

RECORDATION NO. W-¹⁰.....Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

EQUIPMENT TRUST AGREEMENT

dated as of

November 30, 1971

among

SECURITY PACIFIC NATIONAL BANK

AS OWNER PARTICIPANT,

and

BANKERS TRUST COMPANY

AS TRUSTEE,

and

CALIFORNIA AND HAWAIIAN SUGAR COMPANY,

AS GUARANTOR.

EQUIPMENT TRUST AGREEMENT

This **EQUIPMENT TRUST AGREEMENT** dated as of November 30, 1971, among SECURITY PACIFIC NATIONAL BANK, a national banking association (herein sometimes called the "Owner Participant"), and BANKERS TRUST COMPANY, a New York corporation, as trustee hereunder (herein called the "Trustee") and CALIFORNIA AND HAWAIIAN SUGAR COMPANY, a California cooperative corporation, as guarantor (herein sometimes called the "Guarantor").

WITNESSETH:

ARTICLE I**Definitions**

SECTION 1.01. For all purposes of this Trust Agreement the following terms shall have the following meanings (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

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

"Business Days" shall mean calendar days other than Saturdays, Sundays or public holidays under the laws of the State of New York or days on which banking institutions in The City of New York are authorized to close.

"Certificate" shall include each Equipment Trust Certificate and each Owner Certificate from time to time outstanding.

"Charters" shall mean and refer collectively to the Bareboat Charter and the Time Charter.

"Charterer" shall mean and refer to the Guarantor in its capacity as Charterer under the Time Charter.

"Commitment Notice" shall mean ten Business Days' written notice (effective on the receipt thereof) prior to the scheduled delivery date or said notice by telephone promptly confirmed in writing from the Guarantor to the Trustee and each Participant specifying the amount of Owner's Cost for the Vessel and the amount of each Participant's Original Participation in such Vessel including any such notice with respect to a postponed scheduled delivery date delivered pursuant to Section 5 of the Participation Agreement.

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

"Equipment Trust Certificate" shall mean a certificate, substantially in the form set forth in Section 3.01(a) hereof, issued by the Trustee to a Loan Participant pursuant to Section 4.01(d) hereof in the principal amount, bearing interest at the rate and payable as to principal and interest as provided in Section 3.02 hereof, and shall include any certificate issued in exchange therefor or replacement thereof pursuant to Section 3.07 or 3.08 hereof.

"Event of Default" shall mean (a) the failure to pay in full any instalment of principal or interest on the Equipment Trust Certificates when due and the continuance thereof for 15 days, (b) failure by the Owner Participant to perform any of its covenants contained herein continued

for a period of 60 days after written notice thereof by the Trustee, or if any of its representations and warranties contained herein should prove to be incorrect, or (c) any event constituting an Event of Default under the Time Charter.

"Loan Participant" shall mean each of the institutional investors listed in Schedule A to the Participation Agreement and their respective successors and assigns.

"Majority in Interest of Participants" as of a particular date of determination shall mean (i) the holders of 50% or more in aggregate unpaid principal amount of all Equipment Trust Certificates, if any, outstanding as of such date and (ii) the Owner Participant, *provided, however*, that during any period during which any Event of Default shall have occurred and be continuing, *"Majority in Interest of Participants"* shall mean the holders of 50% or more in aggregate unpaid principal amount of all Equipment Trust Certificates.

"Operator" shall mean and refer to Pyramid Sugar Transport, Inc., a Louisiana Corporation or its successor provided for in Article 22(b) of the Bareboat Charter, which successor shall be a reputable vessel operator qualified and prepared to make the representations and warranties contained in Article 16 of the Bareboat Charter.

"Original Participation" of a Participant in the Vessel shall mean the original Commitments of such Participant referred to in Section 2 of the Participation Agreement, being such Participant's participation in the payment of Owner's Cost for the Vessel.

"Owner Certificate" shall mean a certificate, substantially in the form set forth in Section 3.01(b) hereof, issued by the Trustee to the Owner Participant pursuant to Section 4.01(d) hereof and, among other things, acknowledging receipt by the Trustee of the payment by the Owner Participant of its Original Participation in the Vessel as provided in Section 3.02(b) hereof, and shall include any certificate issued in exchange therefor or replacement thereof pursuant to Sections 3.07 and 3.08 hereof.

"Participants" shall include each Loan Participant and the Owner Participant.

"Participation Agreement" shall mean the Participation Agreement as modified by the Supplement thereto, both dated as of the date hereof and entered into concurrently with the execution and delivery of this Trust Agreement, among the Participants, the Trustee and the Guarantor as the same may from time to time be supplemented or amended, or the terms thereof waived or modified, to the extent permitted by, and in accordance with, the terms thereof.

"Purchase Agreement" shall mean the Purchase Agreement dated August 13, 1971, and entered into by the Builder and Bankers Trust Company, as trustee under an interim trust agreement dated August 13, 1971 between Charterer and such trustee, as the same may from time to time be supplemented or amended, or the terms thereof waived or modified, to the extent permitted by, and in accordance with, the terms of this Trust Agreement.

"Purchase Agreement Assignment" shall mean the Purchase Agreement Assignment from Bankers Trust Company, as trustee under an interim trust agreement dated August 13, 1971 between Charterer and such trustee, to the Trustee, to which is attached the Consent and Agreement of the Builder and Charterer, all in substantially the form of Exhibit II to the Participation Agreement.

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

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

"Trust Estate" shall mean all estate, right, title and interest of the Trustee in and to the Vessel, the Charters, the Time Charter Assignment and the Purchase Agreement and Purchase Agreement Assignment (to the extent of the Trustee's interest therein, including any rights arising out of the Participation Agreement) including, without limitation (i) all amounts of Charter Hire, Stipulated Loss Value, Termination Value, insurance proceeds or other payments of any kind for or with respect to the Vessel, which amounts shall be deemed assigned to secure prompt payment of the indebtedness evidenced by the Equipment Trust Certificates, (ii) all amounts from time to time deposited as security for the Charterer's obligations under the Time Charter, and (iii) any and all payments or proceeds received by the Trustee after the termination of the Time Charter with respect to the Vessel as the result of the sale, lease or other disposition thereof (or Termination Value payments in lieu thereof).

SECTION 1.02. For all purposes of this Trust Agreement the following terms shall have the meanings defined in the Charters: "Builder", "Hire", "Delivery Date", "Owner's Cost", "Stipulated Loss Value", "Term", "Termination Value", "Total Loss" and "Vessel".

ARTICLE II

Authority to Execute the Purchase Agreement, the Bareboat Charter and the Time Charter Assignment; Declaration of Trust

SECTION 2.01. The Owner Participant hereby confirms and ratifies the execution and delivery by the Trustee of the Purchase Agreement and hereby authorizes and directs the Trustee to execute and deliver the Participation Agreement, the Purchase Agreement Assignment, the Bareboat Charter and the Time Charter Assignment and, subject to the terms of this Trust Agreement, to exercise the rights and perform the duties of the Purchaser of the Vessel under the Purchase Agreement, of assignee under the Time Charter Assignment, of owner under the Bareboat Charter and its duties under the Participation Agreement and the Purchase Agreement Assignment.

SECTION 2.02. The Trustee hereby declares that it will hold the Trust Estate upon the trusts hereinafter set forth, subject to, and in accordance with, the terms of Article V hereof, *first*, as a first lien on the Trust Estate for the ratable use and benefit of the holders of the Equipment Trust Certificates and, *second*, for the use and benefit of the Owner Participant, all as more particularly set forth in said Article V. This Trust Agreement creates, for the benefit of the holders of the Equipment Trust Certificates, a security interest and first lien in the Trust Estate to secure the prompt payment of the indebtedness evidenced by the Equipment Trust Certificates and the performance and observance by the Trustee of all of the agreements, covenants and provisions herein and in the Equipment Trust Certificates contained, subject to the terms and conditions hereof. For convenience of reference the trust created by this Trust Agreement may be referred to as the California and Hawaiian Sugar Company Vessel Equipment Trust.

ARTICLE III

The Certificates

SECTION 3.01. (a) The Equipment Trust Certificates shall each be substantially in the form set forth below:

[FORM OF EQUIPMENT TRUST CERTIFICATE]

This security has not been registered under the Securities Act of 1933. This security may not be sold, offered for sale, pledged or hypothecated unless registered pursuant to such Act or unless an exemption from such registration is available.

