CHAPTER 29

SHIPS AND BOATS

Table of Sections

A. INTRODUCTION

Sec.
29.1 In General.

B. SALE OF VESSEL

29.2 Bill of Sale of Documented Vessel.
29.3 Bill of Sale for Boat.
29.4 Bill of Sale to Yacht.
29.5 Yacht Purchase Agreement.

C. MORTGAGE OF VESSEL

29.10 Uniform Commercial Code—Comment.
29.11 Mortgage of Documented Vessel.
29.12 Preferred Mortgage to United States of America.
29.13 Affidavit to Be Filed With Mortgage.
29.14 Affidavit as to Citizenship.
29.15 Release of Preferred Mortgage.
29.16 Provision for Release of Part of Mortgaged Vessels.
29.17 Provision Concerning Compensation for Requisition for War Purposes.
29.18 Provision for Appointment of Receiver.
29.19 Amendment of Preferred Ships Mortgage.
29.20 Letter to Coast Guard.

D. CHARTER PARTY AGREEMENTS

29.50 General Comments.
29.51 Charter Party.
29.52 Voyage Charter Party.
29.53 ___ Another Form.
29.54 Bareboat Charter Party.
29.55 ___ Another Form.
29.56 Charter of Yacht (Time).
29.57 Clauses in Charter Parties—Expenses.
29.58 ___ Loss of Vessel.
29.59 ___ War Risks.
29.60 ___ General Exceptions.
29.61 ___ Force Majeure.
29.62 ___ Liberties.
29.63 ___ Release.
29.64 Bareboat Charter Contract—Pleasure Yacht.

680
§ 29.1 In General

Federal statutes provide for and regulate the documentation of vessels engaged in commerce in the United States.\(^1\) Vessels of at least five net tons, not registered under the laws of a foreign nation, are eligible for documentation if certain ownership requirements are met.\(^2\) A certificate of documentation is issued, upon application by the owner of any vessel eligible for documentation, in the form and in the manner prescribed by the Secretary.\(^3\) A vessel may not be employed in a trade not covered by the certificate of documentation issued for that vessel.\(^4\)

Bills of sale, conveyances, and mortgages of any vessel or part of a vessel of the United States should be recorded in the office of the collector of customs of the port of documentation of such vessel.\(^5\) To maintain the preferred status of a mortgage there should be filed with it an affidavit that it was made in good faith, etc.\(^6\) Acknowledgment of any such instrument or of a discharge of any encumbrance is a prerequisite to record.\(^7\) A bill of sale should set forth the part of the vessel owned by each person selling, and the part conveyed to each person purchasing.\(^8\)

3. "Secretary" means the head of the department in which the Coast Guard is operating. Also, see 46 U.S.C.A. §§ 12105-12109 and 46 CFR §§ 67.17-1 through 67.17-11 for the types of certificates of documentation issued by the Secretary.
4. See 46 U.S.C.A. § 12110(a), 46 CFR § 67.01-3 and 46 CFR § 67.17-1(b) and (c).
7. See 46 U.S.C.A. § 926(b) and 46 CFR § 67.29-7(a)(2).
8. See 46 U.S.C.A. §§ 921(b)(4) and 926(a); and 46 CFR § 67.31-5.
§ 29.2 Bill of Sale of Documented Vessel
To All to Whom These Presents Shall Come, Greeting:

Know ye, that I, ___, of ___, sole owner [or we, ___, and ___, of ___, each of us being an owner of one-half part] of the steamship or vessel called the ___, of the burden of ___ tons, or thereabout, for and in consideration of the sum of ___ dollars, lawful money of the United States of America, to me [or us] in hand paid, before the sealing and delivery of these presents, by ___, of ___, the receipt whereof I [or we] do hereby acknowledge and am [or are] therewith fully satisfied, contented, and paid, have bargained and sold, and by these presents do bargain and sell, unto the said ___, his executors, administrators, personal representatives and assigns, all [or one-half part] of the said steamship or vessel, together with all [or one-half part of] the masts, bowsprit, sails, boats, anchors, cables, tackle, furniture, and all other necessaries thereunto appertaining and belonging, the certificate of documentation of which said steamship or vessel is as follows: [Insert copy of certificate].

To have and to hold the said steamship or vessel and appurtenances thereunto belonging unto the said ___, his executors, administrators, personal representatives and assigns, to the sole and only proper use, benefit, and behoof of him, the said ___, his executors, administrators, personal representatives and assigns forever. And I [or we], the said ___, have, and by these presents do promise, covenant, and agree, for myself [or ourselves] and my [or our] heirs, executors, personal representatives and administrators, to and with the said ___, his heirs, executors, administrators, personal representatives and assigns, to warrant and defend the said steamship or vessel and all the other before-mentioned appurtenances against all and every person and persons whomsoever.

In Testimony Whereof, I [or we], the said ___, have hereunto set my [or our] hand[s] and seal[s] this ___ day of ___, 19__.

[Seal]

[Seal]

Signed, sealed, and delivered in presence of:
COMMENT

For requirements involved in drafting and recording bills of sale and conveyances, see 46 U.S.C.A. §§ 921 and 926; see also 46 CFR §§ 67.29-1 through 67.31-7.

§ 29.3 Bill of Sale for Boat

DATE: ________________, 19__

SELLER: __________________________________________

Name

Street Address

City, State and Zip Code

Phone Number

BUYER: __________________________________________

Name

Street Address

City, State and Zip Code

Phone Number

PURCHASE PRICE: ____________________________________

IN CONSIDERATION of payment of the above purchase price by Buyer, the receipt of which is hereby acknowledged by Seller, Seller has and does hereby grant, bargain, sell, convey, transfer and deliver to the Buyer the following-described boat:

<table>
<thead>
<tr>
<th>Year</th>
<th>Make</th>
<th>Model</th>
</tr>
</thead>
</table>

This boat is sold "AS IS", and Seller does not in any way, expressly or impliedly, give any warranties. Seller expressly disclaims any implied warranties of merchantability or of fitness for a particular use.

Buyer shall pay all sales tax and transfer fees incident to this sale, and shall reimburse Seller if Seller pays them.

Buyer has examined this boat prior to this sale as fully as desired and accepts it as conforming in all respects.

Signed, sealed and delivered in the presence of: SELLER:
§ 29.3 SHIPS AND BOATS

Witnesses to SELLER

___, SELLER

Witnesses to BUYER

___, BUYER

§ 29.4 Bill of Sale to Yacht

KNOW ALL MEN BY THESE PRESENTS:

That _____, a Florida corporation, of _____, Florida, hereinafter called "Seller", for good and valuable consideration received from

whose address is _____, hereinafter called "Purchaser", does hereby bargain, sell, transfer, assign and deliver to Purchaser one yacht described as follows:

Manufacturer: ____________________________

Type of Yacht: ____________________________

Manufacturer's Serial Number: ____________________________

Other Identifying Information: ____________________________

Seller represents that it has the right to sell the yacht and that it is free of any liens or mortgages.

DATED this _____ day of _____, 19___.

Witnesses:

By: ____________________________

Title: ____________________________

(Corporate Seal)

§ 29.5 Yacht Purchase Agreement

AGREEMENT made between _____, a Florida corporation, hereafter referred to as "Seller", and ____________________________

whose address is _____, hereafter referred to as "Purchaser".

684
In consideration of their mutual promises, and for other good and valuable consideration, the parties hereby agree as follows:

1. **Description.** Purchaser hereby agrees to purchase from Seller, and Seller hereby agrees to sell to Purchaser, one _______, hereafter referred to as the "yacht", which yacht is to be built and equipped by ______ and Seller in accordance with the General Specifications and Equipment List attached hereto.

2. **Purchase Price.** Purchaser shall pay Seller as the purchase price for the yacht and equipment the sum of $______ F.O.B. _______, plus applicable sales tax. Any additions or deletions to the General Specifications or Equipment List must be agreed upon in writing by both parties, and the purchase price shall be adjusted accordingly and paid in the final billing.

3. **Terms of Payment.** Upon signing this Agreement, Purchaser shall pay Seller twenty-five percent (25%) of the purchase price. Upon written notice to Purchaser that the yacht is complete at the factory and ready for commissioning, Purchaser shall pay Seller the balance of the purchase price.

