

RECORDATION NO. W-^{2-A}.....Filed & Recorded

DEC 17 1969 -9 45 AM

INTERSTATE COMMERCE COMMISSION

SPINDRIFT TRANSPORTATION, INC.

MIDLAND ENTERPRISES INC.

AND

THE NATIONAL SHAWMUT BANK OF BOSTON,

Trustee, Mortgagee

I.C.C.
OPERATION BR.

DEC 17 9 45 AM '69

RECEIVED

Charter Assignment

Dated December 17, 1969

THIS CHARTER ASSIGNMENT, dated December 17, 1969 (herein, as the same may be supplemented or amended from time to time, called this Charter Assignment) by and among SPINDRIFT TRANSPORTATION, INC., a corporation organized and existing under the laws of the State of New York (herein called the Owner), having an address c/o Bluefish & Co., 49 East Fourth Street, Cincinnati, Ohio 45202, MIDLAND ENTERPRISES INC., a corporation organized and existing under the laws of the State of Delaware (herein, together with any corporation succeeding thereto by consolidation, merger or acquisition of all or substantially all of its assets, called the Charterer) and THE NATIONAL SHAWMUT BANK OF BOSTON, a national banking association (herein in its capacity as Trustee, Mortgagee under the First Preferred Ship Mortgage and Indenture hereinafter referred to, together with its successors as such Trustee, Mortgagee called the Trustee), having an address at 40 Water Street, Boston, Massachusetts 02106, as Trustee, Mortgagee under a First Preferred Ship Mortgage and Indenture, dated December 17, 1969 (herein, as the same may be supplemented or amended from time to time, called the Indenture) from the Owner.

PRELIMINARY STATEMENT

The Owner has entered into the Indenture with the Trustee and will issue its notes under and as permitted by the Indenture (all notes of the Owner as from time to time may be outstanding as defined in the Indenture are herein collectively called the Notes). The Notes are being issued and sold in connection with the financing of the acquisition by the Owner of two oil screw vessels, the J. N. Philips, Official Number 520414 and the A. P. Boxley, Official Number 520785 (herein, together with all appurtenances thereto and any vessel or vessels which may be substituted therefor pursuant to the Bareboat Charter hereinafter referred to, collectively called the Vessels). The Owner has bareboat chartered the Vessels to the Charterer pursuant to a Bareboat Charter, dated December 17, 1969 (herein, as the same may be supplemented or amended from time to time, called the Charter). The Owner and the Charterer are entering into this Charter Assignment in order to induce the purchasers of the Notes to purchase the same. This Charter As-

signment shall equally and ratably secure the Notes, without preference, priority or distinction of any thereof over any other by reason of difference in time of issuance or otherwise.

Now **THEREFORE**, the Owner and the Charterer hereby agree with the Trustee as follows:

1. **ASSIGNMENT OF CHARTER:**

The Owner, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in furtherance of the provisions of the Indenture and as security for the payment of the principal of (premium, if any), and all interest and all other sums payable on the Notes and under the Indenture and the performance and observance of the provisions thereof, has assigned, transferred and set over and by these presents does assign, transfer and set over, to the Trustee, the Charter and all of the Owner's right, title and interest, claim and demand as owner under the Charter, together with all rights, powers, privileges, options and other payments, tenders and security payable to or receivable by the owner under the Charter or pursuant thereto (whether payable in case of total (actual or constructive) loss, seizure, forfeiture, requisition of title or purchase of any Vessel or otherwise), and the right to make all waivers and agreements, to exercise or fail to exercise any right to require the Charterer to purchase a Vessel or any portion thereof or other property, as provided in the Charter, and upon any such exercise to execute and deliver, in the name and on behalf of the owner under the Charter, as agent and attorney in fact of the owner under the Charter, with an interest, an appropriate instrument or instruments of transfer covering such Vessel or Vessels or any portion thereof or other property, purchased by the Charterer in accordance with the Charter, and to perform as such agent and attorney in fact all other necessary or appropriate acts with respect to any such purchase, to give and receive duplicate copies of all notices and other instruments or communications, to take such action upon the occurrence of an event of default under the Charter, including the commencement,

conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Charter or by law, and to do any and all other things whatsoever which the Owner or any owner of the Vessels is or may be entitled to do under the Charter.

2. ASSIGNMENT AS COLLATERAL SECURITY:

The assignment made hereby is executed as collateral security, and the execution and delivery hereof shall not in any way impair or diminish any obligations of the Owner or any owner under the Charter nor shall any of such obligations be imposed upon the Trustee. Upon the payment of the principal of (premium, if any) and all interest on the Notes and of all other sums payable on the Notes or under the Indenture, and the performance and observance of the provisions thereof, the assignment made hereby and all rights herein assigned to the Trustee shall cease and terminate and all the estate, right, title, interest, claim and demand of the Owner or any owner under the Charter in and to the above described assigned property shall revert to the Owner or such owner, and the Trustee shall at the request of the Owner or such owner deliver an instrument cancelling this Charter Assignment and reassigning the above-described assigned property.

