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SEP 10 1979

September 6, 1979

*Direct dial number  
(216)*

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission  
12th and Constitution  
Recordation Room 2303  
Washington, D.C. 20423

REGISTRATION NO. *W-18-A* FILED 1425  
SEP 10 1979  
9-253A 066  
SEP 10 1979  
100.00  
INTERSTATE COMMERCE COMMISSION

Gentlemen:

Please file the enclosed Assignment and Subcharter Amendment in the Interstate Commerce Commission records and return a copy reflecting such filing to the undersigned. Our Firm check in the amount of \$100.00 is enclosed.

If you have any questions, please call me at 696-9200 extension 753.

Very truly yours,

Debora Senor  
Legal Assistant

DS:scm  
Enclosure

*Supt. Marine - Lessee  
Subsized Cook Lessee*

SEP 17 11 02 AM '79  
FEE OF 1.00  
INTERSTATE COMMERCE COMMISSION

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

9/20/79

OFFICE OF THE SECRETARY

Debora Senor, Legal Assistant  
Squire, Sanders & Dempsey  
1800 Union Commerce Building  
Cleveland, Ohio 44115

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 9/10/79 at 11:05am, and assigned re-  
recording number(s).

W-18 & W-18-A

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SEP 10 1979

INTERSTATE COMMERCE COMMISSION

SUBCHARTER AGREEMENT

THIS AGREEMENT, made and entered into as of September 1, 1979, by and between THE LUBRIZOL CORPORATION, 29400 Lakeland Boulevard, Wickliffe, Ohio 44092, an Ohio corporation ("Lubrizol"), and SWIFT MARINE, INC., 5785 Beechwood Avenue, Alliance, Ohio 44607, an Ohio corporation ("Swift").

WHEREAS, pursuant to an Agreement of Assignment, Assumption and Consent of even date herewith, Swift did assign to Lubrizol all of Swift's right, title and interest in and to a certain Charter Agreement between Swift and Dravo Leasing Company ("Dravo") dated as of June 19, 1974 as amended by Supplemental Agreements Numbers 1 and 2 (the "Charter Agreement"); and

WHEREAS, Swift desires to continue to use the Barges now chartered to Lubrizol under the Charter Agreement for transportation of goods for Lubrizol and third parties.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1 - CHARTERING CLAUSE:

Lubrizol agrees to charter and Swift agrees to accept under charter five (5) 195' x 35' x 12' semi-integrated tank barges identified and described herein for the term and charter hire and under the conditions hereinafter set forth.

ARTICLE 2 - DESCRIPTION OF THE BARGES:

The Barges which are the subject of this Agreement are identified and described as follows:

<u>Swift's Operating Name or Number</u>	<u>Dravo's Hull Number</u>	<u>Official Number</u>
SM 3	6530	569779
SM 4	6531	569780
SM 5	6544	569781
SM 6	6545	569782
SM 7	6546	569783

and are further described in the following Dravo Corporation specifications and drawings:

1. Contract Specifications for a Stock Design Double Skin Tank Barge with Deckmounted Cargo Pump, 195'0" x 35'0" x 12'0" dated July 3, 1974, Revised October 28, 1974, and April 3 and December 11, 1975.

2. Drawing No. 336473, Rev. 3, entitled "Double Skin Tank Barge, 195' x 35' x 12', General Arrangement."

3. Drawing No. 336474, Rev. 1, entitled "Double Skin Tank Barge, 195' x 35' x 12'0" Semi-Int., Low Rate External Angle Steam Heating Coils."  
The Barges as identified and described above are hereinafter referred to as the "Barges."

ARTICLE 3 - TERM:

The Barges shall be chartered to Swift for a term of two (2) years beginning on the date hereof; provided, however, that this Agreement shall terminate if Swift, at any time during the term hereof, shall provide not less than 60 days notice to Lubrizol that it no longer desires to transport Lubrizol products; provided further, however, that said notice shall not relieve Swift from any liability to perform pursuant to the terms of this Agreement prior to the date of termination including, but not limited to, the failure to maintain the Barges as required by this Agreement.