4. **Delivery.** After completion of the yacht at the factory, the yacht shall be transported to the commissioning yard of Seller's choice for commissioning and sea trials. After proper commissioning service, the yacht shall be available for Purchaser's inspection and acceptance. In addition to the purchase price, Purchaser shall pay Seller the sum of $______, with the final payment of the purchase price, for the yacht's land transportation, commissioning and other expenses.

5. **Excuse.** Seller shall not be held responsible for any delay or failure to make delivery of all or any part of the yacht and equipment due to foreign, federal, state or municipal action or regulation; strikes or other labor troubles; fire, damage to, or destruction in whole or part of the yacht, equipment or factory; lack of, or inability to obtain, raw materials, labor, fuel, supplies or equipment; or any other causes, contingencies or circumstances within or without the United States not subject to Seller's control which prevent or hinder the manufacture, equipping or delivery of the yacht and equipment or make fulfillment of this agreement impracticable; any of which shall, without liability, excuse Seller from the performance of this Agreement.

6. **Transfer.** Risk of loss of the yacht and equipment shall pass to Purchaser upon delivery of the yacht to Purchaser, whether or not transfer of legal title is then complete. The yacht is deemed delivered when Purchaser accepts it at commissioning. Seller shall furnish to Purchaser a manufacturer's certificate of origin on the yacht after delivery and full payment.

7. **Default by Purchaser.** If the Purchaser wrongfully rejects acceptance or fails to make a payment when due or repudiates the contract in whole or in part or otherwise defaults on this agreement,
then Seller may recover the full amount due together with incidental and consequential damages, interest, collection costs and reasonable attorneys fees, and the Seller may also retain all sums paid by Purchaser, and the Seller may also, in its sole discretion, resell the yacht and equipment or any part of it to mitigate Seller's damages although it shall have no duty to do so.

8. Default by Seller. If Seller fails to make delivery of the yacht and equipment, or if Seller wrongfully repudiates the contract or otherwise substantially defaults on this agreement, then Purchaser may cancel this agreement and recover all sums paid to Seller. This shall be Purchaser's exclusive remedy, and other remedies being expressly waived hereby by Purchaser.

IN WITNESS WHEREOF, the parties have signed this agreement this ______ day of ___, 19___.

Witness: 
__________
Witness: 
__________
Witness: 
__________
Purchaser(s):

Seller:

By: 

§§ 29.6–29.9 are reserved for supplementary material.

C. MORTGAGE OF VESSEL

§ 29.10 Uniform Commercial Code—Comment

Article 9 of the Uniform Commercial Code provides that it does not apply "to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920,\(^1\) to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property."\(^2\) The Ship Mortgage Act contains provisions on formal requisites, recordation, and foreclosure. To this extent it supersedes Article 9 in the financing of vessels which have been documented under the laws of the United States.\(^3\) The practical effect is that the Ship Mortgage Act governs loans on ships of substantial size, and Article 9 applies to loans on small vessels, particularly small pleasure craft.\(^4\)

\(^2\) Uniform Commercial Code (UCC) § 9–104(a).
\(^3\) UCC §§ 9–104(a) and Comment, 9–302(1)(f) and (3)(a) and (4).
\(^4\) Commercial vessels and pleasure vessels under 5 net tons are not eligible for documentation under 46 U.S.C.A. § 12102.
§ 29.11 Mortgage of Documented Vessel

To All to Whom These Presents Shall Come, Greeting:

Bond. Know ye, that I, _______, of _______, County of _______, in the State of Florida, am held and firmly bound unto _______, of _______, in the County of _______, in the just and full sum of ______ dollars, for the payment of which sum, well and truly to be made, I hereby bind myself, and my heirs, executors, administrators and personal representatives, by these presents.

Sealed with my seal at ______ this ______ day of ______, 19__.

Whereas, the said ______ has this day lent and advanced unto the said ______ the sum of ______ dollars, on the body, tackle, and appurtenances of the good schooner or vessel called the ______, of the burden of ______ tons, or thereabouts, the said ______ being the sole owner of the said schooner.

Now, the condition of this obligation is that, if the said ______ shall pay or cause to be paid to the said ______ the sum of ______ dollars and interest thereon at the rate of ______ per cent per annum, payable semiannually, on the ______ day of ______, 19__, and ______ in each year, then this obligation to be void; otherwise to be and remain in full force and virtue.

Assignment. And in consideration of, and as security for, said loan as aforesaid, the said schooner is by these presents assigned, pledged, mortgaged, set over, and conveyed to the said _______, his executors, administrators, personal representatives and assigns; the certificate of documentation of which vessel is as follows, viz. [insert copy].

Power of Sale. It being mutually understood and agreed that, in case the amount of said loan and interest or any part thereof according to the terms of these presents shall remain due and unpaid to said _______, his executors, administrators, personal representatives or assigns, after the expiration of ______ from the date hereof, the said _______, his executors, administrators, personal representatives or assigns, may take possession of said schooner or vessel and appurtenances and sell the same at public auction, in order to satisfy what may then remain due, without any proceedings in court or otherwise for the purpose of authorizing such sale, and thereupon may execute and deliver a sufficient bill of sale to transfer completely to any purchaser or purchasers all title and property in and to the said schooner or vessel and appurtenances to the said _______, as owner thereof, now belonging; the said _______, his executors, administrators, personal representatives or assigns, thereupon to account to the said _______, his executors, administrators, personal representatives or assigns, for any

Loans on undocumented vessels may be made under the Uniform Commercial Code. The Code has little application to loans on documented vessels which are within the scope of the federal Ship Mortgage Act, 1920.
surplus of such sale, after paying all charges and expenses. And in case of such sale as aforesaid the said _____, his executors, administrators, personal representatives or assigns, shall, whenever thereto requested, make, execute, and deliver to such purchaser or purchasers another bill of sale of said schooner or vessel and appurtenances, in which the certificate shall be recited as above, for the transferring completely to such purchaser or purchasers all the right, interest, and claim of said _____, his executors, administrators, personal representatives or assigns, as owners of the said schooner or vessel. And in default of the prompt execution and delivery of such other bill of sale to such purchaser or purchasers by the said _____, his executors, administrators, personal representatives or assigns when thereto requested, the said _____, and his executors, administrators, personal representatives and assigns, are hereby constituted and appointed the legal attorney or attorneys of the said _____, his executors, administrators, personal representatives and assigns, for the purpose of making, executing, and delivering such bill of sale; and the said _____ hereby ratifies and confirms the acts of the said _____ as his attorney or attorneys for said purpose.

Insurance. And it is hereby further agreed and understood that insurance shall be made in some office in _____ on the said schooner or vessel for the security of the said _____ as mortgagee to an amount not less than the sum loaned as aforesaid; and the said _____ is hereby authorized to procure such insurance at the expense of the said _____ if not seasonably obtained by him, the said _____.

[Seal]

Signed, sealed, and delivered in the presence of:

[Add affidavit by mortgagor that it was made in good faith and without any design to hinder, delay, or defraud any existing or future creditor of the mortgagor or any lienor of the mortgaged vessels.]
described in the certificate of documentation, a true and correct copy of which is hereto annexed, being justly indebted to the Mortgagee, acting by and through the Secretary of Transportation, in the sum of ______ dollars, upon the purchase price of the vessel, has, for the purpose of securing the payment of said debt and interest thereon, granted, bargained, sold and mortgaged, and by these presents does grant, bargain, sell and mortgage unto the Mortgagee, and its assigns, the whole of the vessel, together with all her engines, boilers, machinery, masts, bowsprit, boats, anchors, cables, rigging, tackle, apparel, furniture and all other appurtenances thereunto appertaining and belonging and all the earnings, income, revenue, rents, issues and profits of the vessel, and also any and all additions, improvements and replacements hereafter made in or to the vessel or any part thereof, or in or to her equipment and appurtenances aforesaid;

To have and to hold the vessel and any and all such before mentioned appurtenances, earnings, income, revenue, rents, issues and profits, additions, improvements and replacements unto Mortgagee, and its assigns, to the sole and only proper use, benefit, and behoof of the Mortgagee, and its assigns forever:

Provided always, and the condition of these presents is such, that if the Mortgagor shall pay or cause to be paid, to the Mortgagee, or its assigns, the debt aforesaid, with interest thereon, at the time or times and in the manner following, to wit, by paying on the respective dates of their maturity each and every of ______ promissory notes numbered as follows and of the following amounts and maturities:

<table>
<thead>
<tr>
<th>Number</th>
<th>Amount</th>
<th>Maturity</th>
</tr>
</thead>
</table>

[All of which notes, save for their respective amounts and dates of maturity are in form and substance as follows: here set forth the form of notes in blank.

and by paying interest on all of said notes semi-annually, and if the Mortgagor shall duly perform all the agreements, covenants and conditions hereinafter set forth, then these presents shall be void and of no effect, subject, however, to the covenants and agreements hereinafter contained; and the Mortgagor hereby agrees to pay the debt aforesaid, and interest thereon, and to fulfill and perform each and every one of the covenants, agreements and conditions herein contained.