This security may be sold, assigned, pledged or otherwise transferred only to (i) a "citizen of the United States" within the meaning of the Shipping Act, 1916, as amended, or (ii) a person or entity which has obtained the approval of the Maritime Administration for its acquisition of this security.

BANKERS TRUST COMPANY, TRUSTEE UNDER
EQUIPMENT TRUST AGREEMENT
DATED AS OF NOVEMBER 30, 1971

8¼% Equipment Trust Certificate
Unconditionally Guaranteed as to principal and interest by
California and Hawaiian Sugar Company

\$.....

No.

Bankers Trust Company, a New York corporation, not in its individual capacity but solely as trustee (herein called the "Trustee") under that certain Equipment Trust Agreement dated as of November 30, 1971 (herein called the "Trust Agreement"; the defined terms therein not otherwise defined herein being herein used with the same meanings), among the party referred to as "Owner Participant" in the Trust Agreement, the Trustee and California and Hawaiian Sugar Company, as Guarantor, hereby promises to pay to the order of, or registered assigns, the sum of \$..... together with interest on the amount of said principal sum remaining unpaid from time to time from the date of this Equipment Trust Certificate until due and payable at the rate of 8¼% per annum (computed on the basis of a 360-day year of twelve 30-day months), payable (i) if the Delivery Date of the Vessel shall not have occurred, in instalments of interest only accrued hereon semiannually after the date hereof and, in addition, on the Delivery Date and (ii) in 40 consecutive level payments of principal and interest payable semiannually on the date of the end of each 6-month period after the later of the Delivery Date or the Deposit Date. The principal amount hereof payable on each of the 40 semiannual level payment dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each payment date shall be substantially equal and such 40 instalments of principal and interest will completely amortize the principal amount hereof. The Trustee will furnish to the holder hereof promptly after the later of the Delivery Date or the Deposit Date a schedule, in such number of counterparts as shall be requested by the holder hereof, showing the respective amounts of principal and interest payable on each payment date.

This Equipment Trust Certificate, to the extent permitted by applicable law, shall bear interest at the rate of 8¾% per annum (computed on the basis of a 360-day year of twelve 30-day months) on any part of the principal or interest hereof not paid when due for any period during which the same shall be overdue.

All payments of principal and interest to be made by the Trustee hereunder and under the Trust Agreement shall be made only from the income and proceeds from the Trust Estate and only to the extent that the Trustee shall have sufficient income or proceeds from the Trust Estate to

make such payments in accordance with the terms of Article V of the Trust Agreement; and each holder hereof, by its acceptance of this Equipment Trust Certificate, agrees that it will look, as against the Trustee, solely to the income and proceeds from the Trust Estate to the extent available for distribution to the holder hereof as above provided and that neither any Owner Participant nor the Trustee is personally liable to the holder hereof for any amounts payable under this Equipment Trust Certificate or the Trust Agreement.

Both principal and interest shall be payable at the corporate trust office of the Trustee in the Borough of Manhattan, City and State of New York, or at the office of any successor Trustee in the State of New York or otherwise as provided in the Trust Agreement.

As provided in the Trust Agreement the Equipment Trust Certificates are subject to prepayment, with accrued interest but without premium, other than through application of the level payment instalments, from time to time in whole or in part only (a) with any moneys left on deposit with the Trustee for the account of the Loan Participants and not applied in payment of Owner's Cost on the earlier of (i) the Delivery Date, or (ii) November 30, 1974, or (iii) the date of an Event of Default under the Trust Agreement, (b) on any payment date, with a specified portion of (i) the Stipulated Loss Value or other payment received by the Trustee in the event of a Total Loss with respect to the Vessel and (ii) the proceeds from the sale of the Vessel as surplus or obsolete (or Termination Value payments in lieu thereof) received by the Trustee from such sale at any time after ten years after the Delivery Date and (c) with all payments received and amounts realized at any time after an Event of Default shall have occurred and be continuing.

This Equipment Trust Certificate is one of the Equipment Trust Certificates referred to in the Trust Agreement which, together with the Owner Certificates referred to in the Trust Agreement, have been or are to be issued by the Trustee pursuant to the terms of the Trust Agreement. The rights of the holders of the Owner Certificates under the Trust Agreement, as well as the beneficial interest of the holders of the Owner Certificates in and to the Trust Estate, are subject and subordinate to the rights of the holders of the Equipment Trust Certificates to the extent provided in the Trust Agreement.

Reference is hereby made to the Trust Agreement for a statement of such consequences and of the rights of the holder of this Equipment Trust Certificate and of the rights of the holders of the other Equipment Trust Certificates and of the Owner Certificates, as well as for a statement of the terms and conditions of the Trust created by the Trust Agreement, to all of which terms and conditions each holder hereof agrees by its acceptance of this Equipment Trust Certificate.

IN WITNESS WHEREOF, the Trustee has caused this Equipment Trust Certificate to be executed in its corporate name by one of its authorized officers as of the date hereof.

BANKERS TRUST COMPANY,
as Trustee,

By
Authorized Officer

Dated:

**INQUIRY SHOULD BE MADE OF THE TRUSTEE IF CERTIFICATION AS TO
BALANCE DUE HEREUNDER IS REQUIRED**

[FORM OF GUARANTY FOR EQUIPMENT TRUST CERTIFICATES]

California and Hawaiian Sugar Company, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Equipment Trust Certificate the prompt payment of

the principal of said Equipment Trust Certificate, and of the interest thereon specified in said Equipment Trust Certificate, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 8¾% per annum, all in accordance with the terms of said Equipment Trust Certificate and the Trust Agreement referred to therein.

CALIFORNIA AND HAWAIIAN SUGAR COMPANY,

By
Vice President

(b) The Owner Certificate shall be substantially in the form set forth below:

[FORM OF OWNER CERTIFICATE]

The security has not been registered under the Securities Act of 1933. This security may not be sold, offered for sale, pledged or hypothecated unless registered pursuant to such Act or unless an exemption from such registration is available and except for ordinary dealings between Owner Participant and the Federal Reserve System.

This security may be sold, assigned, pledged or otherwise transferred only to (i) a "citizen of the United States" within the meaning of the Shipping Act, 1916, as amended, or (ii) a person or entity which has obtained the approval of the Maritime Administration for its acquisition of this security.

BANKERS TRUST COMPANY, TRUSTEE UNDER TRUST AGREEMENT
DATED AS OF NOVEMBER 30, 1971

Owner Certificate

No.

Bankers Trust Company, a New York corporation, not in its individual capacity but solely as trustee (herein called the "Trustee") under that certain Trust Agreement dated as of November 30, 1971 (herein called the "Trust Agreement"; the defined terms therein not otherwise defined herein being herein used with the same meanings), among the party referred to as "Owner Participant" in the Trust Agreement, the Trustee and California and Hawaiian Sugar Company hereby certifies as follows: (i) this Owner Certificate is one of the Owner Certificates referred to in the Trust Agreement, which Owner Certificates, together with the Equipment Trust Certificates referred to in the Trust Agreement, have been or are to be issued by the Trustee pursuant to the Trust Agreement; (ii) the Trustee acknowledges receipt on the date hereof from of \$..... in payment of a percentage of Owner's Cost for the Vessel delivered under the Charters on the date hereof; and (iii) subject to the prior payment of the Equipment Trust Certificates to the extent set forth in the Trust Agreement, the holder of this Owner Certificate has an undivided beneficial interest in the Trust Estate and is entitled to receive a share of a portion of the Charter Hire received or to be received by the Trustee for the aforesaid Vessel, as well as a share of certain other payments which may be received by the Trustee pursuant to the terms of the Trust Agreement as more particularly set forth therein.

All amounts payable by the Trustee hereunder and under the Trust Agreement shall be paid only from the income and proceeds from the Trust Estate and only to the extent that the Trustee shall have sufficient income or proceeds from the Trust Estate to make such payments in accordance with the terms of Article V of the Trust Agreement; and each holder hereof, by its acceptance of this Owner Certificate, agrees that it will look solely to the income and proceeds from the Trust Estate to the extent available for distribution to the holder hereof as above provided and that the Trustee is not

personally liable to the holder hereof for any amounts payable under this Owner Certificate or the Trust Agreement.

The amounts payable to the holder hereof pursuant to the Trust Agreement shall be payable at the corporate trust office of the Trustee in the Borough of Manhattan, City and State of New York, or at the office of any successor Trustee in the State of New York or otherwise as provided in the Trust Agreement.