ARTICLE 4 - DELIVERY:

The Barges are in the possession of Swift and shall be deemed delivered as of the date of this Agreement.

ARTICLE 5 - CONDITION OF BARGES:

Swift accepts the "Barges" and their equipment "as is," and Lubrizol makes no representation or warranty whatsoever as to their condition, seaworthiness and/or fitness for any purpose whatsoever and none is to be implied. The acceptance of the Barges by Swift shall constitute an admission of full performance by Lubrizol of all of Lubrizol's obligations under Articles 1, 2 and 4 hereof, and Swift shall not be entitled to make or assert any claim against Lubrizol with respect to the condition, seaworthiness or fitness of the Barges.

ARTICLE 6 - PAYMENT:

Swift, as rent and hire for the Barges, agrees to pay Lubrizol monthly charter hire in the amount of Thirty-Six Thousand Nine Hundred Fifty-Five Dollars (\$36,955.00). Said sum includes payment of charter hire on a tug in the amount of Fourteen Thousand Nine Hundred Dollars (\$14,900.00) which Swift agrees to pay to Lubrizol, and Lubrizol agrees to forward directly to Dravo, until the sooner of the termination of this Agreement or Dravo's consent to the termination of such payments. Lubrizol has no right or claim to the tug as a result of such payments.

Payment of the monthly charter hire shall be due on the first day, and made by the tenth day, of each month. If Swift fails to make any such payment, Lubrizol may, upon notice to Swift, deduct the amount thereof from sums owed by Lubrizol to Swift for the transportation of product on behalf of Lubrizol. Nothing herein shall be deemed to require Lubrizol to so deduct any defaulted payment from amounts due Swift.

ARTICLE 7 - INSURANCE:

Swift agrees to insure and keep insured each of said Barges from the date of its delivery by Lubrizol to Swift and continuing as long as this Agreement remains in force; said insurance to protect against the risks of fire, explosion and marine perils (including, without limitation, Collision and Inchmaree Clauses) and against the usual protection and indemnity risks and injury or death to crew members as Lubrizol may require or as may be hereinafter recited. Said insurance shall be in not less than the following amount for each Barge:

<u>Dravo's Hull Number</u>	<u>Swift's Operating Number</u>	<u>Insured Value</u>
6530	SM 3	\$315,000.00
6531	SM 4	\$315,000.00
6544	SM 5	\$315,000.00
6545	SM 6	\$315,000.00
6546	SM 7	\$315,000.00

Policies providing said insurance coverage are to be issued in the name of Swift, with Lubrizol and Dravo named as additional insureds, and are to provide for payment of loss or damage, if any, to Swift, Lubrizol and/or Dravo as their respective interests may appear. Each such policy shall prohibit cancellation without 30 days written notice to Lubrizol and Dravo. Swift shall file with Lubrizol and Dravo satisfactory evidence of such insurance including copies of the applicable insurance policies promptly upon taking the Barges into Swift's service. Swift further agrees to indemnify Lubrizol and Dravo for any loss or damage falling within the scope of any deductible provision approved by Lubrizol which is included in said insurance policies.

-3-

Such insurance shall be in such amounts and in such forms and with such insurance companies, underwriters or funds as Lubrizol may require and approve. All insurance required under this Agreement shall be placed and kept with insurers satisfactory to Lubrizol and shall include Lubrizol and Dravo as additional assureds, with full waiver of subrogation against Lubrizol and Dravo only and not against the builder of the Barges, and without liability by Lubrizol or Dravo for any assessments under mutual forms of policies, should Lubrizol or Dravo deem such necessary to fully and effectively protect it against any and all losses, claims, damages and/or demands arising out of the operation of the Barges under this Agreement. All hull and protection and indemnity insurance on the Barges shall be in an amount not less than the amounts set forth in the second sentence of this Article. In addition to the foregoing, Swift shall carry Excess Collision and protection and indemnity liability coverage with a limit of not less than \$1,000,000.00 for each accident.