1. **Covenants of Mortgagor.** The Mortgagor covenants and agrees as hereinafter in this Article set forth:

   (a) **Insurance.** At its own expense, as long as any of the notes hereunder and hereby secured are outstanding, to keep the vessel insured in an amount in dollars, lawful money of the United States, at least equal to 25% more than the amount remaining unpaid, the policy valuation not to exceed the amount insured, with responsible underwriters in good standing, approved by the Mortgagor, under the American Hull Underwriters’ Association form of marine insurance policy,
§ 29.12  SHIPS AND BOATS  Ch. 29

insuring against the usual risks covered by such policy, including the Four-fourths Running Down Clause and the Inchmaren Clause, and with a policy franchise or deductible average of not exceeding 5% of the insured value, or under such other form of policy as the Mortgagee may approve; disbursement insurance to such amount as Underwriters will allow being permitted; and to keep the vessel fully entered in a protection and indemnity association or club in good standing in both protection and indemnity classes, or covered in the amount above specified by protection and indemnity clauses of like effect in marine insurance policies; to keep the vessel insured in like amount of war risk insurance while engaged in trans-Atlantic or United Kingdom or European Coast-wise Service, or whenever or so long as the Mortgagee shall request that such war risk insurance be carried. All insurance, by its terms, shall be payable to the Secretary of Transportation for the Mortgagor and the Mortgagee as their interests may appear, and the policies and binders therefor shall be delivered to the Mortgagee, except that if the vessel is entered in a protection and indemnity association or club, the requirements as to the delivery of policies and binders therefore to the Mortgagee shall not be applicable, but a certificate of the brokers arranging the insurance with the club shall be furnished the Mortgagee showing compliance with the requirements hereof, and except that in the event of partial loss, if the Mortgagor is not in default under this mortgage, the Mortgagee shall consent to the payments by the Underwriters direct, of all bills incurred for repairs and salvage or similar services which may be covered by said insurance.

(b) **Operation.** Not to do nor voluntarily suffer nor permit any act to be done whereby any insurance is or may be suspended, impaired or defeated, nor to permit the vessel to engage in any voyage or to carry any cargo not permitted under the policies of insurance in effect, without first covering the vessel to the amount herein provided for by insurance satisfactory to the Mortgagee for such voyage or the carriage of such cargo, nor cause, suffer or permit the vessel, while subject to this mortgage, to be operated in any manner contrary to any reasonable rules and regulations which the Secretary of Transportation may from time to time prescribe for the vessel and other vessels sold or leased by the said Secretary under similar conditions.

(c) **Other Liens.** Not to suffer nor permit to be continued any lien, encumbrance or charge which has or might have priority over this mortgage of the vessel to the Mortgagee; but in due course, and in any event within fifteen days after the same becomes due and payable or enforceable against the vessel, to pay, discharge or make adequate provision for the satisfaction or discharge of all lawful liquidated claims or demands which, if unpaid, in equity, in admiralty, at law or by any statute of this or any other nation where the vessel may be navigating or berthed, have such priority over this mortgage, or might operate as a lien, encumbrance or charge upon the vessel to cause detention in part;
provided, however, that this provision shall not apply to the extent that there may be pending on behalf of either of the parties hereto with solvent underwriters, not yet having been paid or rejected, a claim for reimbursement on account of the matter upon which any such lien is alleged to be founded nor to the extent that the Mortgagee has insurance or has received the proceeds thereof properly applicable as reimbursement on account of such matter or to the payment or discharge thereof; always, however, subject to the condition that the vessel be discharged or released from any libel, attachment or other detention under process or color of legal authority within fifteen days from the time when the same is attached.

(d) Maintenance. At all times, at its own expense, to maintain and preserve the vessel in as good condition, working order and repair as on the date of execution of this mortgage, so far as same may be practicable, ordinary wear and tear and depreciation excepted, and to keep the vessel in such condition as will entitle her to the highest classification and rating for vessels of the same age and type in the American Bureau of Shipping or Lloyds (British) Register of Shipping; and annually, and at such other times as the Mortgagee may determine, to furnish to the Mortgagee certificates by one of such bureaus that such class has been maintained.

(e) Inspection. At all times to afford the Mortgagee or its authorized representatives full and complete access to the vessel for the purpose of inspecting the same and her cargoes and ship's papers, and at all reasonable times to permit the Mortgagee of the second part or its duly authorized representatives to examine its minutes, books of account, records, files and documents. It is hereby agreed that in the event the Mortgagee, second part, from any such examination, shall deem its interest in the vessel to be at any risk or hazard, it may, at the expense of the Mortgagor, place its authorized representative upon the vessel with authority to be advised of all operations and records thereof.

(f) Notice of Mortgage. To carry a properly certified copy of this mortgage with the ship's papers; and to take such other appropriate steps, designated to it by the Mortgagee from time to time or required by the circumstances, as will give notice to the world that the Mortgagor's right, title and interest in the vessel is subject to this mortgage, and that the Mortgagor has no right, power or authority to suffer or permit to be imposed on or against the vessel any liens or claims which might be deemed superior to or a charge against the interest of the Mortgagee in the vessel.

(g) Taxes. To pay and discharge, when due and payable from time to time, all taxes, assessments and governmental charges, fines or penalties lawfully imposed on the vessel or upon the income and profits thereof.

(h) Reimbursement for Expenses. To reimburse the Mortgagee promptly, with interest at the rate of ______ per cent per annum, for
any and all expenditures, which the Mortgagee may make from time to time in providing such protection in respect to insurance, discharge of liens and taxes, repairs and other matters as the Mortgagor is obligated under this article to provide, but fails to provide; but the Mortgagee shall be under no obligation to the Mortgagor to make any such expenditures nor shall the making thereof affect the Mortgagor's default in that regard.

(i) Sale. Not to make any sale, lease or other transfer of the vessel or of any interest therein without the written consent of the Mortgagee first obtained, and such written consent to any such transfer shall not be deemed a waiver of this provision in respect to any subsequent proposed transfer. Any such consent may be upon the condition that the transferee shall, together with the Mortgagor, jointly and severally assume all obligations of the Mortgagor under this mortgage and upon its said notes, but the Mortgagor may, for uses lawful for American vessels and subject to all the provisions of this mortgage, charter the vessel to citizens of the United States as defined in the "Merchant Marine Act of 1920"; and, so far as permitted by regulations of the Secretary of Transportation to persons not citizens of the United States, and further provided that the Mortgagor may mortgage or pledge the vessel to American citizens of the United States as defined in the "Merchant Marine Act of 1920" subject, however, to the prior lien and provisions of this mortgage.

(j) Statute. To comply with and satisfy the requirements of the "Ship Mortgage Act, 1920", so as to establish and maintain this mortgage as a preferred mortgage under said Act.

(k) Further Assurances. In the event this mortgage or said notes, or any provision thereof, be deemed invalidated in whole or in part by any present or future law of the United States or any decisions of any authoritative court thereof, to execute such other and further instrument as, in the opinion of counsel for the Mortgagor, will carry out the true intent and spirit of this mortgage. From time to time to execute such further assurances as, in the opinion of such counsel, may be required to safeguard the rights of the parties hereto and carry out the spirit of this mortgage.