The rights of the holders of the Owner Certificates under the Trust Agreement, as well as the beneficial interest of the holders of Owner Certificates in and to the Trust Estate, are subject and subordinate in right of payment to the rights of the holders of the Equipment Trust Certificates to the extent provided in the Trust Agreement. Reference is hereby made to the Trust Agreement for a statement of the rights of the holders of the Owner Certificates and of the rights of the holders of the Equipment Trust Certificates, as well as for a statement of the terms and conditions of the trust created by the Trust Agreement, to all of which terms and conditions each holder hereof agrees by its acceptance hereof.

Each holder hereof, by its acceptance of this Owner Certificate, agrees not to transfer this Owner Certificate except in accordance with the terms of Section 9.01 of the Trust Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Owner Certificate to be executed in its corporate name by one of its authorized officers as of the date hereof.

BANKERS TRUST COMPANY,
as Trustee,

By
Authorized Officer

Dated:

SECTION 3.02. (a) There shall be issued on the Deposit Date to each Loan Participant a single Equipment Trust Certificate dated the Deposit Date and payable to the order of such Loan Participant or its registered assigns in a principal amount equal to such Loan Participant's Participation in the Vessel pursuant to Section 1 of the Participation Agreement or the Loan Participant's Original Participation if the Deposit Date is subsequent to the Delivery Date (or in such smaller denominations aggregating said principal amount and payable to the order of such name or names as such Loan Participant may specify at least five business days prior to such Deposit Date). Each Equipment Trust Certificate shall bear interest on the principal amount thereof from time to time outstanding from the date thereof until due and payable at the rate of 8¼% per annum (computed on the basis of a 360-day year of twelve 30-day months). The principal of and interest on each Equipment Trust Certificate shall be payable (i) if the Delivery Date of the Vessel shall not have occurred, in instalments of interest only accrued hereon semiannually after the date hereof and, in addition, on the Delivery Date, and (ii) in 40 consecutive level payments of principal and interest payable semiannually on the date of the end of each 6-month period after the later of the Delivery Date or the Deposit Date. The principal amount of the Equipment Trust Certificates payable on each of the 40 semiannual level payment dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each payment date shall be substantially equal and such 40 instalments of principal and interest will completely amortize the principal amount thereof. The Trustee will furnish to the holder thereof promptly after the later of the Delivery Date or the Deposit Date a schedule, in such number of counterparts as shall be requested by the holder thereof, showing the respective amounts of principal and interest payable on each payment date. Each Equipment Trust Certificate, to the extent permitted by applicable

law, shall bear interest at the rate of 8 $\frac{3}{4}$ % per annum (computed on the basis of a 360-day year of twelve 30-day months) on any part of principal or interest not paid when due for any period during which the same shall be overdue. Each Equipment Trust Certificate shall have endorsed thereon the guaranty of the Guarantor in the form thereof included herein.

(b) Each Owner Certificate issued pursuant to Section 4.01 hereof shall be dated the Delivery Date for the Vessel, shall contain an acknowledgment by the Trustee of the receipt of an amount equal to the Owner Participant's Original Participation in such Vessel made available pursuant to Section 1 of the Participation Agreement and shall contain a statement by the Trustee that, subject to the prior payment of the Equipment Trust Certificates to the extent set forth in this Trust Agreement, each holder of Owner Certificates has an undivided beneficial interest in a portion of the Trust Estate and is entitled to receive a share of a portion of the Charter Hire received or to be received by the Trustee for the Vessel, as well as a share of certain other payments which may be received by the Trustee pursuant to the terms hereof as more particularly set forth herein.

SECTION 3.03. All payments to be made by the Trustee under the Certificates and under this Trust Agreement shall be made only from the income and the proceeds from the Trust Estate and only to the extent that the Trustee shall have sufficient income or proceeds from the Trust Estate to make such payments in accordance with the terms of Article V hereof. Each holder of a Certificate, by its acceptance of such Certificate, agrees that it will look, as against the Trustee, solely to the income and proceeds from the Trust Estate to the extent available for distribution to such holder as above provided and that neither any Owner Participant nor the Trustee is personally liable to the holder of any Equipment Trust Certificates for any amounts payable under any Equipment Trust Certificates or this Trust Agreement.

SECTION 3.04. The principal of and interest on each Equipment Trust Certificate and the amounts payable to the holders of Owner Certificates will be payable at the corporate trust office of the Trustee in the Borough of Manhattan, City and State of New York, provided that, in the case of the Participants or any other holder who shall so request in writing such amount shall be payable by mailing a check payable in New York Clearing House funds to each such holder at his address as the same appears on the books of the Trustee or at such other address as such holder shall have specified by written notice to the Trustee. Notwithstanding the foregoing or any provision in any Certificate to the contrary, the Trustee will pay, if so requested by the holder of a Certificate by written notice to the Trustee, all amounts payable by the Trustee to such holder or a nominee therefor (including all amounts distributed pursuant to Article V of this Trust Agreement) either (i) by crediting the amount to be distributed to such holder to the account maintained by such holder with the Trustee or (ii) by transfer by wire of such amount to such other bank in the United States, including a Federal Reserve Bank, as shall have been specified in such notice, for credit to the account of such holder maintained at such bank. In the case of payment by check, credit to account or wire transfer, such payment shall be made without any presentment or surrender of any Certificate, except that, in the case of the final payment in respect of any Equipment Trust Certificate, such Equipment Trust Certificate shall be surrendered to the Trustee. The Trustee may deem and treat the person in whose name any Certificate shall have been issued by the Trustee as the absolute owner and holder of such Certificate for the purpose of receiving payment of all amounts payable by the Trustee with respect to such Certificate and for all other purposes, and the Trustee shall not be affected by any notice to the contrary.

SECTION 3.05. The Equipment Trust Certificates are subject to prepayment, with accrued interest but without premium, other than through application of the level payment instalments, from time to time in whole or in part only as provided in Sections 5.01(b), 5.02 and 5.03 of this Trust Agreement.

SECTION 3.06. A holder of an Equipment Trust Certificate shall have no further beneficial interest in, or other right with respect to, the Trust Estate when and if the principal of and interest on all Equipment Trust Certificates held by such holder and all other sums payable to such holder hereunder, under the Participation Agreement and under such Equipment Trust Certificates shall have been paid in full.

SECTION 3.07. The Trustee shall maintain at its office a register for the purpose of registering transfers and exchanges of Certificates. A holder of a Certificate intending to transfer any or all of the Certificates held by such holder to a new payee shall surrender such Certificate or Certificates to the Trustee at its corporate trust office in the Borough of Manhattan, City and State of New York, together with a written request from such holder for the issuance of a new Certificate or Certificates, specifying the name and address of the payee or payees. If required by the Trustee (or the Guarantor in the case of an Equipment Trust Certificate) the Certificate or Certificates so surrendered shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Trustee duly executed, by such holder or his duly authorized attorney. Promptly upon receipt of such documents the Trustee will issue a new Certificate or Certificates of the same type in the same aggregate original face amount dated the same date or dates bearing the appropriate legend regarding transfer, in the case of an Equipment Trust Certificate bearing a notation as to principal payments and the date to which interest has been paid, and in such denomination or denominations and payable to the order of such payee or payees as shall be specified in the written request from such holder and the Guarantor agrees to endorse on any such new Equipment Trust Certificate its guaranty thereof. The Trustee shall make a notation on each new Equipment Trust Certificate of the amount of all payments or prepayments of principal previously made on the old Equipment Trust Certificate or Certificates with respect to which such new Equipment Trust Certificate is issued and the date to which interest on such Equipment Trust Certificate or Certificates has been paid. The Trustee shall not be required to exchange any surrendered Equipment Trust Certificate as above provided during the 15-day period preceding the due date of any payment on such Equipment Trust Certificate. Nothing contained in this Section 3.07 shall be deemed to permit the holder of an Owner Certificate to transfer such Owner Certificate except in accordance with the terms of Article IX hereof.