In the event of a total loss or constructive total loss (as constructive total loss is defined in the insurance policies covering fire and marine perils to which reference is made herein) of any or all of said Barges occurring during the period this Agreement remains in effect, all sums collected from said policy or policies of insurance by reason of such total loss or constructive total loss together with a sum representing losses coming within the deductible provisions of said policy or policies shall be paid first to Dravo in the amount due it under Section 10 of the Charter Agreement, then to Lubrizol in the amount of \$75,000.00 per Barge, and then to Swift. Effective on the date of any such loss, the monthly charter payment set forth in Article 6 hereof shall be reduced by \$4,436 for each barge lost and the sum of \$142,800 set forth in the Assumption Agreement of even date herewith between the parties hereto shall be reduced by \$28,560 per barge lost.

Swift warrants that it will maintain all such insurance unimpaired by any act, breach of warranty or otherwise and that it will not be guilty of, or permit any acts of omission or commission which would in any way invalidate, avoid, or suspend insurance herein required to be maintained. Swift shall pay for any loss of or damage to the Barges, for any costs whatsoever, and any third party claims which shall constitute a lien against the Barges not covered by insurance, or from which no reimbursement or incomplete reimbursement is received from the above insurances.

The cost of all such insurance shall be borne by Swift and if not paid by Swift promptly and when due, may be paid by Lubrizol. Should Lubrizol pay for the cost of such insurance, the amount of such payment shall be treated as additional charter hire due and payable to Lubrizol.

ARTICLE 8 - MAINTENANCE AND OPERATION:

Swift specifically covenants and agrees that:

(A) It will maintain the Barges, their appliances and appurtenances, in a good state of repair and in efficient operating condition during the term of this Agreement, including but without limitation, keeping said Barges in full unexpired classification as may be required by the United States Coast Guard or other regulatory agencies having jurisdiction in the premises.

(B) It will return said Barges at the expiration or sooner termination hereof, in as good order and condition as when received, reasonable wear and tear excepted. Reasonable wear and tear shall not, however, include any breakage or structural damage. Upon redelivery, if it should be found that the Barges are not in as good condition as when received by Swift,

reasonable wear and tear excepted, Lubrizol shall have the right to either require Swift at its sole expense to put the same in good condition as aforesaid, or accomplish said work itself, charging the cost thereof to Swift. Swift shall, during any period required to accomplish said work, be liable to Lubrizol for charter hire as stipulated in Article 6. A survey of the Barges shall be conducted at Swift's expense on or about the time of redelivery of the Barges to Lubrizol by a representative of the U.S. Salvage Association, (or other surveyor approved by Lubrizol), and such survey or surveys shall govern the application of this subparagraph as respects the conditions of the Barges at the time of such redelivery.

(C) Swift shall have the Barges regularly inspected, overhauled and repaired as necessary, but at least once during the term of this Agreement.

(D) As to any such inspection, overhaul or repair Swift shall give Lubrizol and Dravo reasonable notice of its intention to accomplish the same and afford Lubrizol and Dravo the opportunity to have their agents or representatives enter upon the Barges to inspect them. In the event repairs are to be made, the inspection shall occur before the repairs are undertaken and after the same are completed. All costs incurred by Dravo or its representatives in making such inspections shall be borne by Swift only when and at such times as the Barges are drydocked. Such inspection on behalf of Lubrizol or Dravo shall not relieve Swift of any of the obligations imposed by provisions of Sections (A) and (B) of this Article 8. Any lay-up of the Barges for purposes of inspection, overhaul or repair shall not abate or postpone the charter hire payable hereunder.

(E) It will make no structural alterations or changes in the Barges, their equipment or appurtenances, unless the consent of Lubrizol and Dravo be first obtained in writing. All alterations, improvements or additions made on the Barges after commencement of this Agreement except those that pertain to navigational equipment furnished by Swift shall become the property of Lubrizol and shall remain upon, and be surrendered with the Barges at the termination or expiration of this Agreement.