2. Events of Default. The Mortgagor shall be in default under this agreement in case any one or more of the following events, herein termed events of default, shall happen:

(a) Default, for fifteen days after it falls due, in the payment of any installment of interest on any of said notes; or

(b) Default in the due and punctual payment of the principal of any note when the same shall become due; or

(c) Default in the due and punctual performance of any provision of section (a) and/or section (c) of Article 1 hereof; or
§ 29.12

(d) Default for more than fifteen days after notice in writing given by the Mortgagee, in the prompt and faithful performance of any of the covenants, agreements or conditions herein contained; or

(e) The Mortgagor shall sell or attempt to sell the vessel or any part thereof or transfer the flag of the vessel without the written consent of the Mortgagee, or the vessel shall be libeled and levied upon or taken by virtue of any attachment or execution against the Mortgagor or otherwise subjected to lien or claim and not released within fifteen days, as herein provided, or the Mortgagor shall remove or attempt to remove the vessel beyond the limits of the United States, save on voyage with the intention of returning to the United States, or if legal proceedings be instituted to place the vessel or any of the property of the Mortgagor in the hands of a receiver, custodian or trustee in bankruptcy or insolvency.

3. Remedies. Upon the occurrence of an event of default the Mortgagee thereupon may:

(a) Acceleration. Declare all outstanding notes to be immediately due and payable, whereupon all of said notes shall, upon declaration, become due and payable immediately and shall bear interest thereafter at the rate of _____ per cent per annum upon the amount of principal and interest then due thereon;

(b) Judgment. Recover judgment for any amount due upon said notes or any of them, either by their terms or by virtue of such declaration and collect the same out of any property of the Mortgagor;

(c) Lease. Retake the vessel, wherever the same may be found, and hold, lease, charter, operate or otherwise use the vessel for such times and upon such terms as the Mortgagee may deem to its best advantage;

(d) Sale. Retake the vessel, wherever the same may be found and sell the same free from any claim by the Mortgagor in law, in equity, in admiralty or by statute, after first giving a printed notice for ten consecutive days (except Sunday) in some newspaper published in the City of ___, State of Florida, and in some newspaper, if any, published at the place of sale, which said sale may be held at such place or places and at such time or times as the Mortgagee may specify, and may be conducted without bringing the vessel to the place of sale, and in such manner generally as the Mortgagee may deem to its best advantage, and the Mortgagee may become the purchaser at any such sale;

(e) Supervision. Place its duly authorized representative in the business office of the Mortgagor to supervise its financial transactions or have a receiver appointed for like purpose.

4. Exercise of Rights of Entry and Retaking. When any right to retake the vessel shall accrue, the Mortgagee may retake the same wherever the same may be found without prior demand and without legal process, and for that purpose may enter upon any dock, pier or
other premises where the vessel may be, and the Mortgagee may take possession of the vessel upon the high seas or in any port, harbor or other place; but, without impairing the said right, the Mortgagor agrees, upon demand to deliver the vessel at its own cost, at such place or places as the Mortgagee may designate, and that the Mortgagee shall have the right to dock the vessel at any dock, pier or other premises, without charge, or to dock the vessel at any other place at the expense of the Mortgagor, and further agrees that whenever any legal proceedings shall be commenced to enforce any right under this mortgage, then the Mortgagee shall be entitled to exercise the right of entry and retaking and also any other rights and powers herein conferred and provided to be exercised by the Mortgagee upon the happening of any event of default, and that in any such legal proceedings the Mortgagee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the vessel and of the earnings, income, revenue, rents, issues and profits thereof, with such power as the court making such appointment shall confer.

5. Remedies Cumulative, No Waiver. Each and every power and remedy herein specifically given to the Mortgagee shall be cumulative and shall be in addition to every other power or remedy herein specifically given, or may now or hereafter be given in law, in equity, in admiralty or by statute, and each and every power or remedy, whether specifically given herein or otherwise, so existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of any power or remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other power or remedy. No delay or omission, by the Mortgagee, or by any of the holders of said notes, in the exercise of any right or power accruing upon any event of default as above defined, shall impair any such right or power, or shall be construed to be a waiver of such event or default or an acquiescence therein; nor shall the acceptance by the Mortgagee of any security or of any payment of a note or notes maturing after such event of default, or of any payment on account of any past default, be deemed a waiver of any right to take advantage of any further event or of any past event of default not completely cured thereby.

6. Offer of Mortgagor to Cure Default. If, at any time after an event of default and prior to the actual sale of the vessel by the Mortgagee, the Mortgagor shall offer to cure completely all events of default and to pay all expenses, advances and damages of the Mortgagee, consequent on such default, together with interest at the rate of ______ per cent per annum, then the Mortgagee may, in its discretion, but without any obligation so to do, accept such offer and payment and restore the Mortgagor to its former position, and thereupon cancel and annul any notices accelerating the maturity of the notes and any notices of sale of the vessel; but no such cancellation or annulment
shall affect any subsequent default nor impair any rights consequent thereon.

7. **Application of Proceeds of Sale.** The proceeds of any sale and the net earnings from any management, charter or other use of the vessel by the Mortgagee under any of the powers above specified, and the proceeds of any judgment collected by the Mortgagee for any default hereunder, together with the proceeds of any insurance and of any claims for damages on account of the vessel, received by the Mortgagee, while exercising any of such powers shall be applied as follows:

First, to the payment of all expenses and charges including the expense of any sale, the expenses of any retaking and any other expenses or advances made or incurred by the Mortgagee in the protection of its rights hereunder; and to the payment of any damages sustained by the Mortgagee from the default or defaults of the Mortgagor, with interest as provided for herein; and to provide adequate indemnity against liens claiming priority over this mortgage.

Second, to the payment pro rata of all of said notes, whether due or not due, with interest to the date of such payment, without preference to one note over another, or of interest over principal.

Third, any surplus thereafter remaining to belong and be paid or returned to the Mortgagor.

8. **Possession.** Until default shall have been made in the due and punctual payment of the interest or of the principal of any note or notes or of some part of such interest or principal, or until one or more of the events of default hereinbefore described shall happen, the Mortgagor shall be suffered and permitted to retain actual possession of the vessel, and to manage, operate and use the same and to collect, receive, take, use and enjoy the earnings, revenue, rents, issues and profits thereof.

In Witness Whereof, etc.

**COMMENT**


§ 29.13 **Affidavit to Be Filed With Mortgage**

**STATE OF FLORIDA**

**COUNTY OF ________**

______, being duly sworn, deposes and says: that he is president of ______ Steamship Company, a corporation, mortgagor of the Steamship ______, official number ______, and that the attached mortgage is made in good faith and without any design to hinder, delay or
§ 29.13 SHIPS AND BOATS

defraud any existing or future creditor of the mortgagor or any lienor of the above mentioned vessel.

[Jurat]

§ 29.14 Affidavit as to Citizenship

[Venue]

______, being duly sworn, deposes and says: that he is attorney for ______ Mortgage Company, the mortgagee of the ______, official number ______, and that the controlling interest therein is free from any alien trust or fiduciary obligation and is owned by citizens of the United States; that the ______ Mortgage Company, the mortgagee, is incorporated under the laws of the State of Florida, and the president and managing directors and officers are citizens of the United States; and the title to ______ per cent of the stock of said corporation is vested in citizens of the United States, free from any trust or fiduciary obligation in favor of any person, firm or corporation not a citizen of the United States, and that the majority of the voting power in such corporation is vested in citizens of the United States of America.

[Jurat]

§ 29.15 Release of Preferred Mortgage

Know ye, that ______, a corporation, organized and existing under the laws of the State of Florida, for and in consideration of ______ dollars, lawful money of the United States, to it in hand paid by ______, the receipt of which is hereby acknowledged, has remised, released and forever discharged and by these presents does, for itself, its successors and assigns, remise, release and forever discharge the said ______, its successors and assigns, and the Steamship ______, official number ______, her owners, agents, underwriters, and charterers, their successors and assigns or their heirs, executors, administrators and personal representatives of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, agreements, contracts, controversies, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law, in equity, or in admiralty, which, against the said ______, it ever had, now has or which it, its successors and assigns, hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day and date of these presents, arising by reason of a certain mortgage from ______ to

696
§ 29.16 Provision for Release of Part of Mortgaged Vessels

At any time the Mortgagor is not in default hereunder, it shall have the right to have either of said vessels released from this mortgage or to sell any part of said mortgaged property free of the lien of this mortgage, upon payment to the Mortgagee, to be applied upon the notes secured by this mortgage, the amount at which such part of the mortgaged property so sold is valued herein, to wit, $________, and upon receipt thereof the Mortgagee shall release and discharge such vessel so sold from the lien of this mortgage.