SECTION 3.08. If any Certificate shall become mutilated, destroyed, lost or stolen, the Trustee shall, upon written request of the holder of such Certificate, execute and deliver in replacement thereof, and, in the case of an Equipment Trust Certificate, the Guarantor shall endorse thereon its guaranty thereof, a new Certificate, payable in the same original amount, dated the same date, bearing the appropriate legend regarding transfer and, in the case of an Equipment Trust Certificate bearing a notation as to principal payments and the date to which interest has been paid as the Certificate mutilated, destroyed, lost or stolen. If the Certificate being replaced has been destroyed, lost or stolen the holder of such Certificate shall furnish to the Trustee and Guarantor such security or indemnity as may be required by it to save the Trustee harmless and evidence satisfactory to the Trustee of the destruction, loss or theft of such Certificate and of the ownership thereof; *provided, however*, that if the holder of such Certificate is an original party to the Participation Agreement, the written undertaking of such holder delivered to the Trustee and the Guarantor, in the case of an Equipment Trust Certificate, shall be sufficient security and indemnity.

SECTION 3.09. Upon the issuance of a new Certificate or Certificates pursuant to Section 3.07 or 3.08 hereof, the Trustee may require from the party requesting such new Certificate or Certificates payment of a sum to reimburse the Trustee for, or to provide funds for, the payment of any tax or other governmental charge or any charges and expenses connected with such tax or other governmental charge paid or payable by the Trustee but no other service charge shall be payable in connection therewith.

ARTICLE IV

Acceptance and Delivery of the Vessel Issuance of Certificates; Title to the Vessel

SECTION 4.01. The Owner Participant hereby authorizes and directs the Trustee, and the Trustee agrees for the benefit of the Owner Participant and the Loan Participants, that on or before the Delivery Date for the Vessel, it will, subject to due compliance with the terms of Section 4.02 hereof:

(a) to the extent not previously accomplished by a prior authorization, authorize a representative of the Trustee (who shall be an employee of the Operator) to accept delivery of the Vessel on the Delivery Date pursuant to the Purchase Agreement Assignment, Article 14 of the Purchase Agreement and Section 6 of the Participation Agreement;

(b) accept from the Builder the Builder's Certificate, as defined in the Participation Agreement, with respect to the Vessel;

(c) make payment from the aggregate amount of the Original Participations of the Participants in the Vessel, to the extent received by the Trustee, (A) to the Builder, an amount equal to the sum of the unpaid balance of Owner's Cost payable to the Builder on the Delivery Date pursuant to the Purchase Agreement as such unpaid balance may be adjusted in accordance with the terms of the Purchase Agreement and (B) to the Charterer or other person entitled thereto the aggregate amount of the advance payments made to the Builder for the Vessel pursuant to Article 10 of the Purchase Agreement for the Vessel (less any refunds thereof), all as invoiced by the Builder to the Trustee on or before the Delivery Date for the Vessel and (C) to J. J. Henry Co., Inc. or other person entitled thereto for services in designing and supervising construction of the Vessel, and (D) to the Charterer or other person entitled thereto the aggregate amount of the fees, interest and other costs described in elements (c) through (g) of the definition of "Owner's Cost" as set forth in the Bareboat Charter; and

(d) issue to the Owner Participant an Owner Certificate in the amount and otherwise as provided in Section 3.02 hereof.

SECTION 4.02. The obligation of the Trustee to take delivery of the Vessel and to take the action required by Section 4.01 hereof with respect to the Vessel shall be subject to the following conditions precedent:

(a) the Trustee shall have received a notice from the Guarantor with respect to the Vessel in accordance with the terms of Section 2(b) of the Participation Agreement;

(b) each Participant shall have paid to the Trustee the full amount of its Original Participation;

(c) the terms and conditions of Section 4 of the Participation Agreement shall have been complied with to the satisfaction of special counsel for the Loan Participant;

(d) the Vessel shall have been accepted by the Operator and the Charterer pursuant to, respectively, the Charters as evidenced by the Certificate of delivery and acceptance delivered pursuant to Article 3 of the Charters; and

(e) the Trustee shall have received copies of the documents referred to in Section 4 of the Participation Agreement which in the case of the opinions of counsel referred to therein shall be addressed to the Trustee and shall to the extent that the same relate to right of interests of the Trustee be in form and substance satisfactory to the Trustee.

SECTION 4.03. The Trustee without the necessity of further instructions from the Owner Participant, is hereby authorized and directed by the Owner Participant to take all action specified in Section 4 and Section 5 of the Participation Agreement as action to be taken by the Trustee.

SECTION 4.04. Title to the Vessel shall pass out of the Trust Estate and vest in the Owner Participant at the later of the end of the Term for the Vessel or the date upon which payment of unpaid

principal and accrued interest and all other amounts payable on the Equipment Trust Certificates shall have been made. Upon the passage of such title, the Trustee agrees that it will at the expense of the Owner Participant take such steps as are necessary to document the Vessel in such manner as the Owner Participant may specify. In the case where the Vessel remains part of the Trust Estate after the expiration of the Term of the Charters, the Trustee shall have no obligation to employ the Vessel after possession thereof has been delivered to it, unless the Trustee has received indemnity, in form and substance satisfactory to it, with respect to any loss or liability which might be incurred as a result of employing the Vessel.

SECTION 4.05. If the Deposit Date shall occur subsequent to the Delivery Date, the Trustee shall disburse amounts received from the Loan Participants on the Deposit Date in accordance with the provisions of Section 4.01(c) subject to compliance with the conditions of Section 4.02(b), (c), (d) and (e) as of the Deposit Date to the same extent as of the Delivery Date.

ARTICLE V

Receipt, Distribution and Application of Income from the Trust Estate

SECTION 5.01. (a) Except as otherwise provided in Section 5.03 hereof, each payment of Hire as well as any payment of interest on overdue instalments of Hire received by the Trustee at any time pursuant to the Time Charter Assignment shall be distributed by the Trustee on the date such payment is due from Charterer (or as soon thereafter as such payment shall be received by the Trustee) in the following order of priority: *first*, after the Deposit Date, so much of such payment as shall be required to pay in full the aggregate amount of the level payment or payments of principal and interest (as well as any interest on overdue principal or interest) due on the next succeeding level payment date under all Equipment Trust Certificates (i) if such level payment date is to occur within five days after the payment is due from Charterer, shall be distributed on such payment date to the holders of such Equipment Trust Certificates; and (ii) if such level payment date is not to occur within five days after the payment is due from Charterer, shall be held by the Trustee and invested as provided in Section 5.08 hereof until five days prior to such level payment date, at which time the Trustee shall sell all Investments then held pursuant to Section 5.08 as promptly as possible and use the funds so derived together with interest received on any Investments and any deficiency paid by Guarantor as contemplated by Section 5.08 to distribute on such payment date the amount so due under the Equipment Trust Certificates to the holders of such Equipment Trust Certificates; and *second*, the balance, if any, of such payment remaining thereafter shall be distributed to the Owner Participant.

(b) The funds becoming distributable pursuant to subsection (c) of Section 3 of the Participation Agreement shall be distributed by the Trustee to the holders of Equipment Trust Certificates.

(c) The funds payable to the Trustee pursuant to subsection (d) of Section 3 of the Participation Agreement shall be paid by the Trustee to the holders of Equipment Trust Certificates in payment of interest accrued to the date thereof and the balance, if any, shall be held as part of the Trust Estate.

(d) Any funds distributable to the holders of Equipment Trust Certificates hereunder shall be distributed ratably, without priority of one over the other, in the proportion that the amount of such payment or payments then due under each such Equipment Trust Certificate bears to the aggregate amount of the payments then due under all such Equipment Trust Certificates.

SECTION 5.02. Except as otherwise provided in Section 5.03 hereof, (i) the Stipulated Loss Value or other payment received by the Trustee pursuant to the Time Charter Assignment in the event of a Total Loss with respect to the Vessel and (ii) the proceeds from the sale of the Vessel as surplus or obsolete (or Termination Value payments in lieu thereof) received by the Trustee pursuant to the Time Charter Assignment, shall in each case be distributed forthwith upon receipt by the Trustee in the following order of priority: *first*, so much of such payment as shall be required to reimburse the Trustee for any expenses not reimbursed by the Charterer in connection with the collection or distribution of such payment shall be distributed to the Trustee; *second*, so much of such payment remaining as shall be required to pay in full the aggregate unpaid principal amount of all Equipment Trust Certificates plus the accrued but unpaid interest on such Equipment Trust Certificates to the date of distribution, shall be distributed to the holders of such Equipment Trust Certificates, ratably, without priority of one over the other, in the proportion that the unpaid principal amount of each such Equipment Trust Certificate, plus the accrued but unpaid interest thereon to the date of distribution bears to the aggregate unpaid principal amount of all such Equipment Certificates, plus the accrued unpaid interest thereon to the date of distribution; *third*, in the manner provided in clause "second" of Section 5.03 hereof; and *fourth*, the balance, if any, of such payment remaining thereafter shall be distributed to the Owner Participant.