(F) Swift shall not create, incur or permit to be imposed upon the Barges any liens whatsoever except salvage in appropriate circumstances, and agrees to indemnify and hold harmless Lubrizol against any and all claims, demands, or liens of whatsoever nature arising out of the operation and custody of the Barges or out of any act or neglect on its part or the part of any third parties. Swift agrees to pay promptly all bills and obligations of every description which it may enter into or incur in the operation and maintenance of said Barges including federal, state or local taxes on the charter, operation or use of the Barges. Swift agrees to notify, in writing if possible, any person furnishing repairs, supplies, towage or other necessities to the Barges that Swift does not have the right, power or authority to create, incur, or permit to be imposed on the Barges any liens whatsoever. It is understood that Lubrizol is entering into this Agreement to provide the use of the Barges to Swift based upon Swift's ability to perform "express tow service" for the transportation of goods for Lubrizol. Said service is unique and therefore this Agreement is not assignable. An involuntary assignment, by virtue of insolvency proceedings, bankruptcy, or appointment of a receiver, shall constitute an assignment or subletting

of this Agreement and said Barges and shall amount to a breach hereof on the part of Swift.

(G) Swift warrants that it is and will remain a citizen of the United States of America and entitled to own and operate barges documented under the laws of the United States with the privilege of engaging in the coastwise trade, and that the Barges shall not be used in any unlawful trade or for any unlawful purpose whatsoever, or in violation of any of the laws and regulations of the United States or of any foreign nation having jurisdiction, limited, overall or special, over the Barges.

(H) Swift covenants to maintain and not to mar Dravo's hull number or the official number applicable to the Barges assigned by the appropriate agency of the Government of the United States of America, as permanently marked on the Barges, and not to have any words or figures written, or painted, or placed upon said Barges indicating ownership by Swift, or anyone else, but Swift's operating name or number may be marked on the Barges. Swift also covenants to maintain and keep affixed at all times in a conspicuous place on the coaming of the Barges a metal plate which shall be stamped and punched with the following words:

"Dravo Leasing Company, Wilmington, Del.  
Owner and Lessor - 1975"

(I) This Agreement is a full and complete demise of the Barges to Swift, which shall, at its own expense, man, navigate and operate the Barges. Swift shall have exclusive control over the Barges during the currency of this Agreement.

ARTICLE 9 - ASSUMPTION OF RISKS:

Swift agrees to assume all risks and shall not be released from its obligations hereunder, in the event of damage or loss from any cause whatsoever attributable to its use of said Barges and to keep said Barges and deliver them at the expiration of this Agreement to Lubrizol free from all bills, liens, encumbrances, or charges of any nature whatsoever and to pay any and all taxes, license fees, fines, damages, or other charges which may be lawfully imposed by reason of the possession or operation of said Barges by Swift during the term of this Agreement; and, further, Swift shall bring to the attention of Lubrizol forthwith, by written notice, the necessity for complying with any statute, rule, or regulation applicable to the possession or operation of said Barges, Swift to pay all of the expenses of complying therewith, it being understood and agreed that Swift will assume the responsibility for any violation of such statutes, rules, or regulations, and will indemnify and save Lubrizol harmless from any fine, penalty, damages, or expense, occasioned thereby; and especially Swift covenants to secure the release of said Barges from any lien, maritime, or otherwise, or from any seizure or arrest by virtue of any act of legal process issued by any court of any jurisdiction.

ARTICLE 10 - THE CLEAN WATER ACT:

Swift binds and obligates itself to comply with all the requirements of The Clean Water Act and all Amendments thereto and any regulations which may be promulgated thereunder. Swift shall at its own cost and expense furnish to the appropriate agency of the United States Government evidence of financial responsibility as required by said Act, and agrees to defend, indemnify, and hold harmless Lubrizol of and from any and all claims, demands,

causes of action, of whatever kind and nature including without limitation claims for fines and penalties, which may be asserted against Lubrizol by any party (governmental or otherwise) whatsoever.

