maintained the following insurance (including without limitation, insurance against hull and machinery and usual marine risks and protection and indemnity risks and against such other risks as are insured against by Charterer with respect to barges owned or leased by Charterer), at its sole expense, with respect to each Vessel: (i) physical damage insurance insuring against physical loss or damage to each Vessel, in an amount not less than the Stipulated Casualty Value of each Vessel, and (ii) insurance against liability for bodily injury, death and property damage and other customary protections, indemnity risks (including, but not limited to, pollution, spillage and leakage) resulting from the use, operation, ownership and possession of each Vessel, in each such case, in amounts not less than and against such risks so as to be no less protective than the insurance, if any, maintained by the Charterer with respect to similar vessels owned or leased by Charterer and, in the case of the insurance required to be maintained pursuant to clause (ii) above, according coverage of not less than \$50,000,000 per occurrence or in the case of environmental liability of any kind, \$500,000,000 per occurrence, provided such coverage is available at commercially reasonable rates. Should environmental liability coverage of \$500,000,000 per occurrence not be available at commercially reasonable rates, Charterer shall promptly notify Owner and Charterer and Owner shall thereafter confer in good faith to discuss and determine the level of appropriate coverage based on insurance market conditions then prevailing and limits of insurance then being carried by prudent and reputable owners and operators of vessels of similar size and type engaged in similar trade or service. In the event Charterer and Owner cannot agree on the level of appropriate coverage within 45 days of Charterer's notice to Owner, this Charter shall be terminated in accordance with Section 10(d) hereof. All such insurance shall be with reputable insurance companies of recognized national standing. No such insurance shall be subject to a defense based on any co-insurance clause. Notwithstanding the foregoing, the Charterer may self-insure against such risks so long as the long term corporate bond obligations of both the Charterer and the Guarantor shall be rated "A" or its equivalent by either Standard & Poor's Corporation or Moody's Investors Service, Inc. The Owner, the Security Trustee and each Noteholder shall be named insureds as their interests may appear and, with respect to physical damage coverage on the Vessels, Security Trustee,

for so long as any of the Notes shall be outstanding, and thereafter the Owner, shall be named sole loss payee, on all insurance policies required under this Section. All such policies shall provide for at least thirty (30) days' prior written notice to the Owner and the Security Trustee of any cancellation or material alteration of such policies. The Charterer shall furnish the Owner and the Security Trustee certificates or other evidence satisfactory to the Owner and the Security Trustee of compliance by the Charterer with the provisions hereof. The Charterer's obligation to maintain insurance with respect to any Vessel shall commence on the actual day of delivery of the Vessel and shall run until the earlier to occur of (x) the date on which the Vessel is sold, or (y) the expiration of the term of the charter of the Vessel.

(b) All policies of insurance shall provide that there shall be no recourse against the Owner, the Security Trustee or any Noteholder for premiums or calls; shall be considered primary to any other policy in effect for the Owner, the Security Trustee or any Noteholder; shall require no participation or contribution from such other policy in the event of a loss; and shall insure the interests of the Owner, the Security Trustee and each Noteholder regardless of any breach of or violations by the Charterer of any warranties, declarations or conditions contained in such policies.

(c) The Charterer will not make adjustments with insurers providing such insurance except with the Owner's and the Security Trustee's written approval. The proceeds of such insurance shall be payable to the Security Trustee or, in the event that the Lien of the Security Agreement has been discharged, the Owner provided that the Security Trustee or the Owner, as the case may be, shall, so long as no Event of Default has occurred or is continuing, remit all such insurance proceeds to Charterer at such time as Charterer either (i) provides Owner evidence that the damage has been repaired and any Vessel has been restored to good working order and condition or (ii) has paid to Owner or Security Trustee, as the case may be, the amounts otherwise due on any such loss pursuant to Section 11 hereof. In the case of all insurance payments from policies maintained by the Charterer received as the result of an Event of Loss (as defined in Section 11) with respect to a Vessel, so much of such payments as shall not exceed the sum of the Stipulated Casualty Value required to be paid by the Charterer pursuant to Section 11 hereof and any other Charter Hire then due and owing by the Charterer, hereunder shall be applied, first, in reduction of the Charterer's obligation to pay such other Charter Hire, if any, then due and owing, and second, in reduction of the Charterer's obligation to pay such Stipulated Casualty Value if not already paid by the Charterer, or, if already paid by the Charterer and provided no Event of Default shall have occurred and be continuing, to reimburse the Charterer for its payment of the Stipulated Casualty Value. Any excess shall be paid to Owner.

(d) The Charterer will not do any act, nor suffer any act to be done, whereby any insurance required hereunder shall or may be suspended, impaired or defeated, and will not suffer the Vessels to carry any cargo not permitted, or the Vessels to be operated in any geographical area where they would not be covered, under the insurance policies in effect without first covering the Vessels with insurance reasonably satisfactory in all respects, including the amount thereof, to the Owner and the Security Trustee.

(e) The Charterer will give prompt notice to Owner of all casualties or other insured loss or damage to any of the Vessels and of all damage or injury to cargo, property, persons or other third parties in excess of deductible amounts and the Charterer will concurrently send copies of all such notices to the Owner and the Security Trustee.

(f) Nothing in this Section 9 shall limit or prohibit the Owner, the Security Trustee, any Noteholder or the Charterer from obtaining insurance for its own account and any proceeds payable thereunder shall be payable as provided in the insurance policy relating thereto, *provided* that no such insurance may be obtained which would limit or otherwise adversely affect the coverage of any insurance required to be obtained or maintained pursuant to this Section 9, and no such insurance maintained by the Charterer shall limit the ability of the Owner, the Security Trustee or any Noteholder to insure any Vessel, at its option, in excess of amounts required to be maintained under this Section 9.

(g) It is understood and agreed that any payments made by the Charterer or its insurance carrier for loss or damage of any kind whatsoever to the Vessels are not made as accelerated Charter Hire payments or adjustments of Charter Hire, but are made solely as indemnity to the Owner for loss or damage to the Vessels.

#### SECTION 10. EARLY TERMINATION.

(a) Provided no Default or Event of Default shall have occurred and be continuing, as to all but not less than all of the Vessels then subject to this Charter, the Charterer may terminate this Charter on any Charter Hire Payment Date (the "*Termination Date*"), *provided* that in the Charterer's good faith judgment, as evidenced by an officer's certificate in form and substance reasonably satisfactory to Owner, the Vessels shall have become obsolete, surplus or uneconomical to the Charterer's business. The Charterer shall deliver written notice to the Owner (with a copy to the Security Trustee) not less than one hundred and thirty-five (135) days prior to any such Termination Date, which shall be the Charter Hire Payment Date so designated in the notice. In such notice, the Charterer shall (1) certify that the Vessels have become economically obsolete or no longer useful in Charterer's business and (2) set forth the Termination Date. After delivery of such notice, the Charterer, as non-exclusive agent for the Owner, shall solicit bids for the sale of such Vessels to a person unrelated to, and not acting on behalf of, the Charterer. The Owner may obtain bids, but shall be under no duty to solicit bids, inquire into the efforts of the Charterer to obtain bids or otherwise take any action in connection with arranging such sale. The Owner shall execute and transmit to the Charterer all papers needed to effectuate the sale to the highest bidder. On the Termination Date, the Charterer shall cause the proceeds of sale of such Vessels to be transmitted to the Owner against delivery by the Owner of a quit-claim deed or bill of sale transferring and assigning to the purchaser all right, title and interest of the Owner in and to such Vessels without recourse or warranty, express or implied, except for a warranty against liens or claims arising by, through or under the Owner. If the net proceeds of such sale, less any expenses of sale paid by the Owner, shall be less than the Termination Value for such Vessels, plus an amount equal to the Make-Whole Premium Amount, the Charterer shall pay to the Owner as a Supplemental Payment, on the Termination Date, in addition to the Basic Charter Hire then due on such date, an

amount equal to such deficiency. If the net proceeds of such sale, less any expenses of sale paid by the Owner, shall be more than the Termination Value for such Vessels, the Owner shall retain such proceeds and the Charterer shall pay to the Owner as a Supplemental Payment immediately therewith, in addition to the Basic Charter Hire then due, an amount equal to any Make-Whole Premium Amount. The obligations of the Charterer hereunder in respect to such Vessels, including, without limitation, its obligation to pay Basic Charter Hire, shall continue until the Charterer pays such amounts. If no sale shall have occurred by the Termination Date specified in the notice referred to above, the Charterer's notice given pursuant to this Section 10 shall be deemed to be withdrawn as of such date and this Charter shall continue in full force and effect in respect of such Vessels. The Charterer shall indemnify, defend and pay all of the Participants' and the Security Trustee's fees and expenses, out-of-pocket or otherwise, incurred in connection with or arising out of any such termination, whether or not such termination occurs, including, but not limited to, reasonable fees and expenses of outside and inside counsel and the reasonable time and expense incurred by employees of the Participants and the Security Trustee. It shall be an absolute condition precedent to Charterer's right to terminate the Charter that on the Termination Date the Owner shall have received funds of the type specified in this Section 10 in an amount sufficient to enable it to pay in full the aggregate unpaid principal amount of all Notes which may be outstanding on such date, together with accrued interest thereon to such date and the Make-Whole Premium Amount, if any, pursuant to Section 4.2(a) of the Security Agreement, plus all other sums then due and payable by the Charterer on such date under the Operative Agreements. If Charterer shall fail to pay all amounts due and owing under the provisions of this Section 10, this Charter shall continue in full force and effect and it shall be deemed that Charterer has rescinded its notice of termination.

(b) Notwithstanding the foregoing provisions of this Section 10, the Owner may within ninety (90) days after receipt of notice from the Charterer as provided above, and prior to the termination applicable to the Vessels, at its sole option, pay to the Security Trustee an amount, computed as of the date of such termination, equal to the Loan Value of such Vessels together with the Make-Whole Premium Amount and all other amounts due the Security Trustee and the holders of the Notes hereunder and under the Participation Agreement and the other Operative Agreements but, in the case of the Make-Whole Premium Amount, only to the extent that the Owner has received such Make-Whole Premium Amount from the Charterer as Supplemental Payments. Upon receipt of such undertaking, the Charterer shall cease its efforts to negotiate the sale of the Vessels as provided above. On the date that the Owner pays such amount as aforesaid, the Charterer shall deliver such Vessels to the Owner in accordance with Section 12 and pay Owner the Make-Whole Premium Amount as Supplemental Payments and the Basic Charter Hire and such other amounts due hereunder. The obligation of the Charterer to pay Basic Charter Hire in respect to such Vessel shall continue until the date on which such delivery takes place, but shall terminate thereafter. It shall be an absolute condition precedent to Charterer's right to terminate the Charter that on the Termination Date the Owner shall have received funds of the type specified in this Section 10(b) in an amount equal to the Make-Whole Premium Amount, if any, pursuant to Section 4.2(a) of the Security Agreement plus the Basic Charter Hire and all other sums then due and payable by the

Charterer on such date under the Operative Agreements. If Charterer shall fail to pay all amounts due and owing under the provisions of this Section 10(b), this Charter shall continue in full force and effect and it shall be deemed that Charterer has rescinded its notice of termination.