SECTION 5.03. All payments received and amounts realized by the Trustee after an Event of Default shall have occurred and be continuing as well as all payments or amounts then held or thereafter received by the Trustee as part of the Trust Estate while such Event of Default shall be continuing, shall be distributed by the Trustee in the following order of priority:

first, so much of such payments or amounts as shall be required to reimburse the Trustee for any tax, expense or other loss incurred by the Trustee (to the extent not previously reimbursed) and to pay the reasonable remuneration of the Trustee shall be distributed to the Trustee;

second, so much of such payments or amounts as shall be required to reimburse the then existing or prior holders of the Equipment Trust Certificates for payments made by such holders or their predecessors in interest to the Owner Participants pursuant to Section 6.03(b) hereof (to the extent not previously reimbursed), shall be distributed to the then existing holders of Equipment Trust Certificates ratably, without priority of one over the other, in accordance with the total amount of such reimbursements thus being made;

third, so much of such payments or amounts as shall be required to pay in full the aggregate unpaid principal amount of all Equipment Trust Certificates then outstanding, plus the accrued but unpaid interest thereon to the date of distribution, shall be distributed to the holders of such Equipment Trust Certificates ratably, without priority of one over the other, in the proportion that the aggregate unpaid principal amount of all Equipment Trust Certificates held by each such holder, plus the accrued but unpaid interest thereon to the date of distribution, bears to the aggregate unpaid principal amount of all such Equipment Trust Certificates held by all such holders, plus accrued interest thereon to the date of distribution;

fourth, so much of such payments or amounts as shall be required to reimburse the Owner Participant for any payments to, or deposits with, the Trustee made by the Owner Participant pursuant to Section 6.03 or Section 8.01 hereof (to the extent not previously reimbursed) shall be distributed to the Owner Participant; and

fifth, the balance, if any, of such payments or amounts remaining thereafter shall be distributed to the Owner Participant.

SECTION 5.04. Except as otherwise provided in Section 5.03 hereof, any payments received by the Trustee provision for the application of which is made in the Time Charter shall be applied to the purpose for which such payment was made in accordance with the terms of the Time Charter.

SECTION 5.05. Except as otherwise provided in Sections 5.03 and 5.04 hereof:

(a) any payments received by the Trustee from or on behalf of the Charterer pursuant to the Charterer's indemnities contained in the Time Charter;

(b) any payments received by the Trustee for which no provision as to the application thereof is made in the Time Charter, Time Charter Assignment or elsewhere in this Article V; and

(c) all payments received and amounts realized by the Trustee under the Charters or otherwise with respect to the Vessel (including, without limitation all amounts realized upon the sale or re-lease of the Vessel after the termination of the Charters with respect thereto) to the extent received or realized at any time after payment in full of the principal of and interest on all Equipment Trust Certificates issued in connection with the Vessel, as well as any other amounts remaining as part of the Trust Estate after payment in full of the principal of and interest on all Equipment Trust Certificates issued hereunder,

shall be distributed by the Trustee in the following order of priority: *first*, in the manner provided in clause "first" of Section 5.03 hereof; *second*, in the manner provided in clause "third" of Section 5.03 hereof; *third*, in the manner provided in clause "fourth" of Section 5.03 hereof; and *fourth*, in the manner provided in clause "fifth" of Section 5.03 hereof.

SECTION 5.06. Anything in this Article V to the contrary notwithstanding, after the Trustee shall have knowledge of an Event of Default, all amounts which, but for the provisions of this Section 5.06, would otherwise be distributable to the Owner Participant shall be held by the Trustee as part of the Trust Estate and, if such Event of Default shall cease to be continuing prior to the time such amounts may become distributable pursuant to Section 5.03 hereof, such amounts shall be distributed as elsewhere in this Article V provided.

SECTION 5.07. The Guarantor, for value received, hereby unconditionally guarantees to each holder of Equipment Trust Certificates by endorsement (through its execution hereof and the form of guaranty on the Equipment Trust Certificates) the due and punctual payment of all sums payable under the Equipment Trust Certificates and the due and punctual performance of all obligations of the Owner Participant and the Trustee under this Agreement and in case of default in any such obligations or payments the Guarantor agrees punctually to perform or pay the same.

The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity, regularity or enforceability of this Agreement or the Equipment Trust Certificates or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of the provisions of Section 3.03 hereof or of the provisions of the Equipment Trust Certificates limiting the liability of the Trustee and any Owner Participant or any other circumstances which might otherwise limit the recourse of the holders of Equipment Trust Certificates to the Trustee or any Owner Participant. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof or of the Equipment Trust Certificates in whole or in part or of any default hereunder or thereunder, and all notices with respect to this Agreement and the Equipment Trust Certificates and all demands whatsoever hereunder or thereunder. No waiver by any holder of Equipment Trust Certificates of any of its rights hereunder or thereunder and no action by any holder of Equipment Trust Certificates to enforce any of its rights hereunder or thereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to any holders of Equipment Trust Certificates on account of its guaranty hereunder and under the Equipment Trust Certificates, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Trustee and the Owner Participant or with respect to the Vessel by reason of such

payments, all such rights being hereby irrevocably released, discharged and waived by the Guarantor; *provided, however*, that after the payment by the Guarantor to the holders of all outstanding Equipment Trust Certificates of all sums payable hereunder and under this Agreement, the Guarantor shall, by subrogation, be entitled to the rights of the holders of Equipment Trust Certificates against the Trustee by reason of such payment, to the extent, but only to the extent, that the Trustee has received "income and proceeds from the Trust Estate" (as referred to in Section 3.03 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and the Equipment Trust Certificates, of all sums payable hereunder and thereunder and *provided, further*, that nothing herein shall be deemed a waiver of any rights Guarantor may have as Charterer.

SECTION 5.08. Any amounts received by the Trustee as contemplated by Section 5.01 and not distributable within five days thereafter shall, pending distribution thereunder and upon instructions from Owner Participant, be invested and reinvested (whether through outright purchase or repurchase agreements) in (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest or (ii) commercial paper of any company (including Guarantor) incorporated and doing business under the laws of the United States of America or one of the States thereof which shall have commercial paper rated at least "A-2" or its equivalent by Standard & Poor's Corporation or its successor or (iii) certificates of deposit of commercial banks in the United States of America having capital and surplus aggregating at least \$50,000,000 (which may be the Trustee or Owner Participant), in each case maturing in not more than one year from the date of such investment (all such investments being hereinafter called "Investments"), as may be specified in any such instruction. Upon any sale or payment at maturity of any Investment, the proceeds thereof, plus any interest received by the Trustee thereon, shall be held by the Trustee for distribution pursuant to Section 5.01 or reinvested if the proceeds are not so distributable. If such proceeds (plus such interest) shall be less than the cost (including accrued interest) thereof, Owner Participant will promptly pay to the Trustee an amount equal to such deficiency. Any payment in respect of such deficiency shall be held and applied by the Trustee in like manner as the proceeds of the sale of Investments. Owner Participant will pay all fees of and expenses incurred by the Trustee in purchasing and selling Investments.