ARTICLE 11 - DETENTION AND DAMAGE:

In the event that the Barges are detained or rendered inoperative because of the happenings of any event caused or contributed to by another vessel, person, corporation, or others, for which detention such third parties are or may be liable (detention to include time necessary to proceed to, survey and effect repairs), then for such period of detention Swift shall indemnify and save Lubrizol harmless from any loss whatsoever by reason of the Barges being detained or rendered inoperative, and shall pay to Lubrizol the charter hire and any other sums which would otherwise be payable to Lubrizol, but on performance of this indemnity Swift shall immediately become subrogated, to the extent of such indemnity, to all rights whatsoever of Lubrizol to recover for such detention from or against such vessel, person, corporation, or others, and Swift shall be entitled to bring and maintain suit or suits thereon in its own name or in the name of Lubrizol as Swift may see fit; and provided further, that Lubrizol, in its option, may in each instance, assert and prosecute such claims in the name of Lubrizol for and on behalf of Swift and at Swift's expense, such claims to be in a sum not less than the amount of indemnity paid by Swift.

ARTICLE 12 - LIMITS OF BARGE USE:

It is contemplated that Swift will use said Barges in its transportation service on the Mississippi River, the Gulf Intracoastal Canal, the Missouri River, the Ohio River, the Illinois River and waterway, and the

connecting and tributary waterways of each named river, canal and waterway, and in no event beyond the navigation limits set forth in the policies of insurance hereinabove provided for, and Swift shall not use the Barges in any other service while this Agreement remains in effect without the written consent of Lubrizol and Dravo.

ARTICLE 13 - EVENTS OF DEFAULT AND REMEDIES OF LUBRIZOL:

(A) The following shall, without limitation, constitute events of default under this Agreement:

(1) Failure of Swift to pay charter hire as and when the same shall be payable, time being of the essence in this respect;

(2) Failure of Swift to operate the Barges pursuant to the terms hereof and the failure to perform each and every covenant contained herein to be done and performed by it;

(3) The occurrence of any event causing Swift to be prohibited by governmental or other action from chartering and/or operating the Barges;

(4) The failure of Swift to provide services for the transportation of goods for Lubrizol under terms reasonably satisfactory to Lubrizol and reflective of current market conditions; or

(5) The filing of a petition in bankruptcy by or against Swift or the appointment of a receiver for Swift.

(B) Immediately following the expiration of three (3) calendar days from the happening of an event of default as described in Section (A) (1) of this Article 13, or immediately following the expiration of five (5) calendar days from the happening of an event of default as described in Sections (A)(2), (3) and (4) of this Article 13, it is understood and agreed that Lubrizol at its option may:

(1) Proceed by appropriate court action or actions, either at law, in equity or in admiralty, to enforce performance by Swift of the applicable covenants of this Agreement or to recover damages for the breach thereof;

(2) Personally or by agents or attorneys enter and re-take the Barges without legal process wherever the same may be, and Swift forthwith upon demand of Lubrizol shall surrender to Lubrizol possession of the Barges. Upon any such retaking (or regaining possession by virtue of judicial proceedings, as the case may be), Swift shall forthwith be deemed divested of all right, title, interest, claim and/or demand whatsoever, either at law, in admiralty or in equity of, in and to the Barges and such retaking and repossession shall be a perpetual bar at law, in admiralty, or in equity against Swift, its successors or assigns, and against any and all persons who may claim the Barges, or any part thereof.

(3) Notwithstanding such retaking as provided in this Article 13, Section (B)(2) above, recover from Swift any and all amounts which under the terms of this Agreement may be then due or which may have accrued to the date of such termination and also to recover from Swift any damages in addition thereto which Lubrizol shall have sustained by reason of the breach of any covenant or covenants of this Agreement other than for the payment of the monthly charter hire.

(4) In the event that the Barges shall be arrested or detained by any judicial officer of any country or nation and

shall not be released from detention within fifteen (15) days from the date of arrest or detention, Swift does hereby empower and authorize Lubrizol, in the name of Swift, to apply for and receive possession thereof, or to take possession thereof, and this power of attorney shall be irrevocable and may be exercised not only by Lubrizol but also by any appointee or appointees of Lubrizol with full power of substitution to the same extent and effect as if such appointees had been named as one of the attorneys above named by express designation.