(c) In addition to the rights granted to the Charterer pursuant to Section 10(a) above, so long as no Default or Event of Default shall have occurred and be continuing, as to all but not less than all of the Vessels then subject to this Charter, the Charterer may terminate this Charter on August 28, 2006. On such date, as a condition to such termination, the Charterer shall pay to the Owner, in immediately available funds, the installment of Basic Charter Hire due on such date plus all other amounts then due and owing under the Operative Agreements plus an amount (the "Option Purchase Price") equal to the sum of (A) 53.05% of the Acquisition Cost of the Vessels plus (B) the Make-Whole Premium Amount, if any, required to be paid by the Owner pursuant to Section 4.2(a) of the Security Agreement and the Owner shall deliver to the Charterer a bill of sale transferring and assigning to the Charterer all right, title and interest of the Owner in and to the Vessels on an "as-is", "where-is" basis, without representation or warranty, express or implied, except as to the absence of Owner's Liens. The Charterer shall give the Owner and the Security Trustee not less than thirty 30 days irrevocable prior written notice of its intention to exercise its rights under this Section 10(c). Upon payment to the Owner by the Charterer of the amounts required under this Section 10(c) and payment of all other sums due hereunder, this Charter shall terminate, except as otherwise provided herein. It shall be an absolute condition precedent to Charterer's right to terminate the Charter that on August 28, 2006, the Owner shall have received funds of the type specified in this Section 10(c) in an amount sufficient to enable it to pay in full the aggregate unpaid principal amount of all Notes which may be outstanding on such date, together with accrued interest thereon to such date and Make-Whole Premium Amount, if any, pursuant to Section 4.2(a) of the Security Agreement, plus all other sums then due and payable by the Charterer on such date under the Operative Agreements. If Charterer shall fail to pay all amounts due and owing under and pursuant to this Section 10(c), this Charter shall continue in full force and effect and it shall be deemed that Charterer has rescinded its right of termination.

(d) In the event that the Owner and the Charterer cannot agree within 45 days on the level of appropriate coverage with respect to environmental liability insurance under the second sentence of Section 9(a) of this Charter Agreement, the Charterer shall immediately and without further notice or direction at the end of said 45 day period discontinue any use of the Vessels; *provided, however*, that if the required environmental liability insurance has not expired, the Charterer may continue to use the Vessels until the expiration of such coverage. Not more than 10 days after the aforesaid termination of the Charterer's ability to use the Vessels, the Charterer shall pay to the Owner, in immediately available funds, (i) the Stipulated Casualty Value (which shall at all times equal or exceed the Loan Value of the Vessels) of such Vessels as of the Charter Hire Payment Date immediately preceding such termination date, plus (ii) the daily equivalent of the Basic Charter Hire due on the Charter Hire Payment Date next succeeding the date of such termination for each day from and including the Charter Hire Payment Date immediately preceding such termination date to but

not including such termination date, plus (iii) all other amounts then due and owing under the Operative Agreements. Upon payment of the amounts set forth above this Charter shall terminate immediately and Owner will, to the extent permitted by law, convey the Vessels to Charterer on an "as-is", "where-is" basis, without representation or warranty, express or implied, except as to the absence of Owner's Liens.

#### SECTION 11. EVENTS OF LOSS.

(a) The Charterer shall assume and bear risk of loss and damage (including any governmental requisition, commandeering, condemnation or confiscation) to the Vessels and all component parts thereof from any and every cause whatsoever, whether or not covered by insurance. No loss or damage to any Vessel shall impair any obligation of the Charterer under this Charter Agreement, which shall continue in full force and effect except as hereinafter expressly provided. The Charterer shall repair or cause to be repaired all damage to such Vessel. In the event that any Vessel (a) shall, in the Charterer's good faith opinion, suffer an actual or constructive total loss, (b) shall suffer destruction or damage which, in the Charterer's good faith opinion, makes such Vessel irreparably damaged or uneconomical to repair, (c) shall become lost, stolen or otherwise disappears for a period in excess of thirty (30) days, (d) shall have title thereto taken or appropriated by any governmental authority under the power of eminent domain or otherwise, (e) shall be taken or requisitioned for use by (i) any governmental authority in the United States for a period extending beyond the earlier of (A) twelve (12) months after the date of such taking or requisition, or (B) the last day of the Basic Term or Renewal Term then in effect or (ii) any other governmental authority for a period extending beyond the earlier of (A) one hundred and eighty (180) days after the date of such taking or requisition or (B) the last day of the Basic Term or the Renewal Term then in effect or (f) shall be prohibited from being used in the normal course of coastwise trade of the United States for a continuous period in excess of one hundred and eighty (180) days as a result of any rule, regulations order or action by any governmental authority or agency of the United States (referred to herein as an "*Event of Loss*"), then the Charterer shall, within one hundred and eighty (180) days after it shall have made such determination, fully inform the Owner (with a copy to the Security Trustee) in regard thereto and shall pay the Owner (i) the Stipulated Casualty Value (which at all times shall equal or exceed the Loan Value of such Vessel) of such Vessel as of the next succeeding Charter Hire Payment Date; (ii) all other Charter Hire, late charges and other sums past due or becoming due to and including such next succeeding Charter Hire Payment Date in respect of such Vessel; and (iii) in the event a Vessel shall be wrecked or otherwise rendered inoperable, the Charterer shall pay all costs of removal of said Vessel. If such Event of Loss is due to governmental requisition, commandeering, condemnation or confiscation, the Charterer, instead of making the payment described in (i) above, shall pay the greater of the (a) Stipulated Casualty Value (which at all times shall equal or exceed the Loan Value of such Vessel) of such Vessel as of the next succeeding Charter Hire Payment Date or (b) any award received due to such requisition, commandeering, condemnation or confiscation of, the Vessel less any amounts that relate solely to the Charterer's possessory interest in the Vessel hereunder, plus in either case, any Charter Hire Payments due as of such date. Upon payment in full of such amounts, (i) the Charterer, as agent and for the account of the Owner, shall, as soon as practicable, dispose

of such Vessel or Vessels, (ii) the Owner by delivery of a quit-claim deed or bill of sale shall convey to the Charterer, or to, any third party designated by the Charterer, all of the Owner's right, title and interest in and to such Vessel or Vessels without recourse or warranty, express or implied, except for a warranty against Owner's Liens and (iii) the obligation of the Charterer to pay Charter Hire with respect to such Vessels shall terminate, but the Charterer shall continue to pay Charter Hire for all other Vessels.

(b) Provided no Default or Event of Default shall have occurred and be continuing, in lieu of payment of all or a portion of the Stipulated Casualty Value for any Vessel due and owing as provided in subsection (a) above, the Charterer may, on or prior to the date on which such Stipulated Casualty Value would have otherwise been due, convey or cause to be conveyed to the Owner, as replacement for any such Vessel with respect to which an Event of Loss has occurred, title to a Replacement Vessel free and clear of all liens other than Permitted Encumbrances and having a value and utility and estimated useful life at least equal to, and being in as good operating condition as, such Vessel with respect to which the Event of Loss occurred, assuming such Vessel was in the condition and repair required by the terms hereof immediately prior to the occurrence of such Event of Loss. Prior to or at the time of any such conveyance, the Charterer, at its own expense, will furnish the Owner, the Security Trustee and each Noteholder with the following documents which shall have been duly authorized, executed and delivered by the respective parties thereto and shall be in full force and effect on the date of such conveyance: (i) a bill of sale, in form and substance satisfactory to Owner and Security Trustee, with respect to such Replacement Vessel, (ii) a Charter Supplement substantially in the form of Exhibit B hereto covering such Replacement Vessel, (iii) a Security Agreement Supplement in accordance with Section 8 of the Security Agreement covering such Replacement Vessel subjecting such Replacement Vessel to the lien of the Security Agreement, (iv) such other amendments or supplements to the Operative Agreements as may be reasonably requested by the Owner or the Security Trustee, (v) such evidence of compliance with the provisions of Section 11 hereof as the Owner or the Security Trustee may reasonably request, (vi) such evidence of compliance with the insurance provisions of Section 9 hereof with respect to such Replacement Vessel as the Owner or the Security Trustee shall reasonably request, (vii) an opinion or opinions of counsel (which may be the Charterer's counsel) in form and substance satisfactory to the Owner and the Security Trustee with respect to such Replacement Vessel to the effect that upon such conveyance the Owner will acquire or has acquired good and marketable title to such Replacement Vessel free and clear of all liens other than Permitted Encumbrances and that such Replacement Vessel will be or have been leased hereunder and subjected to the lien of the Security Agreement to the same extent as the Vessel replaced thereby, and to the further effect of the form of opinion of counsel for the Charterer attached as Annex II to the Participation Agreement and (viii) an opinion of counsel (which shall be the Owner's counsel) to the effect that such Event of Loss and replacement will not have any adverse tax consequences for the Owner. Upon full compliance by the Charterer with the terms of this subsection (b), the Owner will transfer to the Charterer, without recourse or warranty (except as to the Owner Liens) and subject to a disclaimer satisfactory to the Owner and the Security Trustee of all liabilities, including tort and negligence with respect to such Vessel, all of the Owner's right, title and interest, if any, in and to such replaced Vessel with respect to which an Event of Loss occurred. For all purposes hereof, each such Replacement Vessel

shall, after such conveyance, be deemed part of the property leased hereunder and shall be deemed a "Vessel" as defined herein. No Event of Loss with respect to a Vessel under the circumstances contemplated by the terms of this Section shall result in any reduction in Basic Charter Hire.

## SECTION 12. REDELIVERY OF EQUIPMENT TO OWNER.

Upon termination of the Term of any Vessel hereunder, the Charterer shall, at its own expense, redeliver such Vessel to the Owner by delivering the same to the Owner at Lake Charles, Louisiana or at the Port of New Orleans, above Mile 107, on the Lower Mississippi River at a fleet suitable to both parties as Owner may select. Upon delivery, such Vessel shall (i) be free of all liens or encumbrances of any nature whatsoever, including, without limitation, maritime liens or prior mortgages, except Owner's Liens, (ii) be safely afloat, reasonably free of all accumulations and deposits of the commodities transferred in or on such Vessel and in as good operating order, repair and condition as when purchased from the applicable Manufacturer, ordinary wear and tear excepted, (iii) be capable of being operated by a third party and in accordance with all applicable laws, rules and regulations, (iv) be in a condition suitable for the purpose for which it was originally intended and (v) be otherwise in compliance with Section 7 and Section 8 hereof. The Charterer shall have the obligation for, and cooperate with the Owner in, and the Owner shall have the right of, effecting removal of any Vessel from the Charterer's property. If Charterer does not elect to renew this Charter Agreement or purchase the Vessels upon termination of the Term, Owner and its agents shall have the right to show the Vessels to all prospective buyers or charterers. Upon Owner's or its agent's request, Charterer shall inform Owner or its agent of the location of the Vessels and their proposed schedules so that a mutually acceptable time and location can be arranged to show the Vessels. Owner and its agent shall take all reasonable steps to avoid interfering with Charterer's use and quiet enjoyment of the Vessels during such showings.