ARTICLE VI

Duties of the Trustee

SECTION 6.01. In the event the Trustee shall have knowledge of an Event of Default, the Trustee shall give prompt written notice of such Event of Default to each holder of a Certificate by first class mail, postage prepaid. Subject to the terms of Section 6.03 hereof, the Trustee shall take such action with respect to such Event of Default as the Trustee shall be directed in writing by a Majority in Interest of Participants, *provided, that* the Trustee shall immediately upon receiving actual knowledge thereof by notice in writing from one or more holders of Certificates give notice to Charterer of any event which, with the giving of notice, shall constitute an Event of Default under the Time Charter. If the Trustee shall not have received instructions as above provided within 20 days after mailing of such notice to the holders of the Certificates, the Trustee shall take such action, or refrain from taking such action, with respect thereto as it shall deem advisable in the best interests of the holders of the Certificates. If an Event of Default shall have occurred, the unpaid principal amount of all Equipment Trust Certificates then outstanding with accrued interest thereon shall immediately become due and payable without further act or notice of any kind. If the event which would constitute an Event of Default under the Time Charter shall be the failure of Charterer to pay Hire when due the Owner Participant may, prior to the expiration of the 30-day grace period therefor, deposit with the Trustee a portion thereof sufficient to pay the principal and interest then due

on the Equipment Trust Certificates, whereupon neither the Trustee nor the holders of Equipment Trust Certificates may declare the Equipment Trust Certificates to be due and payable by reason of Charterer's failure to pay such Hire; *provided, that* the Owner Participant's right to make such payments, and the corresponding limitation upon the Trustee's and such holder's rights to declare the Equipment Trust Certificates to be due and payable, is limited to two consecutive instalments of Hire. For all purposes of this Trust Agreement and the Time Charter, in the absence of actual knowledge, the Trustee shall not be deemed to have knowledge of an Event of Default (except in the case of the failure of the Charterer to pay any instalment of Hire within 30 days after the same shall become due) unless notified in writing by one or more holders of Certificates.

SECTION 6.02. Subject to the terms of Sections 6.01 and 6.03 hereof, upon the written instructions, at any time and from time to time, of a Majority in Interest of Participants, the Trustee will take such of the following action as may be specified in such instructions: (i) give such notice or direction or exercise such right or power under the Charters, the Time Charter Assignment or this Trust Agreement as shall be specified in such instruction; (ii) approve as satisfactory to it all matters required by the terms of the Charters or Time Charter Assignment to be satisfactory to the Trustee, it being understood that without the written instructions of a Majority in Interest of Participants, the Trustee shall not approve any such matter as satisfactory to it; and (iii) after the expiration or earlier termination of the Charters, convey all of the Trustee's right, title and interest in and to the Vessel for such amount, on such terms and to such purchaser or purchasers as shall be designated in such instructions, or lease or otherwise dispose of the Vessel on such terms as shall be designated in such instructions. The Trustee will execute and file such continuation statements with respect to financing statements relating to the security interest created hereunder in the Trust Estate as may be specified from time to time in written instructions of any Participant (which instructions may, by their terms, be operative only at a future date and which shall be accompanied by the form of such continuation statement so to be filed).

SECTION 6.03. (a) The Trustee shall not be required to take any action or refrain from taking any action, under Section 6.01 or 6.02 hereof unless the Trustee shall have been indemnified by the Owner Participant, in manner and form satisfactory to the Trustee against any liability, cost or expense (including counsel fees) which may be incurred in connection with such action; and if a Majority in Interest of Participants shall have directed the Trustee to take any such action or refrain from taking any action, the Owner Participant agrees to furnish such indemnity as shall be required. The Trustee shall not be required to take any action under Section 6.01 or 6.02 hereof, nor shall any other provision of this Trust Agreement be deemed to impose a duty on the Trustee to take any action, if the Trustee shall have been advised by counsel that such action is contrary to the terms of the Charters or is otherwise contrary to law.

(b) Each holder of an Equipment Trust Certificate by its acceptance of such Equipment Trust Certificate agrees that if, prior to payment in full of all Equipment Trust Certificates issued hereunder, the Owner Participant shall make any payment to, or deposit with, the Trustee required to be made in connection with a direction by a Majority in Interest of Participants pursuant to paragraph (a) of this Section 6.03, such holder will promptly reimburse the Owner Participant by paying to the Trustee the ratable share of such payment or deposit applicable to each Equipment Trust Certificate held by such holder, such ratable share in respect of each Equipment Trust Certificate to be an amount which bears the same ratio to 80% of such payment or deposit as the unpaid principal amount of such Equipment Trust Certificate as of the date of such payment or deposit bears to the aggregate unpaid principal amount of all Equipment Trust Certificates issued hereunder as of such date. Such reimbursement payments shall then be distributed by the Trustee to the Owner Participant.

SECTION 6.04. The Trustee shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Vessel or any other part of the Trust Estate, or to otherwise take or refrain from taking any action under, or in connection with, the Charters or the Time Charter

Assignment, except as expressly provided by the terms of this Trust Agreement or as expressly provided in written instructions from a Majority in Interest of Participants received pursuant to the terms of Section 6.01 or 6.02 hereof; and no implied duties or obligations shall be read into this Trust Agreement against the Trustee.

SECTION 6.05. The Trustee agrees that it will not manage, control, use, sell, dispose of or otherwise deal with the Vessel or any other part of the Trust Estate except (i) as required by the terms of the Charters, (ii) in accordance with the powers granted to, or the authority conferred upon, the Trustee pursuant to this Trust Agreement or (iii) in accordance with written instructions from a Majority in Interest of Participants pursuant to Section 6.01 or 6.02 hereof.

ARTICLE VII

The Trustee

SECTION 7.01. The Trustee accepts the trusts hereby created and agrees to perform the same but only upon the terms of this Trust Agreement. The Trustee shall not be answerable or accountable under any circumstances, except for its own wilful misconduct or gross negligence.

SECTION 7.02. Except in accordance with written instructions furnished pursuant to Section 6.02 hereof and as required pursuant to Section 4.02 hereof and without limiting the generality of Section 6.04 hereof, the Trustee shall have no duty (i) to see to any documentation of the Vessel or any recording or filing of the Charters or of this Trust Agreement, or to see to the maintenance of any such documentation, recording or filing, (ii) to see to any insurance on the Vessel or to effect or maintain any such insurance, whether or not the Charterer shall be in default with respect thereto, (iii) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the Trust Estate, (iv) to confirm or verify any financial statements or (v) to inspect the Vessel at any time or ascertain or inquire as to the performance or observance of any of the Charterer's covenants under the Charters with respect to the Vessel. Notwithstanding the foregoing, the Trustee will furnish to each of the original parties to the Participation Agreement, so long as it or its nominees shall hold any of the Equipment Trust Certificates, and to each other holder of at least 10% in principal amount of the Equipment Trust Certificates at the time outstanding and to the Owner Participant, promptly upon receipt thereof, duplicates or copies of all reports, notices, requests, demands, certificates and other instruments furnished to the Trustee under the Charters to the extent that the same shall not have been furnished to such Participants or holders pursuant to the Charters. The Guarantor will furnish the Trustee with sufficient copies of the aforementioned items for transmission to the parties referred to above.

SECTION 7.03. The Trustee makes (i) no representation or warranty as to the value, condition or fitness for use of the Vessel or as to its title thereto, or any other representation or warranty with respect to the Vessel whatsoever, and (ii) no representation or warranty as to the validity, legality or enforceability of this Agreement, the Certificates, the Charters, the Purchase Agreement, the Purchase Agreement Assignment or the Time Charter Assignment or as to the correctness of any statement contained in any thereof.

SECTION 7.04. The Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Trustee may accept a copy of a resolution of the Board of Directors or Executive Committee of the Guarantor, certified by the Secretary or an Assistant Secretary of the Guarantor as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted by said

Board or Committee and that the same is in full force and effect. As to any fact or matter the manner or ascertainment of which is not specifically described herein, the Trustee may for all purposes hereof rely on a certificate, signed by the President or by any Vice President and the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary, of the Guarantor, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. In the administration of the trusts hereunder, the Trustee may act directly or through other agents or attorneys and may (with the consent of the Owner Participant provided no Event of Default shall have occurred and be continuing), at the expense of the Trust Estate, advise with counsel (which may be counsel to the Guarantor), accountants and other skilled persons to be selected and retained by it, and the Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

SECTION 7.05. In accepting the trusts hereby created, the Trustee acts solely as trustee hereunder, and all persons, other than the holders of Certificates, having any claim against the Trustee by reason of the transactions contemplated hereby shall look only to the Trust Estate for payment or satisfaction thereof.

SECTION 7.06. The Trustee agrees that it shall have no right against the holders of the Certificates (subject to the provisions of Sections 5.03, 6.03 and 8.01 hereof).

SECTION 7.07. Any and all exculpatory provisions, immunities and indemnities in favor of the Trustee under this Agreement shall inure to the benefit of the Trustee and its successors and assigns in its or their capacity as such and as Owner under the Bareboat Charter and as assignee under the Purchase Agreement Assignment and the Time Charter Assignment.