§ 29.17 Provision Concerning Compensation for Requisition for War Purposes

It is further understood and agreed, and especially convenanted by the Mortgagor, that any just compensation recoverable by and payable to the Mortgagor as a result of the requisition of said vessel under the laws of any nation, for war or other purpose, shall be subject to the lien of this mortgage and applied to the payment or reduction of the obligation hereby secured.

§ 29.18 Provision for Appointment of Receiver

In addition to any and all other rights, privileges, and powers granted herein and conferred, the Mortgagee shall be entitled as a matter of right, to the appointment of a receiver or receivers of the vessel, who shall have full rights to use the same.

§ 29.19 Amendment of Preferred Ships Mortgage

THIS AMENDMENT OF PREFERRED SHIPS MORTGAGE (hereinafter referred to as "Amendment") is entered into between _______ ("Mortgagee"), _______ ("Mortgagor"), _______ ("Borrower") and _______ ("Assignee"), and is made in reference to the following facts:

(A) Mortgagee and Assignee are the owners and holders of that certain Preferred Ships Mortgage (hereinafter "Preferred Mortgage") given by _______ (hereinafter the "Mortgagor") dated _______, 19____, securing the original principal amount of $________ as evidenced and reflected by that certain Promissory Note dated _______, 19____, (in the original principal amount of $________, of which $________ was originally secured by the Preferred Ships Mortgage) and encumbering that certain vessel known as the "_______", U.S. Coast Guard Registration No. _______. The original of such Preferred Mortgage was recorded in the Official Records of the United States Coast Guard at Port of Miami,
§ 29.19
SHIPS AND BOATS
Ch. 29

Florida, on ___, 19__, in Vessel Book _____, Instrument No. _______

(B) Mortgagee is also the owner and holder of that certain Amendment to First Preferred Ships Mortgage (hereinafter "Amended Preferred Mortgage") also given by _____ (Mortgagor) dated _____, 19___, securing the cumulative sum of $______ as evidenced by that certain Future Advance and Amendment to Note dated _____, 19___, and also encumbering that certain vessel known as the "______", as described above. The original of such Amended Preferred Mortgage was recorded in the Official Records of the United States Coast Guard at Port of Miami, Florida, on _____, 19___, in Vessel Book _____, Instrument No. _______.

(C) Mortgagor and Borrower have executed and delivered to Mortgagee a Partial Substitute Promissory Note in the principal amount of $______ dated _____, 19___, (payable at the annual interest rate of _____ percent (______%) with payments of interest only to be paid monthly and with the entire balance of principal and interest to be due and payable on _____, 19___) which Partial Substitute Promissory Note is a substitutes $______ of the underlying obligation of the $______ Future Advance and Amendment to Note, so that said Future Advance and Amendment to Note now evidences an underlying obligation of $______ and said Partial Substitute Promissory Note now evidences an underlying obligation of $______.

(D) By Partial Assignment and Modification of Preferred Ships Mortgage, Mortgagee has assigned to Assignee, without recourse, all of Mortgagee's right, title and interest in and to the Partial Substitute Promissory Note described in sub-paragraph (C) above. Mortgagee also assigned to Assignee a percentage portion of Mortgagee's right, title and interest in and to the Preferred Mortgage and Amended Preferred Mortgage representing the first $______ or _____ percent (______%) of the total original encumbrance reflected by said instruments.

(E) It is an intended result of said Partial Assignment and Modification that the total liens against the ship after the partial assignment be as follows:

1. $______ first preferred ships mortgage to ______;
2. $______ second preferred ships mortgage to ______;
3. $______ third preferred ships mortgage to ______;

making the total liens against said ship equal to $______, which is the same amount as prior to said assignment.

NOW THEREFORE, for and in consideration of Mortgagor and Borrower arranging for Assignee to purchase, by the Partial Assignment and Modification described above, the first $______ of the Mortgagor's ships mortgage, which partial assignment reduced the principal amount owed by Borrower to Mortgagee by $______ and
transferred the right to receive payment of said portion of the underlying obligation to Assignee, the receipt of which $--- is hereby acknowledged by Mortgagee, and in further consideration of the premises and other valuable consideration to each of the parties hereto, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The parties agree that the statements contained in the recitals of fact set forth above (the "Recitals") are true and correct, and the Recitals by this reference are made a part of this Amendment.

2. **Amendment.** The parties hereby agree that the mortgage is hereby amended and modified as follows:

2.1.

3. **Recording Charges.** Assignee shall be responsible for the payment of all recording fees in connection with this Amendment, including but not limited to documentary stamps or processing fees charged by the U.S. Coast Guard.

4. **Affidavits.** If necessary in connection with the recordation of this Amendment, all parties agree to furnish affidavits regarding the transaction set forth herein. This Amendment shall be binding upon the parties whether or not it is recorded.

5. **Complete Agreement.** There are no other agreements, promises or undertakings between the parties except as specifically set forth herein. No alterations, changes, waivers, modifications or amendments shall be made to this Amendment except in a writing signed by the party to be bound.

6. **Binding Effect.** This Amendment shall be binding upon and inure to the benefit of the respective successors and assigns and as applicable, the heirs and legal representatives of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, and shall be deemed to have executed such, on the day and year set forth below.

§ 29.20 **Letter to Coast Guard**

______, 19____

BY FEDERAL EXPRESS
PRIORITY REQUESTED
PLEASE EXPEDITE AND RUSH THE FILING OF THESE DOCUMENTS
PLEASE GIVE THESE DOCUMENTS TO MRS. ______
Mrs. ______
Vessel Documentation
Marine Safety Office
United States Coast Guard
§ 29.20 SHIPS AND BOATS

155 South Miami Avenue, 2d Floor
Miami, Florida 33130-1609

Re: Vessel “_____”; Registration No. _____

Dear Mrs. _____:

Enclosed please find the following documents to be recorded in connection with the above-named vessel; each consists of three signed originals:

First Transaction (Reducing _____’s first and third preferred ships mortgages to a $______ first mortgage and assigning it to ______):

1. Amendment and Assignment of Preferred Ships Mortgage dated ______, 19____, by and between ______.
2. Affidavit of Good Faith of ______, dated ______, 19____, as to the Amendment and Assignment of Preferred Ships Mortgage.
3. Affidavit of Good Faith of ______, dated ______, 19____, as to the Amendment and Assignment of Preferred Ships Mortgage.
5. Affidavit of Good Faith of ______, dated ______, 19____, as to the Amendment and Assignment of Preferred Ships Mortgage.

Second Transaction (Third preferred ships mortgage to ______ for $______):

7. Preferred Mortgage on the vessel “_____”, dated ______, 19____, by ______ to ______.
10. Affidavit of Good Faith of ______, dated ______, 19____, as to Preferred Mortgage.

Documentation and Payment:

13. Our check in the amount of $______ to cover the cost of recording/registering/filing the documents.

Please record these documents as soon as possible, send me the duplicate recorded originals, and also send me a new original Certificate of Documentation. I have enclosed a Federal Express airbill and
envelope for your convenience in returning these documents to me as soon as possible.

If you have any questions, please give me a call. Thank you.

Very truly yours,

---

§§ 29.21–29.49 are reserved for supplementary material.

D. CHARTER PARTY AGREEMENTS

§ 29.50 General Comments

A charter party is a specific contract by which the owners of a vessel rent the entire vessel or some principal part thereof to another person to be used by the latter in transportation for his own account either under their charge or his.

The general rules with respect to contracts govern with regard to the requisites and validity of a contract for chartering a vessel. The fitness of the vessel to be chartered is implied in the charter even if it is not expressly implied.

The contracts that follow provide several examples of charter contracts.