Not later than twenty (20) Business Days after the redelivery of any Vessel pursuant to this Section 12, Owner or its agent may elect to have such Vessel surveyed and/or drydocked for further survey, and made gas-free to determine whether the Vessel is in the condition required by this Section 12. Owner and Charterer shall select the surveyor by mutual agreement. The surveyor shall determine and state the repairs or work necessary to place the Vessel in the condition required by this Section 12. So long as no Event of Default has occurred and is continuing, the costs associated with surveying and/or drydocking and making the Vessel gas-free shall be borne equally by Owner and Charterer if, according to the surveyor, the Vessel is in the condition required by this Section 12; if, however, the surveyor determines that the Vessel is not in the condition as required by this Section 12, then Charterer shall bear 75% of the costs associated with surveying and/or drydocking and making the Vessel gas-free and Owner shall bear 25% of such costs. If an Event of Default shall have occurred and be continuing, the costs associated with surveying and/or drydocking and making the Vessel gas-free shall be borne by the Charterer.

Charterer, at its sole expense, will fully correct and repair any condition disclosed by such survey to the extent necessary to cause such Vessel to comply with all of the terms

hereof. The Charter term of any Vessel shall be extended for any period necessary to survey and/or drydock the Vessels and make such repairs subject to this Charter. Charterer shall use its best efforts to ensure that such repairs shall be made as quickly as is practicable. Charter Hire shall continue unabated during any period past normal charter expiration required to survey and/or drydock the Vessels and to effect repairs.

Owner shall have the right to store each Vessel delivered to it at a site designated by the Owner for a period of no more than two (2) years after the expiration of the Term; *provided* that, subject to Section 14 hereof, Charterer may charge Owner (i) an amount equal to the reasonable time and expense incurred by its employees in procuring storage for Owner hereunder including, but not limited to, reasonable out-of-pocket expenses and (ii) an amount based on the then normal rates charged for storage of barges of the same or similar type as the Vessels, such additional storage to be at Owner's expense and risk. During any such storage period, Charterer shall, at the sole expense and risk of Owner, (i) maintain and insure any Vessel in accordance with the instructions of Owner and (ii) permit the Owner or any person designated by it to inspect such Vessel, subject to the provisions of Section 7 hereof.

#### SECTION 13. EVENTS OF DEFAULT.

The following events of default (each an "*Event of Default*") by the Charterer or the Guarantor, as the case may be, shall give rise to rights on the part of the Owner described in Section 14 hereof:

(a) Default in the payment of Basic Charter Hire, Renewal Charter Hire or any Supplemental Payments beyond the fifth day after such payment is due; or

(b) Default in the maintenance of the insurance coverage required by Section 9 hereof; or

(c) Charterer or the Guarantor shall fail to perform or observe any obligation or covenant of the Charterer or the Guarantor hereunder or under any other Operative Agreement to which it is a party, and such default shall continue for thirty (30) days after the earlier of (i) actual knowledge by a Responsible Officer of the Charterer or the Guarantor, as the case may be, or (ii) written notice to the Charterer or the Guarantor, as the case may be, *provided, however*, if such default is not capable of remedy within such thirty (30) day period and so long as Charterer or Guarantor, as the case may be, has been and is diligently taking whatever action is necessary to remedy such default, Charterer or Guarantor, as the case may be, shall have up to but not more than ninety (90) days to cure such default, notwithstanding any diligent undertaking to cure such default; or

(d) Any representation or warranty made by the Charterer or the Guarantor herein or in the Participation Agreement or in the Guaranty Agreement or in any statement or certificate furnished pursuant to or in connection with the execution and delivery of this Charter Agreement, the Participation Agreement, the Guaranty

Agreement, or any other Operative Agreement to which it is a party proves untrue in any material respect as of the date of making thereof; or

(e) The Guaranty Agreement is held by a court of competent jurisdiction to be unenforceable or invalid in whole or in part; or

(f) The Charterer or the Guarantor shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its Property, or shall consent to any such relief or to the appointment of or taking possession by any such official in any involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall take any corporate action to authorize any of the foregoing; or

(g) An involuntary case or other proceeding shall be commenced against the Charterer or the Guarantor seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its Property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days; or

(h) The Charterer's or the Guarantor's business is dissolved, terminated or discontinued; or

(i) The Charterer or the Guarantor sells, transfers or disposes of all or substantially all of its assets or property; or

(j) Failure of the Charterer to provide notice to Owner and the appropriate authorities as provided in Section 24(d) hereof regarding environmental disclosures.

#### SECTION 14. RIGHTS OF OWNER UPON DEFAULT BY CHARTERER.

(a) Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, the Owner may, at its option, declare this Charter Agreement to be in default, and at any time thereafter, so long as the Charterer or the Guarantor, as the case may be, shall not have remedied all outstanding Events of Default, the Owner may terminate this Charter Agreement effective immediately and, whether or not this Charter Agreement has been so terminated, may do one or more of the following as the Owner in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, applicable law then in effect:

(1) The Owner may proceed by appropriate court action or actions, either at law or in equity, admiralty or bankruptcy to enforce performance by the Charterer of

the applicable covenants and terms of this Charter and/or to recover damages for the breach thereof;

(2) The Owner may demand that the Charterer, and the Charterer shall upon the written demand of the Owner, return any or all of the Vessels promptly to the Owner in the manner and condition required by, and otherwise in accordance with all of the provisions of, Section 12 hereof as if the Vessels were being returned at the end of the Term, except that the Charterer will provide free storage for the Vessels until such Vessels have been sold, leased or otherwise disposed of by Owner and during such period of storage the Charterer shall continue to maintain and insure the Vessels pursuant to the terms of this Charter and shall bear the entire expense and risk of such storage and preparation of the Vessels for shipment and the delivery of the Vessels to the location provided in Section 12; or the Owner, at its option, may enter upon the premises where the Vessels or any part thereof are located and take immediate possession of and remove the same by summary proceedings or otherwise, all without liability to the Charterer for or by reason of such entry or taking of possession, whether for the restoration of damage to Property caused by such taking or otherwise;

(3) The Owner may sell any Vessel or any part thereof at public or private sale, as the Owner may determine, free and clear of any rights of the Charterer and without any duty to account to the Charterer with respect to such sale or for the proceeds thereof (except to the extent required by subparagraph (6) below if the Owner elects to exercise its rights under said subparagraph), in which event the Charterer's obligation to pay Charter Hire with respect to such Vessel hereunder on Charter Hire Payment Dates subsequent to the date of such sale shall terminate (except to the extent that Charter Hire is to be included in computations under subparagraph (5) or (6) below if the Owner elects to exercise its rights under either of said subparagraphs);

(4) The Owner may hold, keep idle or charter to others any Vessel or any part thereof, as the Owner in its sole discretion may determine, free and clear of any rights of the Charterer and without any duty to account to the Charterer with respect to such action or inaction or for any proceeds with respect thereto, except that the Charterer's obligation to pay Charter Hire with respect to such Vessel on Charter Hire Payment Dates subsequent to the date upon which the Charterer shall have been deprived of use of such Vessel pursuant to this Section 14 shall be reduced by the net proceeds, if any, received by the Owner from chartering such Vessel to any Person other than the Charterer;

(5) Whether or not the Owner shall have exercised, or shall thereafter at any time exercise, any of its rights under subparagraph (1), (2), (3) or (4) above with respect to any Vessel, the Owner, by written notice to the Charterer specifying a payment date which shall be not earlier than ten days after the date of such notice, may demand that the Charterer pay to the Owner and the Charterer shall pay to the Owner, on the payment date specified in such notice, as liquidated damages for loss of

a bargain and not as a penalty (in lieu of the Charter Hire for such Vessel due after the payment date specified in such notice), any unpaid Charter Hire for such Vessel due for periods on or prior to the payment date specified in such notice plus whichever of the following amounts the Owner, in its sole discretion, shall specify in such notice: (i) an amount equal to the excess, if any, of the Stipulated Casualty Value for such Vessel computed as of the Charter Hire Payment Date next preceding the payment date specified in such notice or if such payment date occurs on a Charter Hire Payment Date, then computed as of such Charter Hire Payment Date, over the present value of the fair market rental value (determined as hereinafter in this Section 14 provided) of such Vessel for the remainder of the Basic Term or the Renewal Term as of the payment date specified in such notice, such present value to be computed on the basis of a 9.03% per annum rate of discount from the respective dates upon which such Charter Hire would be paid, or (ii) an amount equal to the excess, if any, of the Stipulated Casualty Value for such Vessel as of the Charter Hire Payment Date next preceding the payment date specified in such notice or if such payment date occurs on a Charter Hire Payment Date, then computed as of such Charter Hire Payment Date, over the fair market sales value of such Vessel (determined as hereinafter in this Section 14 provided) as of the payment date specified in such notice;

(6) If the Owner shall have sold any Vessel pursuant to subparagraph (3) above, the Owner, in lieu of exercising its rights under subparagraph (5) above with respect to such Vessel may, if it shall so elect, demand that the Charterer pay to the Owner and the Charterer shall pay to the Owner, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Charter Hire for such Vessel due on Charter Hire Payment Dates subsequent to the date of such sale), (i) any unpaid Charter Hire for such Vessel due for periods up to and including the date of such sale, plus (ii) the daily equivalent of the Basic Charter Hire or Renewal Charter Hire, as the case may be, due on the Charter Hire Payment Date next succeeding the date of such sale for each day from and including, the Charter Hire Payment Date next preceding the date of such sale to but not including the date of such sale, plus (iii) the amount, if any, by which the Stipulated Casualty Value of such Vessel computed as of the Charter Hire Payment date next preceding the date of such sale or if such sale occurs on a Charter Hire Payment Date, then computed as of such Charter Hire Payment Date, exceeds the net proceeds of such sale; and

(7) Whether or not the Owner shall have exercised any of its rights under subparagraph (1), (2), (3), (4) or (5) above other than the right to sell any Vessel, the Owner may in lieu of exercising its rights under subparagraph (5) above demand that the Charterer pay to the Owner and the Charterer shall pay to the Owner, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Charter Hire for such Vessel due on Charter Hire Payment Dates subsequent to the date on which the Stipulated Casualty Value referred to below is paid), (i) any unpaid Charter Hire for such Vessel due for periods up to and including the date of the declaration of default, plus (ii) the daily equivalent of the Basic Charter Hire or Renewal Charter Hire, as the case may be, due on the Charter Hire Payment Date next succeeding the date of the declaration of default for each day from and including the

Charter Hire Payment Date next preceding the date of the declaration of default to but not including the date on which the Stipulated Casualty Value referred to below is paid and all additional sums accrued and unpaid under any of the terms hereof as of the date of the declaration of default, plus (iii) an aggregate sum equal to the Stipulated Casualty Value of such Vessel computed as of the next preceding Charter Hire Payment Date whereupon the Owner will, to the extent permitted by law, transfer title to such Vessel to the Charterer by quit-claim bill of sale, with the Owner's sole representation and warranty being that there are no Owner's Liens. For purposes of this Section 14, Basic Charter Hire or Stipulated Casualty Value with respect to any Vessel shall be computed based on the Acquisition Cost of such Vessel.