3. TRUSTEE DESIGNATED RECIPIENT OF NOTICES BY THE OWNER:

The Owner hereby designates the Trustee as recipient of and hereby directs the Charterer to deliver or remit directly, by prepaid United States mail, to the Trustee, at 40 Water Street, Boston, Massachusetts 02106, or at such other address as the Trustee may from time to time designate, duplicate copies of all notices and other instruments or communications required or permitted to be given or made by the Charterer pursuant to the Charter and all charter hire, purchase prices, liquidated damages and other payments, tenders and security now or hereafter due and payable to or receivable by the owner under the Charter. The Owner hereby agrees to send, by prepaid United States mail, to the Trustee duplicate copies of all notices and other instruments or communications required or permitted to be given by the Owner pursuant to the Charter.

4. REPRESENTATIONS AND WARRANTIES:

The Owner and the Charterer represent and warrant that the Charter is in full force and effect and is not in default, and the Owner further represents and warrants that it has not executed any assignment of, or in any way affecting, the subject matter of the assignment made hereby to the Trustee, other than the assignment to the Trustee made by the Indenture.

5. IRREVOCABILITY; SUPPLEMENTAL INSTRUMENTS:

The Owner agrees that the assignment made hereby and the designation and direction to the Charterer hereinabove set forth are irrevocable, and that the Owner will not, while said assignment is in effect or thereafter until the Charterer has received from the Trustee notice of the termination of said assignment, take any action as owner under the Charter or otherwise which is inconsistent with said assignment, or make any other assignment, designation or direction inconsistent therewith, and that any assignment, designation or direction inconsistent therewith shall be void. The Owner will from time to time, upon request of the Trustee, execute all instruments of further assurance and all such supplemental instruments as the Trustee may specify.

6. AMENDMENT OR TERMINATION OF CHARTER:

The Owner and the Charterer each agrees that it will not, except as permitted by the Charter and the Indenture, enter into any agreement subordinating, amending, supplementing, hypothecating, waiving, discharging or terminating the Charter without the Trustee's written consent thereto, and that any attempted subordination, amendment, supplement, hypothecation, waiver, discharge or termination without such consent shall be void unless permitted by the Charter and the Indenture. In the event that the Charter shall be amended or supplemented as herein permitted, the Charter as so amended or supplemented shall continue to be subject to the provisions of this Charter Assignment without the necessity of any further act by any of the parties hereto.

7. CHARTERER'S CONSENT AND AGREEMENT TO PAY TO TRUSTEE:

(a) The Charterer consents to the provisions of this Charter Assignment, and agrees it will deliver or remit directly to the Trustee, at the address provided for in paragraph 3, (i) duplicate copies of all notices and other instruments, reports, financial statements or communications required or permitted to be given or made by the charterer pursuant to the Charter, and (ii) all charter hire, purchase prices, liquidated damages and other payments, tenders and security now or hereafter due and payable to or receivable by the owner under the Charter, without notice or demand, and without any offset, deduction, defense, abatement, suspension, deferment, diminution or reduction for any reason. If the Charterer shall make any delivery or remittance inconsistent with this paragraph 7, such delivery or remittance shall be neither valid nor effective as a delivery or remittance for purposes of the Charter, this Charter Assignment or the Indenture.

(b) The Trustee acknowledges notice of the provision of section 12 of the Charter which grants the Charterer the right (to the extent the Owner shall be entitled) to take all action and make all expenditures necessary to cure any default under the Indenture or the Notes, and the Trustee agrees to accept such cure.

8. CHARACTER OF THE CHARTERER'S OBLIGATIONS:

The liabilities, obligations and undertakings of the Charterer under this Charter Assignment are independent of, separate from and in addition to those of the Charterer as charterer under the Charter, and shall not be diminished or deferred for any reason whatsoever, including without limitation, (i) any of the reasons referred to in section 23 of the Charter, or (ii) the invalidity or unenforceability of the Charter or any provision thereof, because of any reason whatsoever, or (iii) the invalidity or unenforceability of this Charter Assignment, or any provision hereof, because of any reason whatsoever.

9. PURCHASE OF A VESSEL:

(a) If a Vessel or the Owner's interest therein or other property is to be purchased by the Charterer pursuant to the Charter, any in-

strument or instruments of transfer executed and delivered by the Trustee as permitted by the Indenture will be accepted by the Charterer to the same extent and with the same effect as if executed and delivered by the Owner in accordance with the provisions of the Charter.

(b) In the event the Charterer shall purchase all Vessels subject to the Charter in accordance with the provisions of the Charter, this Charter Assignment shall terminate except with respect to any obligations hereunder, actual or contingent, that may exist at such time.