§ 29.51 Charter Party

This charter party, made the _____ day of ____ _, 19-, between _____, of _____, hereinafter called the Owner, and ---, of ___ hereinafter called the Charterer, witnesseth:

1. Voyage or Term. The Owner lets to the Charterer the [ship] _____, now lying at _____, of which _____ is master, for a voyage to be made from _____ to _____ [or for the term of _____ from the date hereof.]

2. Warranty. The Owner warrants that the said [ship] shall be [kept] seaworthy, and in every respect fit for the voyage [and shall be provided with a sufficient crew and provisions].

3. Cargo. The Charterer may put on board the said [ship] any goods whatever, except such as are contraband of war.

4. Loading and Discharging. [If the vessel is chartered for a voyage only] The Charterer shall be allowed _____ days for loading at the port of _____, and _____ days for discharging [and reloading] at the port of _____ [and _____ days for final discharge at the port of _____], exclusive, in each case, of Sundays and legal holidays, and commencing, in each case, from the time that notice is given to the Charterer, or his proper agent, of the readiness of the vessel to receive or discharge cargo, and that for every day of additional detention of the
vessel for these purposes the Charterer shall pay to the Owner ______ dollars.

5. Payment. The Charterer shall pay to the Owner, at ______, within ______ days after the arrival of the said [ship ] at that port, ______ dollars, in full for the hire of the same (and shall also pay, as they fall due, the expenses of victualing and manning the same, and all port charges and pilotage that may be due thereon).

Witness the hands and seals of the parties.

__________________________________ [Seal ]

Sealed and delivered in the presence of:

__________________________________ [Seal ]

§ 29.52 Voyage Charter Party

Charter Party made as of ______, 19_, at ______, between MS ______ (hereinafter called the "Owner") of the good ______ SS ______ (hereinafter called the "Vessel") and ______ (hereinafter called the "Charterer").

This Charter Party consists of Part I and Part II. Except to the extent otherwise provided in Part I, all the provisions of Part II shall be a part of this Charter Party as though fully set forth herein.

Part I

A. Description of Vessel: Net registered tonnage of vessel: ______

Classed: ______

Capacity for cargo (including deck cargo, if any) ______ tons of 2240 lbs. (10 per cent more or less vessel's option). Fully Loaded Draft (Summer Marks): ______

Bale cubic capacity for cargo _____ cu. ft., under deck according to ship's plan, but not guaranteed by the Owners

Number of hatches: _____ Number of winches and derricks: _____

B. Description of Cargo: __________________________

C. Loading Port(s): __________________________

D. Discharging Port(s): __________________________
§ 29.52

E. Freight Rate: ________________________________

Demurrage: ________________________________

Despatch: ________________________________

F. Stevedoring: ________________________________

G. Loading Time: ________________________________

H. Discharging Time: ________________________________

I. Special Provisions: ________________________________

Commission or brokerage, if any, is due and payable by the Owner to ______.

In Witness Whereof, the parties hereto have executed this Agreement, in triplicate, as of the day and year first above written.

Witness the signature of: ________________________________ Owner

By ________________________________

Witness the signature of: ________________________________ Charterer

By ________________________________

Part II

1. Vessel and Voyage. The Vessel on tendering hereunder shall as far as due diligence can make her so, be tight, staunch, strong and ready for service. Because of prevailing conditions, it is agreed that the Vessel may be of a type not fitted, constructed or ordinarily employed for the contract voyage and the Owner shall not be responsible for any loss or damage or delay to cargo arising from or due to the type or structure of the Vessel provided the same is not due to the Owner’s failure to exercise due diligence, and all risk of loss, damage or delay inherent in such carriage or attributable to such use shall be borne by the Charterer. In the event the named Vessel is prevented from reporting for loading for any reason, Owners are to have the privilege of substituting another vessel of similar class, and, in the event the rate order provides for any alteration in rate, loading or discharging time, demurrage or despatch to cover the type of substituted vessel, the Charterer or Owner, whoever is affected, shall receive the benefit of such change or changes.

2. Stevedoring and Lighterage. (a) Stevedoring and other expenses of loading and discharging, including any expense of tallying,
winchmen, dunnage, cargo fittings, heavy lifts, dumping and trimming, removal of strongbacks with shore equipment where necessary are upon the basis set out in Part I. Unless otherwise agreed, dunnage and fittings placed aboard by the Charterer may be retained on board at the option of the Owner. If the Owner elects not to retain them on board, the cost of removal and discharge shall be borne by the Charterer, and time so used shall count as laytime. Where Charterer loads or discharges the Charterer shall be responsible for cleaning the cargo compartments at Charterer's expense and on his time. Cleaning shall mean swept holds with refuse removed except on cargo where custom provides more complete cleaning.

(b) The Vessel will permit the use of ship's winches and other appropriate gear actually on board. The Vessel will at all times provide power sufficient to run all the winches, or all necessary to be worked. Where loading or discharging is performable by the Charterer and it is necessary to employ the Vessel's crew to operate winches, the said members of the crew shall be deemed the agents of the Charterer and any wages or overtime payable to the Vessel's crew employed as winchmen shall be for Charterer's account and shall be covered by Charterer's compensation or other liability insurance ordinarily required by law or custom upon stevedores or other workmen. At any berth where the Charterer is to load or discharge at his expense, or at any berth used upon the request of the Charterer, the Charterer must supply adequate light for any work performed but may have the use of any lighting facilities aboard the Vessel.

(c) The Charterer agrees to provide and pay for workmen's compensation, job liability and other insurance required by law or custom upon stevedores or other workmen employed by or performing any of the duties of the Charterer hereunder at all ports or places of loading and discharging and will furnish the Owner upon demand a certificate of such insurance. The Charterer agrees to pay for all stevedore damage and to indemnify the Vessel and the Owner for any damage or expense caused by the act or neglect of the Charterer or its Agents or contractors appointed by the Charterers or performing any of its duties in the loading or discharging of the Vessel or from failure of equipment supplied by them.

(d) Lighterage, if any, to be at the risk and expense of the cargo.

3. Loading Port. (a) The cargo described in Part I shall be loaded on the Vessel but in no case shall the cargo exceed what the Vessel can reasonably stow and carry, in the judgment of the Master, over and above the space and burthen necessary for Vessel's officers and crew, her cabin, tackle, apparel, furniture, provisions, fresh water, stores, necessary ballast and fuel. No cargo shall be carried on deck, unless provided in Part I hereof, and in such case the carriage of deck cargo shall be at the sole discretion of the Master and at the risk of the Charterer and Owners of such cargo. Any material required for
securing deck cargo is to be furnished by the Charterer and for his account, but Charterer may have the use of any such material aboard the vessel.

(b) Loading port or ports to be named by the Charterer not later than upon signing this charter.

4. **Loading Berth.** (a) The cargo described in Part I shall be loaded on the Vessel at such berth or berths that the Charterer may designate, always, however, subject to the approval of the Owner. One loading berth only is contemplated, and permission of the Owner is required for any additional berths. If permission is obtained the Charterers shall pay all expenses, except wages of the Vessel’s crew including overtime, fuel, and other usual vessel expenses incurred in shifting between or among berths and the time consumed shall count as used loading time.

(b) The Charterer warrants that such berth or place as may be designated by him shall be safe in all respects. Unless expressly provided in Part I that the Vessel may load safely aground, the Charterer warrants that such berth or berths shall have sufficient depth of water at all times and stages of tide to accommodate safely a vessel of the size and particulars designated in Part I hereof and that the Vessel can proceed to, remain thereat, and depart therefrom always safely afloat.

(c) The Charterer warrants that the berth shall be available immediately when the Vessel is ready to load. Any time lost to the Vessel while awaiting berth shall be counted as used time for loading. Where delay is due to routing instructions, bunching of vessels in convoy or other similar causes resulting from orders of the United States or the Owner, over which the Charterer has no control, the Owner reserves the right to exclude all or any part of the time the Vessel is so delayed from the lay time, if in the Owner’s judgment, which shall be final and conclusive, the circumstances of the delay warrant such action.

5. **Loading Time.** When the Vessel has arrived at the loading port and is in all respects ready to load, a notice of readiness to load shall be tendered by letter, telegram or phone to the Charterer or his agent whether or not during usual business hours and the despatch of such notice shall constitute notice whether or not it is received by the Charterer. The time for loading shall commence at the time stated below respectively, Vessel in or out of berth.