(b) In addition, the Charterer shall be liable, except as otherwise provided above, for any and all unpaid Charter Hire due hereunder before or during the exercise of any of the foregoing remedies and for all legal fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Owner's remedies with respect thereto, including all costs and expenses incurred in connection with the return of the Vessels, or any part thereof, in accordance with Section 12 hereof or in placing the Vessels in the condition required by said Section 12.

(c) Notwithstanding anything else in the Charter to the contrary, in the event Owner declares this Charter to be in default pursuant to Section 14(a) hereof due to an Event of Default under Section 13(e) hereof, Charterer shall, so long as the Vessels are, as of the Payment Date as defined below, exempt from Maritime Administration approval pursuant to 46 U.S.C. App. §808 and the regulations promulgated thereunder or such similar succeeding law (such exemption shall be, if requested by Owner, verified by an acceptable opinion of counsel, which such opinion shall be provided at Charterer's expense) or the Charterer has received as of the Payment Date the prior written approval of the Maritime Administrator pursuant to 46 U.S.C. App. §808 and the regulations promulgated thereunder or such similar succeeding law, have the option within thirty (30) days after the Owner has declared this Charter to be in default pursuant to Section 14(a) hereof and upon five (5) days prior irrevocable written notice to Owner which notice shall specify the payment date (the "*Payment Date*") to pay Owner (i) the higher of (A) the sum of (1) the Stipulated Casualty Value (which at all times shall equal or exceed the Loan Value of the Vessels) of all but not less than all of the Vessels then subject to this Charter as of the immediately preceding Charter Hire Payment Date plus (2) the daily equivalent of the Basic Charter Hire (which at all times shall equal or exceed the daily equivalent interest on the Notes) or Renewal Charter Hire, as the case may be, due on the Charter Hire Payment Date next succeeding the Payment Date for each day from and including the Charter Hire Payment Date immediately preceding the Payment Date to but not including the Payment Date or (B) the fair market sales value (which at all times shall equal or exceed the Loan Value of the Vessels) of all but not less than all of the Vessels then subject to this Charter as of the Payment Date, plus (ii) all other Charter Hire, late charges and other sums past due or becoming due to and including the Payment Date, plus (iii) the Make-Whole Premium Amount due pursuant to Section 4.2(d) of the Security Agreement, plus (iv) all costs and expenses (including outside or inside counsel fees) incurred by Owner or any other Person in connection with the enforcement or termination of this Charter. Upon payment of the

amounts set forth above Owner will convey such Vessels to Charterer on an “as-is”, “where-is” basis, without representation or warranty, express or implied, except as to the absence of Owner’s Liens. It shall be an absolute condition precedent to Charterer’s right to exercise its payment option set forth in this Section 14(c) that on the Payment Date, the Owner shall have received funds of the type specified in this Section 14(c) in an amount sufficient to enable it to pay in full the aggregate unpaid principal amount of all Notes which may be outstanding on such date, together with accrued interest thereon to such date and Make-Whole Premium Amount, if any, pursuant to Section 4.2(d) of the Security Agreement, plus all other sums then due and payable by the Charterer on such date under the Operative Agreements. If Charterer shall fail to pay all amounts due and owing under the provision of this Section 14(c), it shall be deemed that Charterer has rescinded its notice to exercise its payment option contained in this Section 14(c).

(d) For the purposes of this Section 14, “*fair market rental value*” and “*fair market sales value*” shall be determined on the basis of an appraisal of an independent appraiser chosen by the Owner, and the cost of any such appraisal shall be borne by the Charterer; *provided* that, if the Owner is unable to recover possession of any Vessel, the fair market sales value and fair market rental value of such Vessel shall be zero.

(e) Except as otherwise expressly provided above, no remedy referred to in this Section 14 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Owner at law or in equity; and the exercise or beginning of exercise by the Owner of any one or more of such remedies shall not preclude the simultaneous or later exercise by the Owner of any or all of such other remedies. No express or implied waiver by the Owner of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default. To the extent permitted by applicable law, the Charterer hereby waives any rights now or hereafter conferred by statute or otherwise which may require the Owner to sell, lease or otherwise, use the Vessels or any part thereof in mitigation of the Owner’s damages as set forth in this Section 14 or which may otherwise limit or modify any of the Owner’s rights and remedies in this Section 14.

#### SECTION 15. FILINGS; LIENS.

(a) The Charterer will, from time to time, execute, acknowledge, deliver, file, register and record (and will refile, re-register or re-record whenever required) any and all instruments reasonably requested by the Owner or any assignee of the Owner, for the purpose of protecting the Owner’s title to, or any security interest in, the Vessels. The Charterer will pay, as Supplemental Payments, all costs, charges and expenses, including all attorneys’ fees, incident to any such filing, refiling, registering, re-registering, recording and re-recording of any such instruments or incident to the taking of such action. The Charterer will duly execute and deliver to the Owner and/or any assignee of the Owner such other documents and assurances including, without limitation, Uniform Commercial Code financing statements and continuation statements, and will take such further action as the Owner or any such assignee of the Owner may from time to time reasonably request in order to carry out more effectively the intent and purposes of this Charter Agreement and to

establish and protect the rights and remedies created or intended to be created in favor of the Owner and any such assignee, and to perfect the Owner's title to the Vessels. Upon the sale or assignment of the interest of Owner in a Vessel, Charterer shall execute any documents in connection therewith, including, without limitation, a form of acknowledgement or any required Uniform Commercial Code Financing Statements as are reasonably requested by the Owner. Any expenses incurred in connection with any such sale or assignment (other than upon the assignment to the Security Trustee, the Charterer's exercise of its option pursuant to Section 10 or Section 18 hereof or after an Event of Default hereunder has occurred and is continuing) shall be borne solely by Owner. Charterer shall not be required to prepare any documents in connection with any such sale or assignment.

(b) The Charterer will not, directly or indirectly, create, incur, assume or, suffer to exist any maritime lien or other Lien on or with respect to any Vessel or any part thereof, the Owner's title thereto, or any interest therein, except (i) any Lien granted by the Owner to the Security Trustee pursuant to the Operative Agreements, (ii) any Owner's Lien, (iii) Liens for taxes either not yet delinquent or being contested by the Charterer by Permitted Contest and so long as such proceedings shall have the effect of preventing the sale, forfeiture or loss of the Vessel or any part or item thereof, (iv) materialmen's, mechanics', workmen's, repairmen's or other like Liens arising in the ordinary course of business, which are not delinquent or are being contested by the Charterer in good faith by appropriate proceedings and so long as such proceedings shall have the effect of preventing the sale, forfeiture or loss of the Vessel or any part or item thereof, (v) liens for crew's wages, wages of a stevedore when employed directly by the operating master, ship's husband or agent of the Vessel, general average or salvage (including control salvage) which are being contested by the Charterer in good faith by appropriate proceedings and so long as such proceedings shall pose no material risk of sale, forfeiture, loss or seizure of the Vessel or any part or item thereof, and (vi) the rights of any sublessee or assignee pursuant to Section 7(e) or Section 7(f) of this Charter Agreement. The Charterer, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep the Vessel free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to the Owner and the Security Trustee, any such Lien not excepted above if the same shall arise at any time.

#### SECTION 16. COVENANT OF QUIET ENJOYMENT.

During the Term of the charter of any Vessel hereunder and so long as no Event of Default has occurred and is continuing hereunder, the Owner covenants and agrees that the Charterer shall have the right to uninterrupted use and enjoyment of each Vessel on the terms and conditions provided in this Charter Agreement without any interference from the Owner, or those claims resulting from Owner's Liens or from Owner's assignees hereunder including any assignee, lender or mortgagee (including, but not limited to, the Security Trustee) of the Owner. So long as no Event of Default has occurred and is continuing hereunder, the Charterer's right to uninterrupted use and enjoyment of each Vessel on the terms and conditions provided in this Charter Agreement shall not be affected by the bankruptcy, insolvency, dissolution, reorganization or any like proceeding or financial difficulties of the Owner.

## SECTION 17. RIGHTS OF SECURITY TRUSTEE.

(a) The Owner intends to finance the acquisition and ownership of the Vessels pursuant to the terms of the Participation Agreement and the Security Agreement and to assign to the Security Trustee its right, title and interest in this Charter Agreement, in the Vessels and in all moneys (except as provided in the Security Agreement) due from the Charterer or any third party under this Charter Agreement other than Excepted Rights in Collateral and, in that connection, will grant a security interest in the Vessels to the Security Trustee, subject to the rights and interests of the Charterer in the Vessels and under this Charter Agreement (including, but not limited to, the Charterer's right of quiet enjoyment contained in Section 16 hereof). The Charterer agrees to deliver to the Security Trustee duplicate original copies of all notices and other instruments which it delivers hereunder to the Owner (said notices and other instruments to be delivered to the Security Trustee contemporaneously with the delivery of such notices or other instruments to the Owner) and agrees that any consent required to be granted by the Owner hereunder must also be granted by the Security Trustee, except as otherwise provided in the Security Agreement. The Security Trustee shall not be obligated to perform any duty, covenant or condition to be performed by the Owner under any of the terms hereof, but on the contrary, the Charterer and the Owner by their respective executions hereof each acknowledge and agree that notwithstanding any such assignment each and all such duties, covenants or conditions required to be performed by the Owner shall survive any such assignment and shall be and remain the sole liability of the Owner. The Charterer agrees that it will remain obligated under this Charter Agreement in accordance with its terms and that it will not take any action to terminate (except as expressly permitted by this Charter Agreement), rescind or avoid this Charter Agreement, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or other proceeding affecting the Owner or any assignee of the Owner and notwithstanding any action with respect to this Charter Agreement which may be taken by any trustee or receiver of the Owner or of any such assignee or by any court in any such proceedings. The Owner's obligations as between itself and the Security Trustee shall not be subject to any claims or defenses which the Charterer may have against the Owner. Until notified by the Security Trustee otherwise, the Charterer shall make payments of all Charter Hire and other sums due hereunder to the Security Trustee as provided in the Security Agreement and such payments shall discharge the obligation of the Charterer to the Owner hereunder to the extent of such payments.