ARTICLE VIII

Indemnification of Trustee by Owner Participants

SECTION 8.01. The Owner Participant hereby agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and does hereby indemnify, protect, save and keep harmless the Trustee, and its successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, taxes, claims, actions, suits, costs, expenses or disbursements (including legal fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Trustee (whether or not also indemnified against by the Charterer under the Charters, or the Time Charter Assignment or under the Participation Agreement or also indemnified against by the Builder or any other person) in any way relating to or arising out of this Trust Agreement, the Certificates, the Charters, the Time Charter Assignment, the Participation Agreement, the Purchase Agreement or the Purchase Agreement Assignment or the enforcement of any of the terms of any thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease possession, use, operation, condition, sale, return or other disposition of the Vessel (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or in any way relating to or arising out of the administration of the Trust Estate or the action or inaction of the Trustee hereunder, except only in the case of wilful misconduct or gross negligence on the part of the Trustee in the performance of its duties hereunder. The indemnities contained in this Section 8.01 shall survive the termination of this Trust Agreement and shall be construed as including the reasonable fees of the Trustee for acting hereunder. In addition, if necessary, the Trustee shall be entitled to indemnification from the Trust Estate for any liability, obligation, loss, damage, penalty, claim, action, suit, cost, expense, fees or disbursements indemnified against pursuant to Section 8.01 to the extent not reimbursed by the Charterer or the Owner Participant and to secure the same the Trustee shall have a lien on the Trust Estate prior to any interest therein of any holder of a Certificate.

ARTICLE IX

Transfer of Certificates and Owner Participant's Interests

SECTION 9.01. Except in connection with a substitution of an Owner Participant as provided in Section 5(a) of the Participation Agreement, the Owner Participant shall not assign, convey or otherwise transfer any of its right, title or interest in and to this Agreement, any Owner Certificate, the Trust Estate or the Participation Agreement; *provided, however*, that the Owner Participant may convey to another person who shall be a citizen of the United States qualified to engage in the coastwise trade within the meaning of the Shipping Act, 1916, as amended (hereinafter in this Article IX referred to as the "Transferee") all, but not less than all, of its right, title and interest as an Owner Participant in and to this Agreement, all Owner Certificates of the Owner Participant then outstanding, the Trust Estate and the Participation Agreement, provided the Transferee enters into an agreement or agreements, in form and substance satisfactory to the Trustee and special counsel to the Loan Participants, whereby the Transferee confirms that it shall be deemed a party to the Participation Agreement and a party to this Agreement and agrees to be bound by all the terms of, and to undertake all the obligations of the Owner Participant making such conveyance contained in the Participation Agreement and this Agreement and *provided, further*, that the Transferee shall notify the United States Coast Guard and file a declaration of citizenship on the appropriate form. Upon any such conveyance by the Owner Participant as above provided the Transferee shall be deemed the "Owner Participant" for all purposes hereof, and shall be deemed to have made the Original Participations in the Vessel previously made by the Owner Participant; and each reference herein to the Owner Participant making such conveyance shall thereafter be deemed a reference to the Transferee for all purposes except that, without affecting the primary liability of the Transferee assumed pursuant to its agreement entered into in accordance with the foregoing clause (iii), the Owner Participant shall continue to be secondarily liable under Section 6.03(a) and Section 8.01 with respect to the obligations of any Transferee which is not a bank or lending institution with a combined capital and surplus of at least \$50,000,000.

SECTION 9.02. If the Owner Participant proposes to transfer its interest hereunder pursuant to Section 9.01 hereof, it shall give written notice to the Trustee and the Charterer, specifying the name and address of the Transferee, and the Trustee shall promptly notify each holder of a Loan Certificate as of the date of such notice to the Trustee.

SECTION 9.03. At any time after the Trustee, acting pursuant to Section 6.01 hereof, has declared an Event of Default under the Time Charter (unless such declaration has been rescinded), each holder of Equipment Trust Certificates then outstanding agrees that it will, upon the written request therefor of the Owner Participant directed to such holders and upon receipt from the Owner Participant of an amount equal to the aggregate unpaid principal amount of all Equipment Trust Certificates then held by such holder, together with accrued interest thereon to the date of payment, plus all other sums then due and payable to such holder hereunder or under the Participation Agreement or under such Equipment Trust Certificates, forthwith sell, assign, transfer and convey to the Owner Participant (without recourse or warranty of any kind), all of the right, title and interest of such holder in and to the Trust Estate, this Trust Agreement, all Equipment Trust Certificates held by such holder and the Participation Agreement, and the Owner Participant shall assume all of such holder's obligations under the Participation Agreement. If the Owner Participant shall so request, such holder will comply with all the provisions of Section 3.07 hereof to enable new Equipment Trust Certificates to be issued to the Owner Participant in such denominations as the Owner Participant shall request. All charges and expenses required pursuant to Section 3.09 hereof in connection with the issuance of any such new Equipment Trust Certificates shall be borne by the Owner Participant.

ARTICLE X**Successor Trustees**

SECTION 10.01. (a) The Trustee or any successor Trustee may resign at any time without cause by giving at least 30 days' prior written notice to each holder of a Certificate, such resignation to be effective on the date specified in such notice. In addition, a Majority in Interest of Participants may at any time remove the Trustee without cause by an instrument in writing delivered to the Trustee, and each other holder of a Certificate. In addition, the Trustee shall resign if at any time it ceases to be a citizen of the United States qualified to engage in the coastwise trade within the meaning of the Shipping Act, 1916, as amended. In the case of the resignation or removal of the Trustee, a Majority in Interest of Participants may appoint a successor Trustee by an instrument signed by such Majority in Interest of Participants or the holders of all Equipment Trust Certificates may appoint a successor Trustee by an instrument signed by all of them. If a successor Trustee shall not have been appointed within 30 days after such resignation or removal, any holder of a Certificate may apply to any court of competent jurisdiction to appoint a successor Trustee to act until such time, if any, as a successor shall have been appointed as above provided. Any successor Trustee so appointed by such court shall immediately and without further act be superseded by any successor Trustee appointed as above provided. Upon the appointment of any successor Trustee hereunder, the predecessor Trustee will use its best efforts (including the delivery of a bill of sale in recordable form) to cause documentation of the Vessel to be transferred upon the records of any governmental authority having jurisdiction into the name of the successor Trustee including documentation of the Vessel in the name of the successor Trustee under the laws of the United States. The Owner Participant shall execute any necessary consent to such documentation.

(b) Any successor Trustee, whether appointed by a court, by a Majority in Interest of Participants or by the holders of all Equipment Trust Certificates, shall execute and deliver to the predecessor Trustee an instrument accepting such appointment, and thereupon such successor Trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Trustee in the trusts hereunder with like effect as if originally named as a Trustee herein; but nevertheless upon the written request of such successor Trustee, such predecessor Trustee shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of such predecessor Trustee, and such predecessor Trustee shall duly assign, transfer, deliver and pay over to such successor Trustee any property or monies then held by such predecessor Trustee upon the trusts herein expressed.

(c) Any successor Trustee, however appointed, shall be a bank or trust company having a combined capital and surplus of at least \$50,000,000 if there be such an institution willing, able and legally qualified to perform the duties of the Trustee hereunder upon reasonable or customary terms and shall be a citizen of the United States qualified to engage in the coastwise trade within the meaning of the Shipping Act, 1916, as amended, and shall take such steps and file such documents as are necessary to document the Vessel in its name under the laws of the United States.

(d) Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation to which substantially all the business of the Trustee may be transferred, shall, subject to the terms of and upon compliance with the provisions of paragraph (c) of this Section, be the Trustee under this Agreement without further act.