<table>
<thead>
<tr>
<th>Time of Notice</th>
<th>Time for Loading</th>
</tr>
</thead>
<tbody>
<tr>
<td>12:01 AM to 8:00 AM</td>
<td>at 1:00 PM on the same day.</td>
</tr>
<tr>
<td>8:01 AM to 12:00 Noon</td>
<td>4 hours after notice provided loading commences before the four hour period after notice has expired, but in no event later than 4:00 PM on the same day.</td>
</tr>
</tbody>
</table>
§ 29.52 SHIPS AND BOATS

12:01 PM to 4:00 PM

4 hours after notice provided loading commences before the four hour period after notice has expired, but in no event later than 8:00 PM on the same day.

4:01 PM to 12:00 Midnight

at 8:00 AM on the next day, unless loading commences before 12:00 Midnight the day of tendering of notice in which event time starts 12:01 AM the next day.

6. Freight. (a) Full freight to the discharging port named in Part I shall be considered completely earned on cargo as same is loaded whether the freight be stated or intended to be prepaid or to be collected and the Owner shall be entitled to all freight and charges due hereunder whether actually paid or not and to receive and retain them irrevocably under all circumstances whatsoever ship and/or cargo lost or not lost, whether or not the cargo is damaged or unsound or the voyage broken up or abandoned. In the event the Vessel and/or cargo is lost, the loading quantity, weight or measurement at the rate specified in Part I and as indicated by cargo receipts, shall be conclusive.

(b) Freight shall be payable in United States currency in the United States upon completion of loading, without deductions for any cause, except for advances to the Master. In the event freight is to be determined on the outturned weight, 90% of the freight on the loading weight shall be paid upon the signing of cargo receipt; the balance payable upon ascertainment of the gross landed weights as determined by certificates of public weighter, railway scale weights or by other customary means not inconsistent with these. The Vessel may checkweight or measure at its own expense.

(c) Should the Charterer fail to supply the cargo stipulated in Part I hereof, the Vessel may at the Master's option, and shall, upon the request of the Charterer, proceed on her voyage, provided that she is, in the judgment of the Master, in a seaworthy condition as far as the quantity and stowage of the cargo is concerned. In that event, dead freight shall be paid upon the difference between the quantity loaded and the quantity she would have carried if loaded as contracted. Dead freight shall be subject to all of the stipulations as to freight generally hereunder.

(d) If this Charter Party is for successive voyages, the freight for each and every voyage after the first voyage shall be at the rate prescribed by the Owner on or before the date of completion of loading for each such voyage. If the rate of freight and/or surcharge at the time of such loading is higher than the rate stated in Part I hereof, the Charterer agrees to pay such increase and the Vessel shall have a lien upon the goods for any difference between such increased rate and surcharge and the rate and surcharge stated herein. Similarly any
reduction in the rate or surcharge will inure to the benefit of the Charterer.

(e) Notwithstanding any of the foregoing provisions of this clause, the Owner may repay or refund all or part of the freight, dead freight or charges including demurrage if in the judgment of the Owner, whose decision shall be final and conclusive, the circumstances are of a nature which requires the whole or partial absorption of the loss by the Owner rather than by the Charterer.

7. **Advances.** Cash shall be advanced by the Charterer to the Master, if required, for ordinary disbursements at ports of loading and discharge against Master's receipt, and at current rates of exchange, free of interest, discount, commission, or insurance fees.

8. **Discharging Port.** (a) If the port or ports of discharge are not specified in Part I hereof, such port or ports shall be named by the Charterer not later than the time of completion of loading. Any loss of time resulting from delay in naming the port of discharge shall count as used loading time.

(b) Diversion of the Vessel to another discharging port while en route to the first named port at the request of the Charterer may be permitted by the Owner on such terms and conditions as may be agreed upon, but not a less additional charge than if such option had originally been granted in Part I hereof. When the Vessel is diverted or the voyage frustrated by reason of government orders or under any of the circumstances specified in Clause No. 23 hereof, all the rights, liberties and immunities stated in Clause No. 23 shall be available to the Owner and the Owner shall have the right to receive or retain freight in accordance with Clause No. 6(a) hereof except in cases where the Owner, whose decision shall be final and conclusive, determines that all or part of such freight should be refunded or reduced because the circumstances relating to the diversion or frustration are of a nature which properly requires the whole or partial absorption of the loss by the Owner rather than by the Charterer.

9. **Discharging Berth.** (a) Cargo will be discharged at the berth or berths that the Charterer designates. One discharging berth only is contemplated, and permission of the Owner is required for any additional berth. If permission is obtained, the Charterer shall pay all expenses, except wages of the Vessel's crew, including overtime, fuel, and other usual vessel expenses incurred in shifting between or among berths and the time consumed shall count as used discharging time.

(b) The Charterer warrants that such berth or place as may be designated by him shall be safe in all respects. Unless expressly provided in Part I that the Vessel may discharge safely aground, the Charterer warrants that such berth or berths shall have sufficient depth of water at all times and stages of tide to accommodate safely a vessel of the size and particulars designated in Part I hereof and that
§ 29.52 SHIPS AND BOATS

the Vessel can proceed to, remain thereat, and depart therefrom always safely afloat.

(c) The Charterer warrants that the berth will be available immediately upon Vessel being ready to discharge. Any time lost to the Vessel while awaiting berth shall be counted as used time for discharging. Where delay is due to routing instructions, bunching of vessels in convoy or other similar causes resulting from orders of the United States or the Owner, over which the Charterer has no control, the Owner reserves the right to exclude all or any part of the time the Vessel is so delayed from the lay time, if in the Owner's judgment, which shall be final and conclusive, the circumstances of the delay warrant such action.

10. Discharging Time. When the Vessel has arrived at the discharging port and is in all respects ready to discharge, a notice of readiness to discharge will be tendered by letter, telegram or phone to the Charterer or his agent whether or not during usual business hours and the despatch of such notice shall constitute notice whether or not it is received by the Charterer. The time for discharging shall commence at the times stated below respectively, vessel in or out of berth.

If the said notice is tendered between

<table>
<thead>
<tr>
<th>Time for discharging</th>
<th>shall commence</th>
</tr>
</thead>
<tbody>
<tr>
<td>12:01 AM to 8:00 AM</td>
<td>at 1:00 PM on the same day.</td>
</tr>
<tr>
<td>8:01 AM to 12:00 Noon</td>
<td>4 hours after notice provided discharging commences before the four-hour period after notice has expired, but in no event later than 4:00 PM.</td>
</tr>
<tr>
<td>12:01 PM to 4:00 PM</td>
<td>4 hours after notice provided discharging commences before the four-hour period after notice has expired, but in no event later than 8:00 PM.</td>
</tr>
<tr>
<td>4:01 PM to 12:00 Midnight</td>
<td>at 8:00 AM on the next day, unless discharging commences before 12:00 Midnight the day of tendering of notice in which event time starts 12:01 AM the next day.</td>
</tr>
</tbody>
</table>

11. Separation of Cargo. Unless otherwise stipulated in Part I all of the cargo loaded shall be of the same character and quality, and no separation thereof shall be required. Cargo may be discharged and landed as it comes to hand. In the event the Charterer should desire separation of cargo, such separation shall be at his risk and expense, and any material required shall be for Charterer's account. In any event, the Owner shall not be responsible for delivery of cargo by quality, grade or marks.

12. Demurrage, Despatch, Overtime. (a) Lay Time. For purposes of computing lay time under this Charter the quantities stipulat-
§ 29.52

ed in Part I hereof as the minimum loading or discharging rate, or the minimum rate for bringing cargo to or taking it from alongside the Vessel, shall be the factor to determine the number of lay days allowed for loading and discharging.

(b) **Demurrage.** Charterers shall pay demurrage at the rate stipulated in Part I hereof for each and every day and pro rata for any part of a day that the time of loading or discharging exceeds the allowed lay time.

(c) **Despatch.** Charterer shall be entitled to despatch, if any, at the rate stipulated in Part I hereof for each and every day and pro rata for any part of a day for all lay time saved in loading or discharging.