(b) Unless and until the Charterer shall have received written notice from the Security Trustee that the Lien of the Security Agreement has been released, except as otherwise provided in the Security Agreement, (i) no amendment or modification of, or waiver by or consent of the Owner in respect of, any of the provisions of this Charter Agreement shall be effective unless the Security Trustee shall have joined in such amendment, modification, waiver or consent or shall have given its prior written consent thereto, and (ii) the Security Trustee shall, as permitted by the Security Agreement, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Owner for the use and benefit of the Security Trustee) which by the terms of this Charter Agreement or by applicable law are permitted or provided to be exercised by the Owner.

## SECTION 18. PURCHASE OR RENEWAL OF VESSELS.

(a) Upon the expiration of the Basic Term or the Renewal Term, as the case may be, the Charterer, if no Default or Event of Default has occurred and is continuing, may purchase all but not less than all of the Vessels of any Class then subject to this Charter Agreement for an amount equal to the fair market value of such Vessels as of the end of the Basic Term or the Renewal Term, as the case may be. In order to purchase the Vessels of any Class, the Charterer must give the Owner irrevocable written notice of its intent to do so at least 180 days prior to the expiration of the Basic Term or the Renewal Term for such Vessels. No more than one (1) year and not less than 180 days prior to the end of the Basic Term or the Renewal Term, as the case may be, Charterer shall give written notice to Owner that it desires to determine the fair market value of the Vessels and, the Owner and the Charterer shall consult for the purpose of determining the fair market value of the Vessels as of the end of the Basic Term or the Renewal Term, as the case may be, and any value agreed upon in writing shall constitute such fair market value for the purposes of this Section 18.

(b) Upon the expiration of the Basic Term, the Charterer, if no Default or Event of Default has occurred and is continuing, may renew the Basic Term for all but not less than all of the Vessels of any Class then subject to this Charter Agreement in accordance with Section 5 hereof. If the Charterer should desire to renew this Charter Agreement following the Basic Term in accordance with the provisions of Section 5, then no more than one (1) year but not less than 180 days prior to the end of the Basic Term, Charterer shall give written notice to the Owner that it desires to determine the fair market rental of the Vessels and the Owner and the Charterer shall consult for the purpose of determining the fair market rental value of the Vessels as of the end of the Basic Term. Any value agreed upon in writing shall constitute the fair market rental of the Vessels as of the end of the Basic Term, and any value agreed upon in writing shall constitute such fair market rental value for the purpose of this Section 18.

(c) The procedure for determining the fair market sales value or fair market rental value which shall be such price or rental which would be agreed to by and between a willing seller and a willing buyer when neither party is under compulsion to agree and both parties have reasonable knowledge of relevant facts. In the event that the Owner and the Charterer fail to agree upon such value the "*Appraisal Procedure*" shall be as follows: if either party hereto shall have given written notice to the other requesting determination of such value by the Appraisal Procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed with ten (10) Business Days after such notice is given, each party shall appoint an independent appraiser within fifteen (15) Business Days after such notice is given, and the two appraisers so appointed shall within twenty (20) Business Days after such notice is given appoint a third independent appraiser, but, if either party fails to appoint an appraiser within such twenty (20) Business Day period, the independent appraiser appointed by the other party shall be deemed to have been appointed by mutual consent. If no such third appraiser is appointed within twenty (20) Business Days after such notice is given, either party may apply to any court having jurisdiction to make such appointment, and both parties shall be bound by any

appointment made by such court. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to (i) determine the fair market sales value and/or the fair market rental value as of the end of the term, as the case may be, of a Vessel within 30 days after the appointment of such appraiser(s) and (ii) assume that the Vessels are in at least as good a condition as required by the Operative Agreements. If the parties shall have appointed a single appraiser, the determination of value by such appraiser shall be final. If three appraisers shall be appointed, the values determined by the three appraisers shall be averaged and, unless such average shall equal the value determined by the middle appraisal (in which event such average shall be final), the determination which differs most from such average shall be excluded, the remaining two determinations shall be averaged and such average shall be final. The fees and expenses of any appraiser appointed under this Section shall be borne by the Charterer.

#### SECTION 19. DOCUMENTATION AND MARKINGS.

(a) The Charterer acknowledges that a security interest in the Vessels will be given by the Owner to the Security Trustee and agrees to cause a notice to be kept and displayed on each Vessel, reading as follows:

“This Vessel is owned by Cargill Leasing Corporation, is subject to a security interest in favor of CoreStates Bank, N.A., as Security Trustee, and is under charter to Conoco Inc.”

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Owner to such Vessel, its rights under this Charter and the rights of any assignee under Section 17 hereof.

(b) Except as above provided, the Charterer will not allow the name of any person, association or corporation to be placed on the Vessels as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Charterer, with the prior written consent of Owner, which consent shall not be unreasonably withheld, may cause the Vessels to be lettered with the names or initials or other insignia of the Charterer for the purpose of identifying the right of the Charterer to use the Vessels under this Charter, and *provided further*, that the Charterer may make further designations by stencilling, placarding or lettering on the Vessels as may be from time to time required by subcharterers or Charterer's assigns permitted by Section 7(e) hereof.

#### SECTION 20. OWNER'S PERFORMANCE OPTION.

Should the Charterer fail to make any payment or fail to do any act as provided by this Charter Agreement, then the Owner shall have the right (but not the obligation), without notice to the Charterer of its intention to do so and without releasing the Charterer from any obligation hereunder to make or to do the same, to make advances to preserve the Vessels or the Owner's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the judgment of the Owner

appears to affect the Vessels, and in exercising any such rights the Owner may expend whatever reasonable amounts, including attorneys' fees, in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by the Owner shall be due and payable by the Charterer within thirty (30) days of written notice thereof as Supplemental Payments.

## SECTION 21. NOTICES AND REQUESTS.

Unless otherwise expressly specified or permitted by this Charter Agreement, all communications and notices provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight express mail and courier service, (b) five (5) days after the date on which it shall have been mailed by United States mail, certified or registered, postage prepaid, return receipt requested, or, (c) in the case of notice by such a telecommunications device, upon confirmation of receipt by such device with confirmation delivered by overnight express mail, in each case addressed to each party hereto at its address set forth below or, in the case of any such party hereto, at such other address as such party may from time to time designate by written notice to the other parties hereto:

If to Charterer:

Conoco Inc.  
600 North Dairy Ashford Road (77079)  
P. O. Box 4783  
Houston, Texas 77210  
Attention: Managing Counsel, Refining, Marketing,  
Supply & Transportation  
Fax No.: (713) 293-3700  
Confirmation No.: (713) 293-1477

Conoco Inc.  
3519 Patrick Street  
Lake Charles, Louisiana 70605  
Attention: Director of Chartering  
Fax No.: (318) 475-4039  
Confirmation No.: (318) 475-4002

If to Owner:

Cargill Leasing Corporation  
15407 McGinty Road West  
Wayzata, Minnesota 55391  
Attention: General Manager  
Fax No: (612) 475-5279  
Confirmation No.: (612) 475-7611

If to Security Trustee:

CoreStates Bank, N.A.  
510 Walnut Street  
Philadelphia, Pennsylvania 19106  
Attention: Corporate Trust Department  
Fax No. (215) 973-8383  
Confirmation No. (215) 973-1540

All notices required to be delivered under this Charter Agreement to Owner shall, so long as the Lien of the Security Agreement shall not have been discharged, also be delivered to the Security Trustee.

**SECTION 22. REPRESENTATIONS, WARRANTIES AND LIABILITY OF OWNER.**

THE OWNER CHARTERS AND THE CHARTERER TAKES EACH VESSEL "AS-IS". THE CHARTERER ACKNOWLEDGES AND AGREES THAT (A) EACH VESSEL IS THE SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY THE CHARTERER, (B) THE EXECUTION OF THE APPLICABLE CHARTER SUPPLEMENT WILL EVIDENCE THAT THE CHARTERER IS SATISFIED THAT EACH VESSEL IS SUITABLE FOR ITS PURPOSES, (C) THE OWNER IS NOT A MANUFACTURER OR A DEALER IN VESSELS OF SUCH KIND, AND (D) THE VESSELS ARE CHARTERED HEREUNDER SUBJECT TO ALL APPLICABLE LAWS AND GOVERNMENTAL REGULATIONS NOW IN EFFECT OR HEREAFTER ADOPTED AND IN THE STATE AND CONDITION OF EVERY PART THEREOF WHEN THE SAME FIRST BECAME OR BECOMES SUBJECT TO THIS CHARTER AGREEMENT, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY THE OWNER, EXPRESS OR IMPLIED, AS TO THE TITLE, MERCHANTABILITY, COMPLIANCE WITH SPECIFICATIONS, CONDITIONS, SEAWORTHINESS, DESIGN, OPERATION, FREEDOM FROM PATENT OR TRADEMARK INFRINGEMENT, ABSENCE OF LATENT DEFECTS OR FITNESS FOR USE OF THE VESSELS (OR ANY VESSEL OR ANY PART THEREOF), OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE VESSELS (OR ANY VESSEL OR ANY PART THEREOF). The provisions of this Section 22 have been negotiated and, except as otherwise expressly provided in the Operative Agreements, the foregoing provisions are intended to be a complete exclusion and negation of any and all warranties by the Owner, express or implied, with respect to such Vessel, Vessels or portion thereof, whether arising pursuant to admiralty law, the Uniform Commercial Code, the shipping laws of the United States or any other law now or hereafter in effect, or otherwise. Nothing contained herein shall in any way diminish or otherwise affect any right the Charterer may have with respect to such Vessels, Vessel or portion thereof, against any third person. The Owner shall not at any time be required to inspect such Vessels, Vessel or portion thereof, nor shall any inspection by the Owner be deemed to effect or modify the provisions of this Section 22. The Charterer acknowledges that it has selected the Vessels on the basis of its own judgment, that it has not relied on any statements, representations or warranties of the Owner as to any of the Vessels and that the Owner is not a manufacturer of, or a dealer in, any of the Vessels.

## SECTION 23. CERTAIN INFORMATION.

Charterer agrees to furnish Owner, the Security Trustee and each holder of a Note (1) promptly upon Charterer obtaining knowledge that there has occurred and is continuing any condition, event, act or omission which constitutes a Default or an Event of Default or a Lien (other than Permitted Encumbrances) on any Vessel, notice of such condition, event, act or omission and the steps which Charterer has taken, is taking or intends to take to remedy the same and the time frame thereof; and (2) such additional information concerning the location, condition, use and operation of the Vessels and financial condition and operations of Charterer as Owner, Security Trustee or such holder may from time to time reasonably request.