ARTICLE XI**Supplements and Amendments to this Trust Agreement and Other Documents**

SECTION 11.01. At any time and from time to time, upon the written request of a Majority in Interest of Participants, (i) the Trustee, together with the holders of Certificates making such

request, shall execute a supplement hereto for the purpose of adding provisions to, or changing or eliminating provisions of, this Trust Agreement as specified in such request and (ii) the Trustee shall enter into such written amendment of or supplement to the Charters, the Time Charter Assignment, the Purchase Agreement or the Purchase Agreement Assignment as the Operator, Charterer or the Builder, as the case may be, may agree to and as may be specified in such request, or execute and deliver such written waiver or modification of the terms of the Charters, the Time Charter Assignment, the Purchase Agreement or the Purchase Agreement Assignment as the Operator or Charterer, as the case may be, may agree to and as may be specified in such request; *provided, however*, that, without the consent of each holder of a Certificate then outstanding, no such supplement to this Trust Agreement or amendment of or supplement to the Charters, the Time Charter Assignment, the Purchase Agreement or the Purchase Agreement Assignment, or waiver or modification of the terms of any thereof, shall (i) modify any of the provisions of this Section or of Section 6.02 hereof or of the definitions of Majority in Interest of Participants contained in Section 1.01 hereof, (ii) reduce the amount or extend the time of payment of any amount owing under any Certificate, reduce or increase the interest payable on any Equipment Trust Certificate, or alter or modify the provisions of Article V hereof with respect to the order of priorities in which distributions thereunder shall be made as between the holders of Equipment Trust Certificates, and the Owner Participant, (iii) reduce, modify or amend any indemnities in favor of the Participants, (iv) reduce the amount or extend the time of payment of Hire for the Vessel as set forth in the Charters, or (v) modify, amend or supplement the Charters or Time Charter Assignment or consent to any assignment of the Charters in a manner which would have the effect of releasing the Charterer from its obligations in respect of the payment of Hire; *provided, further*, that without the consent or agreement of any other person (A) the Charterer and the Trustee may enter into any change order or other amendment or modification to any of the Purchase Agreement or the Purchase Agreement Assignment to the extent provided in the Purchase Agreement and the Purchase Agreement Assignment, (B) the Trustee, with the consent of the Owner Participant, may enter into amendments of the Charters adjusting Hire, Stipulated Loss Value and Termination Value as contemplated in Sections 3a(iii) and 9(b) of the Participation Agreement and (C) the Trustee upon the direction of the Charterer and with the consent of the Owner Participant, shall appoint a successor Operator under the Bareboat Charter in accordance with the provisions of the Bareboat Charter.

SECTION 11.02. If in the opinion of the Trustee any document required to be executed pursuant to the terms of Section 11.01 hereof affects any immunity or indemnity in favor of the Trustee under this Trust Agreement or the Charters, the Trustee may in its discretion decline to execute such document.

SECTION 11.03. It shall not be necessary for any written request of the holders of Certificates furnished pursuant to Section 11.01 hereof to specify the particular form of the proposed documents to be executed pursuant to said Section, but it shall be sufficient if such request shall indicate the substance thereof.

SECTION 11.04. Promptly after the execution by the Trustee of any document entered into pursuant to Section 11.01 hereof, the Trustee shall mail, by first class mail, postage prepaid, a conformed copy thereof to each holder of a Certificate at its address last known to the Trustee, but the failure of the Trustee to mail such conformed copies shall not impair or affect the validity of such document.

SECTION 11.05. Any supplement to or amendment of this Agreement (including any Exhibit hereto) shall be filed by the Trustee with the United States Coast Guard.

ARTICLE XII

Miscellaneous

SECTION 12.01. This Trust Agreement and the trusts created hereby shall terminate and this Trust Agreement shall be of no further force or effect upon the earlier of (i) the sale or other final disposition

by the Trustee of the Vessel at any time part of the Trust Estate and the final distribution by the Trustee of all monies or other property or proceeds constituting part of the Trust Estate in accordance with the terms of Article V hereof, provided that at such time the Charterer shall have fully complied with all of the terms of the Time Charter and the Participation Agreement or (ii) until twenty-one years after the death of the last surviving of the now living children of the late U. S. Senator from New York, Robert F. Kennedy, whereupon all monies or other property or proceeds constituting part of the Trust Estate shall be distributed in accordance with the terms of Article V hereof; otherwise this Trust Agreement and the trusts created hereby shall continue in full force and effect in accordance with the terms hereof.

SECTION 12.02. No holder of a Certificate shall have legal title to any part of the Trust Estate. No transfer, by operation of law or otherwise, of any Certificate or other right, title and interest of any holder of a Certificate in and to the Trust Estate or hereunder shall operate to terminate this Trust Agreement or the trusts hereunder or entitle any successor or transferee of such holder to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

SECTION 12.03. Any sale or other conveyance of the Vessel by the Trustee made pursuant to the terms of this Trust Agreement or of the Charters shall bind the holders of the Certificates and shall be effective to transfer or convey all right, title and interest of the Trustee and such holders in and to the Vessel provided that the Owner Participant shall have filed a consent with the United States Coast Guard to any transfer of any interest in the Vessel. Except as aforesaid, no purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such sale or conveyance or as to the application of any sale or other proceeds with respect thereto by the Trustee.

SECTION 12.04. Nothing in this Trust Agreement, whether express or implied, shall be construed to give to any person other than the Trustee and the holders of the Certificates any legal or equitable right, remedy or claim under or in respect of this Trust Agreement or any Certificate; but this Trust Agreement and the Certificates shall be held to be for the sole and exclusive benefit of the Trustee and the holders of the Certificates.

SECTION 12.05. Unless otherwise expressly specified or permitted by the terms hereof, all notices shall be in writing, mailed by regular mail, postage prepaid, and (i) if to the Trustee, addressed to it at its address at P.O. Box 318, Church Street Station, New York, N.Y. 10015, Attention of Corporate Trust Division, (ii) if to the Guarantor, addressed to it at its address at One California Street, San Francisco, California 94106, Attention of Vice President—Finance, Corporate Development, and (iii) if to any holder of a Certificate, addressed to such holder at such address as such holder shall have furnished by notice to the Trustee or, until an address is so furnished, addressed to such holder at its address set forth in the Participation Agreement. Whenever any notice in writing is required to be given by the Trustee or any holder of a Certificate to any of the other of them, such Notice shall be deemed given and such requirement satisfied if such notice is mailed by regular mail, postage prepaid, addressed as provided above.

SECTION 12.06. Any provision of this Trust 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.

SECTION 12.07. No term or provision of this Trust Agreement or the Certificates may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party or other person against whom enforcement of the change, waiver, discharge or termination is sought; and any waiver of the terms hereof or of any Certificate shall be effective only in the specific instance and for the specific purpose given.

SECTION 12.08. This Trust Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 12.09. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Trustee and its successors and assigns, the holders of the Equipment Trust Certificates and their successors and assigns and the Owner Participant and its successors and, to the extent permitted by Article IX hereof, its assigns. Any request, notice, direction, consent, waiver or other instrument or action by the Owner Participant or any holder of a Certificate shall bind the successors and assigns thereof.

SECTION 12.10. The headings of the various Articles herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

SECTION 12.11. This Trust Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance. This Trust Agreement is being delivered in the State of New York.

IN WITNESS WHEREOF, the parties hereto have caused this Trust Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

SECURITY PACIFIC NATIONAL BANK
Security Pacific Leasing Corporation
Attorney in Fact for

SECURITY PACIFIC NATIONAL BANK

by Philip D. P. Lane
EXECUTIVE VICE PRESIDENT

Attest:

Marc L. Macher

Assistant Secretary

BANKERS TRUST COMPANY

by Wm Van Etten

Attest:

Om Karden

CALIFORNIA AND HAWAIIAN SUGAR
COMPANY

by Richard M. Brooks
VICE-PRESIDENT

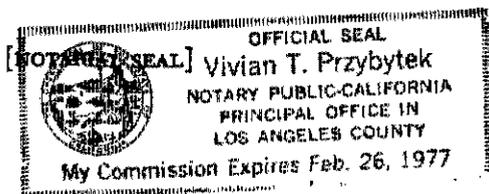
Attest:

Aladine P. Pawa

ASSISTANT SECRETARY

STATE OF CALIFORNIA }
CITY AND COUNTY OF LOS ANGELES } ss.:

On this 16 day of MAY, 1973, before me personally appeared CHARLES D. PEARCE to me personally known, who, being by me duly sworn, says that he is EXECUTIVE VICE PRESIDENT of SECURITY PACIFIC NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Vivian T. Przybytek
Notary Public

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

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

[NOTARIAL SEAL]

Phyllis Buccieri
Notary Public
PHYSIS BUCCHIERI
Notary Public, State of New York
No. 100000001
Qualified in Platts County
Commission Expires March 30, 1975

STATE OF CALIFORNIA }
CITY AND COUNTY OF SAN FRANCISCO } ss.:

On this 21st day of May, 1973, before me personally appeared Richard M. Boothe to me personally known, who, being by me duly sworn, says that he is VICE-PRESIDENT of CALIFORNIA AND HAWAIIAN SUGAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Aladina R. Parva
Notary Public