(5) In its discretion do all acts and make all expenditures necessary to retake or regain possession of the Barges, including, without limitation, incur travel, towing and other expenses in retaking and regaining, or attempting to retake and regain possession of the Barges. Swift covenants and agrees to promptly reimburse Lubrizol, with interest at the rate of 9-1/2% per annum, for any and all expenditures so made or incurred, and until Swift has so reimbursed Lubrizol for such expenditures the amount thereof, together with such interest, shall be an additional indebtedness due from Swift to Lubrizol. Swift shall also reimburse Lubrizol promptly with interest at the rate of 9-1/2% per annum for any and all advances made or incurred by Lubrizol at any time in retaking and/or regaining possession of the Barges or otherwise protecting its rights hereunder, and for any and all damages sustained by Lubrizol from or by reason of any defaults of Swift.

(6) In the event suit or action is instituted by Lubrizol, or those claiming by, through or under it, to recover possession

of the Barges, to collect damages or to enforce any right possessed by Lubrizol under the terms hereof, Swift agrees and promises to pay such additional sum as the court may adjudge reasonable as attorneys' fees in said suit or action.

ARTICLE 14 - NEGATIVE COVENANT:

(A) Swift covenants and agrees that from the date hereof and until the expiration or sooner termination of this Agreement, unless Lubrizol shall otherwise consent in writing, it will not sell, lease, transfer or otherwise dispose of all or a substantial portion of its properties and assets to any person or corporation other than in the ordinary course of business; consolidate with or merge into any other corporation, or permit another corporation to merge into it; nor shall any sale, commitment or other disposal of all or a substantial portion of the capital stock of Swift be made by any present owner without the prior written consent of Lubrizol.

(B) In the event of any change in ownership, consolidation, merger, or capital stock transfer as described in this Article 14, Section (A) above, without the written consent of Lubrizol, such event shall be construed to be an event of default for which the rights, remedies and options described in Article 13, Sections (B)(1), (2), (3), (4), (5) and (6) shall thereupon become and be available to Lubrizol.

ARTICLE 15 - GOVERNING LAW:

The parties hereto expressly agree that this Agreement has been executed and acknowledged in the State of Ohio and that, although it is contemplated that the Barges shall be used within the territorial jurisdiction of other states, the validity, construction and interpretation of

this Agreement shall be exclusively governed by and in accordance with the laws and decisions of the courts of the State of Ohio.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be entered into as of the day, month and year first above mentioned.

SWIFT MARINE, INC.

Attest:

Patricia A. Hough

By Vito Swift  
Title Pres.  
Date 8-30-79

THE LUBRIZOL CORPORATION

Attest:

Frederic C. Dlaughter

By Paul L. Carel  
Title Vice President  
Date 8/30/79

STATE OF OHIO

COUNTY OF LAKE

BEFORE ME, a Notary Public in and for said County and State, personally appeared on this 30th day of August, 1979, THE LUBRIZOL CORPORATION, by Paul L. Carel, its Vice President, who acknowledged to me that he did sign the foregoing instrument and that the same was the free act and deed of said corporation and his free act and deed individually and as such officer.

Gail S. Nowak  
Notary Public

GAIL S. NOWAK  
Notary Public, State of Ohio  
My Commission Expires Feb. 15, 1984

STATE OF OHIO

COUNTY OF Stark

BEFORE ME, a Notary Public in and for said County and State, personally appeared on this 30<sup>th</sup> day of August, 1979, SWIFT MARINE, INC., by Victor Swift, its President, who acknowledged to me that he did sign the foregoing instrument and that the same was the free act and deed of said corporation and his free act and deed individually and as such officer.

Patricia A. Hough  
Notary Public

**PATRICIA A. HOUGH, Notary Public**  
State of Ohio  
My commission expires August 27, 1982