## SECTION 24. MISCELLANEOUS.

(a) Each party hereto agrees that the other party shall not by act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder unless such waiver is given in writing. A waiver on one occasion shall not be construed to be a waiver on any other occasion. Any change or modification of this Charter Agreement must be in writing and duly executed by the parties hereto. The captions in this Charter Agreement are for convenience of reference only and shall not be deemed to affect the meaning or construction of any of the provisions hereof. Any provision of this Charter Agreement 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, the Charterer hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(b) This Charter Agreement may be executed in any number of counterparts, each counterpart constituting an original but all together one and the same instrument and contract; *provided, however*, that to the extent that this Charter Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code), no security interest in this Charter Agreement may be created through the transfer or possession of any counterpart hereof other than the counterpart bearing the receipt therefor executed by the Security Trustee on the signature page hereof, which counterpart shall constitute the only "original" hereof for purposes of the Uniform Commercial Code.

(c) It is the intent of the parties to this Charter Agreement that it will be a true lease and not a conditional sale and that the Owner shall at all times be considered to be the owner of each Vessel which is the subject of this Charter for the purposes of all Federal, state, city and local income taxes or for franchise taxes measured by net income, and that this Charter conveys to the Charterer no right, title or interest in the Vessels except as Charterer.

(d) Charterer agrees that as soon as Charterer has knowledge of any release or discharge arising out of the use, control, or operation of the Vessels, which when under any federal, state, or local law or regulation require notice to the environmental authorities ("*Release*"), Charterer shall immediately notify the appropriate environmental authorities and, as soon as practicable, the Owner. Charterer shall explain to Owner in detail the nature and extent of the Release and any proposed, considered, or intended remedial measures. Charterer shall resolve any doubts regarding notices to Owner in favor of providing notice.

(e) This Charter Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and be governed by the maritime laws of the United States and, to the extent applicable, the laws of the State of New York (without regard to its conflict of laws provisions).

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DEFINITIONS

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## DEFINITIONS

### General Provisions

The following terms shall have the following meanings for all purposes of the Operative Agreements referred to below, unless otherwise defined in an Operative Agreement or the context thereof shall otherwise require. In the case of any conflict between the provisions of this Definition Annex and the provisions of the main body of any Operative Agreement, the provisions of the main body of such Operative Agreement shall control the construction of such Operative Agreement.

Unless the context otherwise requires, (i) references to agreements shall be deemed to mean and include such agreements as the same may be amended and supplemented from time to time, and (ii) references to parties to agreements shall be deemed to include the successors and permitted assigns of such parties.

### Defined Terms

*“Acquisition Cost”* of any Vessel shall mean an amount equal to the invoice price of the Charterer (less any discounts or credits actually utilized by the Owner), and such other costs as may be agreed to by the Owner and the Charterer in writing. The Acquisition Cost shall be as stated, and as agreed, in the respective Charter Supplement.

*“Advance Amount”* shall have the meaning set forth in Section 9.11 of the Participation Agreement.

*“Affiliate”* shall mean a Person (i) which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under a common control with, the Charterer, (ii) which owns or holds 5% or more (by number of votes) of any class of the Voting Stock of the Charterer or (iii) 5% or more (by number of votes) of the Voting Stock (or in the case of a Person which is not a corporation, 5% or more of the equity interest) of which is beneficially owned or held by the Charterer or a Subsidiary. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

*“After-tax”* or *“after-tax basis”* shall have the meaning set forth in the Tax Indemnity Agreement.

*“Appraisal Procedure”* shall have the meaning specified in Section 18(c) of the Charter Agreement.

*“Assigned Agreements”* shall mean the Charter Agreement (together with all Charter Supplements), the Bill of Sale, the Guaranty Agreement and all other agreements referred to in Recital I of the Security Agreement.

*“Basic Charter Hire”* shall mean all charter hire payable pursuant to Section 6 of the Charter Agreement during the Basic Term (other than on the Basic Term Commencement Date).

*“Basic Term”* shall mean the period beginning on the Basic Term Commencement Date and ending on August 28, 2009.

*“Basic Term Commencement Date”* shall mean August 28, 1991.

*“Bill of Sale”* shall have the meaning specified in Section 4.1(a) of the Participation Agreement.

*“Business Day”* shall mean any day other than a Saturday, Sunday or other day on which banking institutions in Delaware, Texas, Minnesota or Pennsylvania are authorized or required to remain closed.

*“Charter”* or *“Charter Agreement”* shall mean the Charter Agreement dated as of May 15, 1991 between the Owner, as owner, and the Charterer, as charterer.

*“Charterer”* shall mean Conoco Inc., a Delaware corporation, and any corporation which succeeds thereto by merger or consolidation or which acquires all or substantially all of the assets thereof.

*“Charterer Agreements”* shall mean the Operative Agreements to which the Charterer is a party.

*“Charterer’s Certificate of Cost”* shall have the meaning specified in Section 4.1(c) of the Participation Agreement.

*“Charter Hire”* shall mean (i) all Charter hire payable pursuant to Sections 5 and 6 of the Charter for the Basic Term and for any Renewal Term and (ii) Supplemental Payments.

*“Charter Hire Payment Dates”* shall mean November 28, 1991 and the twenty-eighth day of each February, May, August and November thereafter during the Term of the Charter.

*“Charter Supplement”* shall mean the Charter Supplement, substantially in the form of Exhibit B to the Charter Agreement, entered into between the Owner and the Charterer, covering each Vessel.

*“Class”* shall mean either oil barges or hot oil barges.

*“Closing Date”* shall have the meaning specified in Section 1.3 of the Participation Agreement.

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

*“Collateral”* shall mean the Vessels and the other Properties mortgaged, assigned, pledged and hypothecated unto the Security Trustee in the Recitals to the Security Agreement.

*“Default”* under the Charter Agreement shall mean any event which would constitute an Event of Default under the Charter Agreement if any requirement in connection therewith for the giving of notice or the lapse of time, or the happening of any further condition, event or act, had been satisfied.

*“Default”* under the Security Agreement shall mean any event which would constitute an Event of Default under the Security Agreement if any requirement in connection therewith for the giving of notice, or the lapse of time, or the happening of any further condition, event or act, had been satisfied.

The term *“employee benefit plan”* has the meaning specified in Section 3 of ERISA.

The term *“employer securities”* has the meaning specified in Section 407(d)(1) of ERISA.

*“ERISA”* shall mean the Employee Retirement Income Security Act of 1974, as amended, or any successor law.

*“Event of Default”* under the Charter Agreement is defined in Section 13 thereof.

*“Event of Default”* under the Security Agreement is defined in Section 5.1 thereof.

*“Event of Loss”* shall have the meaning specified in Section 11 of the Charter Agreement.

*“Excepted Rights in Collateral”* shall mean the following described properties, rights, interests and privileges:

(a) the right of the Owner to assent to a Permitted Contest under the Charter but not to the exclusion of any other affected party;

(b) the right of the Owner, jointly with the Security Trustee, to negotiate the level of appropriate environmental liability insurance coverage pursuant to the second sentence of Section 9 of the Charter;

(c) all payments of any indemnity under the Tax Indemnity Agreement and Section 6 of the Participation Agreement which by the terms thereof are payable to the Owner for its own account whether paid by the Charterer or the Guarantor;

(d) any insurance proceeds payable under general public liability policies maintained by the Charterer pursuant to the terms of the Charter which by the terms

of such policies or the terms of the Charter are payable directly to the Owner for its own account;

(e) all rights of the Owner under the Charter or the Guaranty Agreement to demand, collect, sue for or otherwise obtain all amounts from the Charterer or the Guarantor due the Owner or on account of any such indemnities or payments referred to in paragraph (b) above and to seek legal or equitable remedies to require the Charterer to maintain the insurance coverage referred to in paragraph (c) above;

(f) if an Event of Default under the Charter based solely on a breach of any covenant of the Charterer to pay any indemnity referred to in paragraph (b) above or to maintain any insurance referred to in paragraph (c) above shall occur and be continuing, the right of the Owner to exercise the remedies, but only those remedies, provided for in Section 14(a)(i) of the Charter, to enforce performance by the Charterer of any covenants of the Charterer to pay any such indemnity or payment directly to the Owner or to maintain such insurance or recover damages for the breach of any such covenant;

provided that in all events, the rights described in clauses (e) and (f) above shall be limited in the manner provided in the final paragraph of Section 5.3 of the Security Agreement.

*"Guarantor"* shall mean E.I. du Pont de Nemours and Company, a Delaware corporation.

*"Guaranty Agreement"* shall mean that certain Guaranty Agreement dated as of May 15, 1991 executed by the Guarantor.

*"Interim Term"* with respect to a Vessel shall mean the period commencing with the Interim Term Commencement Date for such Vessel and ending on the Basic Term Commencement Date.

*"Interim Term Commencement Date"* with respect to a Vessel shall mean the date of delivery and acceptance of such Vessel as evidenced by the delivery of a Charter Supplement.

*"Lien"* shall mean any mortgage, pledge, security interest, lien, encumbrance or other charge of any kind on Property.

*"Loan Value"* with respect to each Vessel shall have the meaning specified in Section 3.1(c) of the Security Agreement.

*"Make-Whole Premium Amount"* shall mean, as of the date of any determination thereof, the excess, if any, of (A) the aggregate present value as of such date of each dollar of principal being prepaid (taking into account the application of such prepayment to be made on such date) and the amount of interest that would have accrued thereafter in respect of such dollar if such prepayment had not been made (determined by discounting such

amounts at the Reinvestment Yield from the respective dates on which such principal and interest payments would have been payable) over (B) the outstanding principal amount of such Notes being prepaid. To the extent that the Reinvestment Yield at the date of any determination is equal to or higher than 9.03%, the Make-Whole Premium Amount shall be zero.

*"Manufacturer"* shall mean in the case of the hot oil barges, Nashville Bridge Company and in the case of the oil barges, Jeffboat, a Division of American Commercial Marine Service Company.

*"Net Economic Return"* shall mean Owner's nominal after-tax yield, periodic FASB 13 earnings and aggregate after-tax cash flow as a percentage of Owner's equity investment, all determined by using the multiple investment sinking fund method.

*"Noteholder"* or *"holder"* shall mean the registered holder of any Note issued and outstanding under the Security Agreement.

*"Note Purchaser"* shall mean State Farm Life Insurance Company and its successors and assigns, including successive holders of the Notes.

*"Notes"* shall mean the 9.03% Secured Notes due February 28, 2007 of the Owner substantially in the form attached to the Security Agreement.

*"Officer's Certificate"* shall mean a certificate signed in the case of a corporation by the Chairman of the Board, the President or any Vice President of such corporation, in the case of a partnership including at least one corporate general partner by the Chairman of the Board, the President or any Vice President of a corporate general partner in the case of any other partnership by a general partner, and in the case of a commercial bank or trust company, the Chairman or Vice Chairman of the Executive Committee of the Board of Directors or Trustees, the President, any Vice President, the Secretary, the Treasurer, any Trust Officer, any Executive or Senior or Second or Assistant Vice President, or any other officer or assistant officer customarily performing the functions similar to those performed by the persons who at the time shall be such officers, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject.

*"Operative Agreements"* shall mean and include the Participation Agreement, the Charter, the Charter Supplements, the Bill of Sale, the Notes outstanding at the time of reference, the Security Agreement, the Tax Indemnity Agreement, and the Guaranty Agreement.