10. FINANCIAL STATEMENTS AND REPORTS:

The Charterer will, during the Charter Period, deliver to the Trustee:

(i) within 120 days after the end of each fiscal year, statements of income and surplus of the Charterer and its Subsidiaries consolidated for such year and balance sheets of the Charterer and its Subsidiaries consolidated as at the end of such year, setting forth in each case in comparative form the corresponding figures of the previous annual audit, all in reasonable detail and certified by independent public accountants of nationally recognized standing selected by the Charterer, together with the audit report of such accountants for such fiscal year;

(ii) within 60 days after the end of each of the first three quarterly periods in each fiscal year, a statement of income and surplus of the Charterer and its Subsidiaries consolidated for the period from the beginning of the then current fiscal year to the end of such quarterly period and a balance sheet of the Charterer and its Subsidiaries consolidated as at the end of such quarterly period, all in reasonable detail and certified by the chief financial officer of the Charterer, subject, however, to audit and year-end adjustment; and

(iii) such other financial information as the Trustee or any holder of a Note may from time to time reasonably request.

The term "Subsidiaries" as used in this paragraph 10 shall mean such subsidiaries of the Charterer as are customarily included in consolidated financial statements of the Charterer prepared in accordance with generally accepted accounting principles consistently applied. The

Charterer will deliver such copies of the financial information required by this paragraph 10 as may be requested by the Trustee.

11. MISCELLANEOUS:

This Charter Assignment shall be binding upon, inure to the benefit of and be enforceable by, the respective successors and assigns of the parties hereto. The headings to the various paragraphs of this Charter Assignment have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Charter Assignment. Neither this Charter Assignment nor any provision hereof may be amended, modified, waived, discharged or terminated orally, but only by an instrument signed by the party against whom enforcement of such amendment, modification, waiver, discharge or termination is sought. If any provision of this Charter Assignment or any application thereof shall be invalid or unenforceable, the remainder of this Charter Assignment and any other application of such provision shall not be affected thereby. This Charter Assignment may be executed in any number of counterparts, each of which shall be an original, and such counterparts shall together constitute but one and the same instrument. This Charter Assignment shall be governed by and construed and enforced in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Owner and the Charterer have each caused this Charter Assignment to be duly executed and delivered, in their respective names and behalfs and under their respective corporate seals, and the Trustee, in token of its acceptance of the provisions hereof, has caused this Charter Assignment to be duly executed and delivered, in its name and behalf, and under its corporate seal, all as of the day and year first above written.

SPINDRIFT TRANSPORTATION, INC.

[CORPORATE SEAL]

Attest:

Jameson H. Adkins
Assistant Secretary

By

John M. Bachy
Vice President

MIDLAND ENTERPRISES INC.

[CORPORATE SEAL]

By R. N. Stout
Vice President

Attest:

M. D. Casper
Secretary

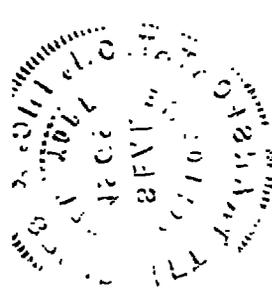
THE NATIONAL SHAWMUT BANK
OF BOSTON, as Trustee, Mortgagee

[CORPORATE SEAL]

By J. J. Quigley
Authorized Officer

Attest:

W. B. Holland
Trust Officer



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

On this 17th day of December, 1969, before me personally appeared John R. Bailey, to me known, who, being by me duly sworn, did depose and say that he resides at 27 College Ave. Upper Meriden, New Jersey 07043 that he is the Vice President of SPINDRIFT TRANSPORTATION, INC., one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[NOTARIAL SEAL]

Marie A. Cronell
Notary Public

MARIE E. CRONELL
Notary Public, State of New York
No. 60-5861800
Qualified in Westchester County
Cert. filed with New York Co. Clerk
Term expires March 30, 1970

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

On this 17th day of December, 1969, before me personally appeared R. N. Stout, to me known, who, being by me duly sworn, did depose and say that he resides at 1459 Cinderella Drive, Cincinnati, Ohio 45244 that he is the Vice President of MIDLAND ENTERPRISES INC., one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[NOTARIAL SEAL]

Marie A. Cronell
Notary Public

MARIE E. CRONELL
Notary Public, State of New York
No. 60-5861800
Qualified in Westchester County
Cert. filed with New York Co. Clerk
Term expires March 30, 1970

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

On this 15th day of December, 1969, before me personally appeared J. J. Quigley, to me known, who, being by me duly sworn, did depose and say that he resides at 204 W. Eighth St. South Boston, Mass. 02127, that he is the an AUTHORIZED OFFICER of THE NATIONAL SHAWMUT BANK OF BOSTON, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

[NOTARIAL SEAL]

Marie A. Cronell
Notary Public

MARIE E. CRONELL
Notary Public, State of New York.
No. 60-5861800
Qualified in Westchester County
Cert. filed with New York Co. Clerk
Term expires 12/31/1970