*"Option Purchase Price"* shall have the meaning set forth in Section 10(c) of the Charter.

*"Overdue Rate"* shall mean 11.03% unless otherwise prohibited by law, in which case interest will be charged at the highest lawful rate allowed.

*"Owner"* shall mean Cargill Leasing Corporation, a Delaware corporation and its successors and permitted assigns of its Owner's Interest.

*"Owner Agreements"* shall mean the Operative Agreements to which the Owner is a party.

*"Owner's Interest"* shall mean the interest of the Owner under the Operative Agreements.

*"Owner's Liens"* shall mean any Lien which results from claims against the Owner unrelated to the transactions contemplated by the Operative Agreements; provided, however, that any Lien which is attributable solely to Owner and would otherwise constitute an Owner's Lien hereunder shall not constitute an Owner's Lien hereunder so long as (i) the existence of such Lien poses no material risk of sale, forfeiture, loss or seizure of the Vessels or any part or item thereof, (ii) the existence of such Lien does not interfere in any material respect with the use or operation of the Vessels by the Charterer, (iii) the existence of such Lien does not affect the priority or perfection of the Security Agreement or the Lien of the Security Trustee, (iv) Owner is diligently contesting such Lien, and (v) the existence of such Lien does not result in threatened or actual interruption in the payment of Charter Hire assigned to the Security Trustee for the benefit of the holders of the Notes.

*"Participants"* shall mean the Note Purchaser and the Owner.

*"Participation Agreement"* shall mean the Participation Agreement dated as of May 15, 1991, among the Charterer, the Participants and the Security Trustee.

The term *"party in interest"* shall have the meaning specified in Section 3 of ERISA.

*"Permitted Contest"* shall mean a good faith contest conducted in a manner so as to prevent the imposition of any criminal penalty on, or adverse effect on the title, Property or right of, any indemnified party, of the legality or validity of any of the taxes, assessments, levies, fees or other governmental charges, or other claims, Liens or impositions which, under the terms of the Charter Agreement or the Participation Agreement, are required to be paid or discharged by the Charterer or the Owner, as the case may be, but for such contest.

*"Permitted Encumbrances"* with respect to any Vessel shall mean any Lien described in Section 15(b) of the Charter other than Owner's Liens.

*"Person"* shall mean an individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

*"Prime Rate"* shall mean the rate of interest publicly announced from time to time by Citibank, N.A. in New York as its "base rate".

*“Property”* shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

*“Register”* shall mean the register kept by the Owner at the principal office of the Security Trustee for the purpose of recording the registration and transfer of the Notes.

*“Registered Note”* shall mean any fully registered Note issued pursuant to the Security Agreement.

*“Reinvestment Yield”* shall mean the per annum interest rate which is the arithmetic mean of the daily rates published in the most recent weekly statistical release designated H.15(519) of the Federal Reserve System under the caption “U.S. Government Securities-Treasury Constant Maturities” (the “Statistical Release”) or if the Statistical Release is not published, of such reasonably comparable index as may be designated by the holders of 66-2/3% in aggregate principal amount of the outstanding Notes (the “Comparable Index”), for the maturity corresponding to the remaining Weighted Average Life to Maturity of the Notes as of the date of such acceleration or prepayment, as the case may be, rounded to the nearest month. If no maturity exactly corresponds to such rounded Weighted Average Life to Maturity, yields for the two most closely corresponding published maturities shall be calculated pursuant to the immediately preceding sentence and the Reinvestment Yield shall be interpolated from such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. For purposes of calculating the Reinvestment Yield, the most recent Statistical Release or, if the Statistical Release is not published, the Comparable Index published prior to the date of determination hereunder shall be used.

*“Renewal Charter Hire”* shall mean all charter hire payable pursuant to Section 5 of the Charter Agreement during the Renewal Term, if any.

*“Renewal Term”* shall have the meaning specified in Section 5 of the Charter Agreement.

*“Replacement Vessel”* shall mean a Vessel substantially similar in material, dimension, condition and estimated useful life to the Vessel with respect to which an Event of Loss has occurred and which is being replaced pursuant to Section 11 of the Charter and in such condition and repair required by the Charter.

*“Responsible Officer”* shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Operative Agreement, the President, or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer or other officer who in the normal performance of his operational responsibility would have knowledge of such matter and the requirements with respect thereto.

*“Secured Indebtedness”* shall mean the outstanding Notes and all principal thereof (and Make-Whole Premium Amount, if any) and interest thereon and all additional amounts and other sums at any time due and owing from or required to be paid by the Owner under the terms of the outstanding Notes or the Security Agreement.

*"Security"* shall have the same meaning as in Section 2(l) of the Securities Act of 1933, as amended.

*"Security Agreement"* shall mean the Security Agreement-Trust Deed dated as of May 15, 1991 between the Owner, as debtor, and the Security Trustee, as secured party.

*"Security Agreement Supplement"* shall mean any Security Agreement Supplement entered into by the Owner and the Security Trustee pursuant to Section 8 of the Security Agreement.

*"Security Trustee"* shall mean CoreStates Bank, N.A., and its successors in trust as security trustee under the Security Agreement.

The term *"separate account"* shall have the meaning specified in Section 3 of ERISA.

*"Stipulated Casualty Value"* shall mean for any Vessel, as of the Basic Term Commencement Date and any Charter Hire Payment Date during the Basic Term, the amount determined in accordance with Exhibit E to the Charter Agreement, and as of any Charter Hire Payment Date during the Renewal Term, if any, the amount determined in accordance with Section 5 of the Charter Agreement.

*"Subsidiary"* shall mean any corporation, trust or association of which more than 80% (by number of votes) of the Voting Stock at the time outstanding shall at the time be owned, directly or indirectly, by the Charterer or by any other corporation, association or trust which is itself a Subsidiary within the meaning of this definition, or collectively by the Charterer and any one or more such Subsidiaries.

*"Supplemental Payments"* shall mean all amounts, liabilities and obligations (other than Basic Charter Hire or Renewal Charter Hire) which the Charterer is obligated to pay under the Charter Agreement or any other Operative Agreements to the Owner or others, including, without limitation, Make-Whole Premium Amount, Stipulated Casualty Value, Termination Value, Option Purchase Price and Advance Amount payments.

*"Taxes"* shall have the meaning set forth in Section 6(a)(iv) of the Participation Agreement.

*"Tax Indemnity Agreement"* shall mean the Tax Indemnity Agreement dated as of May 15, 1991 between the Charterer and the Owner.

*"Term"* shall mean the full term of the Charter Agreement, including the Interim Term, the Basic Term and the Renewal Term, subject to the provisions of Sections 10 and 11 of the Charter Agreement.

*"Termination Value"* shall mean, as of the Basic Term Commencement Date and any Charter Hire Payment Date during the Basic Term, the amount determined in accordance with Exhibit D to the Charter Agreement, and as of any Charter Hire Payment Date during

the Renewal Term, if any, the amount determined in accordance with Section 5 of the Charter Agreement.

*“Transaction Costs”* shall mean all amounts paid or payable by the Owner pursuant to Section 2.1 of the Participation Agreement.

*“Vessel”* shall mean each of the hot oil barges and oil barges to be chartered under the Charter Agreement (as more specifically described in a Charter Supplement), together with all machinery, tanks, apparel, equipment, covers and all other appurtenances thereunto appertaining or belonging, and also any and all additions, improvements, modifications, accessions and replacements hereafter made in or to said barge, or any part thereof, or in or to her machinery, tanks, apparel, equipment, covers and other appurtenances aforesaid.

*“Voting Stock”* shall mean Securities of any class or classes of a corporation, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

*“Weighted Average Life to Maturity”* shall mean, as of the time of any determination thereof, the number of years obtained by dividing the then Remaining Dollar-Years of the Notes by the then outstanding principal amount of the Notes. The term “Remaining Dollar-Years” of the Notes shall mean the amount obtained by (1) multiplying the amount of each of the then remaining required prepayments (and the repayment at final maturity) by the number of years (calculated to the nearest one-twelfth) which will elapse between the date of determination of the Weighted Average Life to Maturity of the Notes and the date of each particular required prepayment or repayment, as the case may be, and (2) totalling all the products obtained in (1).

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DESCRIPTION OF VESSELS

<u>Manufacturer</u>	<u>Class</u>	<u>Hull No.</u>	<u>Charterer Fleet No.</u>	<u>Date Delivered</u>	<u>First Load Date</u>	<u>Acquisition Cost</u>
Jeffboat	Oil Barge	90-2289	7021	2/24/91	3/12/91	\$1,122,782
Jeffboat	Oil Barge	90-2290	7022	3/11/91	3/28/91	1,122,782
Jeffboat	Oil Barge	90-2291	7023	4/04/91	4/16/91	1,122,782
Nashville Bridge Company	Hot Oil Barge	4013	7019	3/26/91	4/16/91	1,457,241
Nashville Bridge Company	Hot Oil Barge	4014	7020	4/18/91	4/28/91	1,457,241

EXHIBIT A  
(to Charter Agreement)

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CHARTER SUPPLEMENT NO. \_\_\_\_\_

DATED \_\_\_\_\_, 19\_\_\_\_\_

BETWEEN

CARGILL LEASING CORPORATION

OWNER

AND

CONOCO INC.

CHARTERER

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All right, title and interest in and to this Charter Supplement and the Vessels of the Owner has been assigned to, and is subject to a security interest in favor of, CORESTATES BANK, N.A., under the Security Agreement-Trust Deed dated as of May 15, 1991. To the extent, if any, that this Charter Supplement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Charter Supplement may be perfected through the transfer or possession of any counterpart other than the original counterpart, which shall be identified as the counterpart containing the receipt therefor executed by CORESTATES BANK, N.A., on the signature page thereof.

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EXHIBIT B  
(to Charter Agreement)

CHARTER SUPPLEMENT NO. \_\_\_\_

THIS CHARTER SUPPLEMENT NO. \_\_\_\_ dated \_\_\_\_\_, to Charter Agreement, dated as of May 15, 1991 (the "Charter"), between CARGILL LEASING CORPORATION, a Delaware Corporation (the "Owner"), and CONOCO INC., a Delaware corporation (the "Charterer");

WITNESSETH:

WHEREAS, the Charter provides for the execution and delivery on the delivery date of a Vessel or Vessels of a Charter Supplement, substantially in the form hereof;

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, the Owner and the Charterer hereby agree as follows:

(1) The Owner hereby confirms that it has let, chartered and demised to the Charterer under the Charter, and the Charterer hereby confirms that it has unconditionally accepted and hired from the Owner under the Charter, for all purposes thereof the following Vessel(s) (the "Delivered Vessel(s)") with the Class, Hull Number(s) and Fleet Number(s) as follows:

<u>Class</u>	<u>Hull No.</u>	<u>Fleet No.</u>
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(2) The delivery date of each Delivered Vessel is the date of this Charter Supplement: \_\_\_\_\_.

(3) The delivery location of each Delivered Vessel is \_\_\_\_\_.

(4) The Acquisition Cost of each Delivered Vessel on the Delivery Date is as follows:

<u>Class</u>	<u>Hull No.</u>	<u>Fleet No.</u>	<u>Acquisition Cost of Vessel</u>
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Total Acquisition Cost

(5) This Charter Supplement is executed pursuant to, and incorporates by reference all of the terms, conditions and provisions of, the Charter. The Charterer hereby (a) acknowledges and certifies that each Vessel described herein has been selected by, delivered to, and inspected by, the Charterer; is located at the location set forth herein; and that, as between the Owner and the Charterer, each such Vessel is of a size, design, capacity and manufacture acceptable to and suitable for the Charterer's purposes, has been installed to the Charterer's satisfaction, and is in good working

order, repair and condition; and (b) unconditionally accepts each such Vessel for charter under the Charter on the date hereof. The Owner and the Charterer hereby agree that each Vessel described herein is hereby chartered from the Owner to the Charterer under, and is subject to all of the terms, conditions and provisions of, the Charter, including, without limitation, Sections 4 and 22 thereof; that the Term of each such Vessel commences on the date hereof and that such date is the Interim Term Commencement Date thereof; and that the amount of the Acquisition Cost for all Vessels covered by this Charter Supplement and the Interim Term and Basic Term thereof is as set forth herein. The Charterer certifies that its representations and warranties set forth in Section 3.2 of the Participation Agreement are true and correct on the date hereof.

(6) Interim Term: Commencing on the date hereof and ending on August 28, 1991.

(7) Basic Term: Eighteen (18) years, commencing on August 28, 1991 (the "*Basic Term Commencement Date*") and ending on August 28, 2009.

(8) The Charterer hereby confirms its agreement, in accordance with the Charter as supplemented by this Charter Supplement, on each Charter Hire Payment Date, to pay timely Charter Hire for each Vessel leased hereunder as provided in the Charter. The amounts of Basic Charter Hire applicable to each Vessel delivered hereunder are set forth in Exhibit A hereto.

(9) All of the provisions of the Charter are hereby incorporated by reference in this Charter Supplement to the same extent as if fully set forth herein.

(10) This Charter Supplement may be executed by the parties hereto in separate counterparts, each of which when so executed shall be an original but all such counterparts shall together constitute but one and the same instrument.

(11) This Charter Supplement and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the maritime laws of the United States and, to the extent applicable, the laws of the State of New York (without regard to its conflict of laws provisions).

(12) All capitalized terms used herein which are otherwise defined herein shall have the meaning given to such terms in the Charter.





Receipt of the original counterpart of the foregoing Charter Supplement is hereby acknowledged on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

CORESTATES BANK, N.A.,  
Security Trustee

By \_\_\_\_\_  
Its \_\_\_\_\_

SCHEDULE OF BASIC CHARTER HIRE PAYMENTS

Date

Amount

## SCHEDULE OF BASIC CHARTER HIRE PAYMENTS

<u>Date</u>	Percentage of Acquisition <u>Cost</u>
11/28/91	2.31945
2/28/92	2.31945
5/28/92	2.31945
8/28/92	2.31945
11/28/92	2.31945
2/28/93	2.31945
5/28/93	2.31945
8/28/93	2.31945
11/28/93	2.31945
2/28/94	2.31945
5/28/94	2.31945
8/28/94	2.31945
11/28/94	2.31945
2/28/95	2.31945
5/28/95	2.31945
8/28/95	2.31945
11/28/95	2.31945
2/28/96	2.31945
5/28/96	2.31945
8/28/96	2.31945
11/28/96	2.31945
2/28/97	2.31945
5/28/97	2.31945
8/28/97	2.31945
11/28/97	2.31945
2/28/98	2.31945
5/28/98	2.31945
8/28/98	2.31945
11/28/98	2.83488
2/28/99	2.83488
5/28/99	2.83488
8/28/99	2.83488
11/28/99	2.83488
2/28/00	2.83488
5/28/00	2.83488
8/28/00	2.83488
11/28/00	2.83488
2/28/01	2.83488
5/28/01	2.83488
8/28/01	2.83488
11/28/01	2.83488
2/28/02	2.83488
5/28/02	2.83488
8/28/02	2.83488
11/28/02	2.83488
2/28/03	2.83488
5/28/03	2.83488
8/28/03	2.83488
11/28/03	2.83488
2/28/04	2.83488
5/28/04	2.83488
8/28/04	2.83488
11/28/04	2.83488

Percentage of  
Acquisition  
Cost

<u>Date</u>	
2/28/05	2.83488
5/28/05	2.83488
8/28/05	2.83488
11/28/05	2.83488
2/28/06	2.83488
5/28/06	2.83488
8/28/06	2.83488
11/28/06	2.83488
2/28/07	2.83488
5/28/07	2.83488
8/28/07	2.83488
11/28/07	2.83488
2/28/08	2.83488
5/28/08	2.83488
8/28/08	2.83488
11/28/08	2.83488
2/28/09	2.83488
5/28/09	2.83488
8/28/09	2.83488

SCHEDULE OF TERMINATION VALUES  
RELATING TO ALL VESSELS

<u>Charter Hire Payment Date</u>	Percentage of Acquisition Cost (After Payment of Basic Charter Hire on Corresponding <u>Charter Hire Payment Date</u> )
8/28/91	108.44224
11/28/91	108.63951
2/28/92	108.77154
5/28/92	108.86344
8/28/92	108.91348
11/28/92	108.92117
2/28/93	108.88307
5/28/93	108.80841
8/28/93	108.69643
11/28/93	108.55240
2/28/94	108.37361
5/28/94	108.16728
8/28/94	107.93291
11/28/94	107.67123
2/28/95	107.38060
5/28/95	107.06569
8/28/95	106.72672
11/28/95	106.36421
2/28/96	105.97704
5/28/96	105.56893
8/28/96	105.13956
11/28/96	104.68862
2/28/97	104.21450
5/28/97	103.72011
8/28/97	103.20517
11/28/97	102.66832
2/28/98	102.10725
5/28/98	101.52463
8/28/98	100.92016
11/28/98	99.77723
2/28/99	98.60146
5/28/99	97.39648
8/28/99	96.16175
11/28/99	94.89628
2/28/00	93.59937
5/28/00	92.27142
8/28/00	90.91205
11/28/00	89.52597
2/28/01	88.11815
5/28/01	86.68610
8/28/01	85.22962
11/28/01	83.75459
2/28/02	82.26833
5/28/02	80.76546
8/28/02	79.24594
11/28/02	77.71159

Charter Hire Payment Date

Percentage of  
Acquisition Cost  
(After Payment of  
Basic Charter Hire  
on Corresponding  
Charter Hire Payment Date)

2/28/03	76.16664
3/28/03	74.60522
8/28/03	73.02736
11/28/03	71.43506
2/28/04	69.83299
5/28/04	68.21478
8/28/04	66.58048
11/28/04	64.93233
2/28/05	63.27549
5/28/05	61.60300
8/28/05	59.91499
11/28/05	58.21394
2/28/06	56.50555
5/28/06	54.78225
8/28/06	53.04420
11/28/06	51.29419
2/28/07	49.53849
5/28/07	47.76129
8/28/07	45.94305
11/28/07	44.08829
2/28/08	42.20010
5/28/08	40.26940
8/28/08	38.29531
11/28/08	36.27993
2/28/09	34.22859
5/28/09	32.13136
8/28/09	30.00000

SCHEDULE OF STIPULATED CASUALTY VALUES  
RELATING TO ALL VESSELS

<u>Charter Hire Payment Date</u>	Percentage of Acquisition Cost (After Payment of Basic Charter Hire on Corresponding <u>Charter Hire Payment Date</u> )
8/28/91	108.44224
11/28/91	108.63951
2/28/92	108.77154
5/28/92	108.86344
8/28/92	108.91348
11/28/92	108.92117
2/28/93	108.88307
5/28/93	108.80841
8/28/93	108.69643
11/28/93	108.55240
2/28/94	108.37361
5/28/94	108.16728
8/28/94	107.93291
11/28/94	107.67123
2/28/95	107.38040
5/28/95	107.06569
8/28/95	106.72672
11/28/95	106.36421
2/28/96	105.97704
5/28/96	105.56893
8/28/96	105.13956
11/28/96	104.68862
2/28/97	104.21450
5/28/97	103.72011
8/28/97	103.20517
11/28/97	102.66832
2/28/98	102.10725
5/28/98	101.52463
8/28/98	100.92016
11/28/98	99.77723
2/28/99	98.60146
5/28/99	97.39648
8/28/99	96.16175
11/28/99	94.89628
2/28/00	93.59937
5/28/00	92.27142
8/28/00	90.91205
11/28/00	89.52597
2/28/01	88.11815
5/28/01	86.68610
8/28/01	85.22962
11/28/01	83.75459
2/28/02	82.26833
5/28/02	80.76546
8/28/02	79.24594
11/28/02	77.71159

EXHIBIT E  
(to Charter Agreement)

Charter Hire Payment Date

Percentage of  
Acquisition Cost  
(After Payment of  
Basic Charter Hire  
on Corresponding  
Charter Hire Payment Date)

2/28/03	76.16664
5/28/03	74.60522
8/28/03	73.02736
11/28/03	71.43506
2/28/04	69.83299
5/28/04	68.21478
8/28/04	66.58048
11/28/04	64.93233
2/28/05	63.27549
5/28/05	61.60300
8/28/05	59.91499
11/28/05	58.21394
2/28/06	56.50555
5/28/06	54.78225
8/28/06	53.04420
11/28/06	51.29419
2/28/07	49.53849
5/28/07	47.76129
8/28/07	45.94385
11/28/07	44.08829
2/28/08	42.20010
5/28/08	40.26940
8/28/08	38.29531
11/28/08	36.27993
2/28/09	34.22859
5/28/09	32.13136
8/28/09	30.00000

**SCHEDULE OF PRICING ASSUMPTIONS  
CHARTER OF OIL AND HOT OIL BARGES**

Acquisition Cost:	\$6,282,828
Acquisition Cost Per Unit:	Oil Barges - 3 @ \$1,122,782 Hot Oil Barges - 2 @ \$1,457,241
Delivery Date:	May 31, 1991
Funding Date:	Delivery Date
Charter Term:	18 years
Basic Term Commencement Date:	August 28, 1991
Debt as a % of Acquisition Cost:	80%
Average Loan Life:	10.89 years
Assumed Debt Rate:	9.03%
Charter Hire Payments:	2.31945% - Payment 1-28 2.83488% - Payment 29-72
Present Value of Charter Hire Payments:	89.68% (Discounted to 5/30/91 @ 8.75%)
Interim Rent:	0%
Transaction Costs:	\$120,000 Assumed
Early Buyout Option:	53.05% on August 28, 2006