(d) **Lay Days Reversible.** Unless otherwise provided in Part I hereof lay days at Charterer's option are reversible, except that, if Charterer earns and elects at the time the bills of lading are signed to collect despatch at loading port, the Charterer is not entitled to a second election in the event demurrage accrues at the port of discharge.

(e) **Overtime—Charterer Loads or Discharges.** If overtime is ordered by the Charterer, all overtime loading and discharging shall be at the Charterer's expense. If overtime is ordered by the Owner, the Owner shall pay or reimburse the Charterer for all overtime for stevedore labor or operators of cranes for loading from alongside the vessel at the end of ship's tackle or for discharging to the end of ship's tackle, but all overtime for placing cargo alongside or for taking it away from alongside the Vessel shall be for Charterer's account. Where overtime is ordered by the Owner, all overtime hours worked at the Owner's expense shall be deducted from any lay time saved in the event despatch is payable hereunder.

(f) **Overtime—Owner Loads or Discharges.** If overtime is ordered by the Charterer, as Charterer may do with the approval of the Owner's Port Representative, to avoid or minimize demurrage, earn despatch, or otherwise for Charterer's convenience, the Charterer shall pay or reimburse the Owners for all overtime expense. If overtime is ordered by the Owner, all overtime for stevedore labor or crane operators for loading cargo from alongside the Vessel at the end of the ship's tackle or for discharging cargo to the end of the ship's tackle shall be for the Owner's account, but all overtime for placing cargo alongside or for taking it away from alongside the Vessel shall be for the Charterer's account.

(g) **Overtime—Vessel's Crew.** Whether loading or discharging is performable by the Owner or by the Charterer, overtime of the Vessel's crew shall be for the Owner's account, except, that where the Charterer loads or discharges and employs the Vessel's crew to operate winches, any overtime of members of the crew operating the winches shall be for the Charterer's account.
(h) **Overtime—Right of Owner to Order.** Notwithstanding the fact that the quantity stipulated in Part I hereof may be loaded or discharged during or before the end of the usual working hour day, the Owner reserves the right to order the Vessel to load or discharge as fast as she can twenty-four consecutive hours per day, each and every day, Sundays and holidays included or during any part of any or all days beyond the usual working hours. In that event and if the Charterer refuses or neglects to use due diligence to perform during straight or overtime hours any of the obligations on its part to be performed pursuant to this Charter Party, the Charterer shall pay as liquidated damage a sum computed upon the rate of demurrage stipulated in Part I hereof for each and every hour of work requested by the Owner which is not worked without regard to the allowed or used lay time.

(i) **Strikes.** Any time lost through strikes, lockouts, or stoppages of work, not caused or promoted by the Charterer, shipper, consignee, or their agents, which prevent the Vessel from loading or discharging cargo, or which prevent the Charterer from bringing cargo, which is on the pier or lighter, alongside the Vessel, or prevents the Charterer from taking cargo from alongside the Vessel is not to be computed as part of the time for loading or discharging; provided that the foregoing exceptions shall not apply to strikes, lockouts or stoppages of work existing at the berth at the time charterer designates such berth pursuant to Clause No. 4(a) or No. 9(a) hereof, or existing at the time the vessel, after arrival at port, tenders notice of readiness to load or discharge pursuant to Clauses No. 5 or No. 10 hereof.

(j) **Strikes—Loading Port.** In the event the Vessel or loading of the Vessel is delayed by reason of strikes, lockouts, or stoppages of work, the Owner reserves the right at the loading port to despatch the Vessel with such portion of the cargo as may then be on board or at the Owner's option to terminate this Charter Party and withdraw the Vessel from service. In either case, the Charterer shall not be liable for dead freight or demurrage or both on cargo which is not loaded up to the time of the commencement of such strike, lockout or stoppage of work.

(k) **Strikes—Discharge Port.** In the event the Vessel or discharge of the Vessel is delayed by reason of strike, lockout, or stoppage of work, the Owner reserved the right at the discharge port to discharge or dispose of the cargo still on board, at Charterer's risk and expense, in accordance with all the terms and liberties contained in Clause No. 23 hereof.

(l) **Strikes—Notice to Owner.** In the event a strike, lockout or stoppage of work is in effect at a particular designated port of berth to which the Vessel is proceeding to load or discharge, the Charterer shall immediately communicate with the Owner or its Agents at that port. If the notice is received by the Owner in less than three days before the scheduled or anticipated arrival of the Vessel at that port, the Owner
may elect whether or not to proceed to that port or berth. In the event
the Owner elects to proceed, the Vessel may tender notice of arrival
and the provisions of Paragraphs j and k above shall not be applicable
and time for loading or discharging shall not commence until four
hours after the termination of the strike, lockout or stoppage of work.
If the Owner elects not to proceed to the loading port, the Owner may
terminate this Charter Party and withdraw the Vessel from service. If
the Owner elects not to proceed to a discharge port the Owner shall be
entitled to all the rights, liberties and immunities provided in Clause 23
and Clause 8(b) hereof.

13. Appointment of Agents. The Owner's Agents will act for
the Vessel at both loading and discharging ports.

14. Dues, Taxes, Wharfage, etc. The Vessel will be free of any
wharf, dock, quay dues, or similar charges at both the port of loading
and port of discharge. Customs' fees, entrance or clearance fees whether measured by the volume of cargo or not, towing and tug charges, pilotage and other usual port charges on the vessel shall be paid by the Owner. All other dues, taxes or assessments of any sort, including but without limitation those against the Vessel which are measured by the volume of the cargo, shall be paid by the Charterer.

15. Customs, Weighers, etc. All arrangements and expense for weighers, samplers and gauges, whether required by Customs, or to determine the quantity of cargo, the amount or adjustment of freight or otherwise and all other Customs' requirements in connection with the cargo to be paid by Charterer, and any delay resulting from failure to make such arrangements shall count as used lay time.

16. Lien. The Owner shall have an absolute lien on the cargo
and upon all subfreights for all amounts due under this Charter
including freight, dead freight, demurrage and costs and disbursements (including attorney's fees) of recovering the same, which lien shall continue after delivery of the cargo hereunder.

17. Assignment. Subject to the prior approval of the Owner the Charterer shall have the option of subletting or assigning this Charter to any individual or company, but the Charterer shall always remain responsible for the due fulfillment of this Charter and all its terms and conditions.

18. Cargo Receipt. (a) Non-negotiable receipt substantially in
the usual form shall be issued and signed by the Master as requested.
If a negotiable bill of lading is provided for in Part I, the bill of lading shall be in the usual form upon which the following clause shall be prominently placed: "Subject to all the terms, provisions, conditions and exceptions of Charter Party dated _____."

(b) Any receipt or bill of lading signed by or on behalf of the Master or Agent shall be without prejudice to the terms, conditions and exceptions of this Charter and subject to all of them. The Charterer
hereby agrees to indemnify and hold harmless the Owner, the Master, and the Vessel of and from all consequences or liabilities that may arise from the Charterer or its agents or the Master signing or issuing receipts, bills of lading or other documents inconsistent with this Charter or from any irregularity in the papers supplied by the Charterer or its agents or from complying with Charterer's or its agents' orders.

19. Limitation of Liability. (a) The Owner and the Vessel in all matters arising under this Charter Party shall be entitled to the like privileges and rights and immunities as are contained in Section 3(6), Section 4, and Section 11 of the Carriage of Goods by Sea Act of the United States approved April 16, 1936. The aforesaid provisions (except as may be otherwise specifically provided herein) shall govern before the goods are loaded on and after they are discharged from the Vessel and throughout the entire time the goods are in the custody of the Owner or Vessel.

(b) Neither the Vessel or Owner, nor any corporation owned by, subsidiary to or associated or affiliated with the Vessel or Owner shall be liable to answer for or make good any loss or damage to the goods occurring at any time and even though before loading on or after discharge from the Vessel, by reason or by means of any fire whatsoever, unless such fire shall be caused by the owner's design or neglect.

(c) Any provision of this Charter to the contrary notwithstanding the Owner shall have the benefit of all limitations of and exemptions from liability accorded to the owner or chartered owner by any statute or rule of law for the time being in force. The amount of the Owner's liability hereunder for or in connection with any cargo transported shall not exceed the value of the Owner's interest in the vessel and pending freight regardless of whether or not the Owner is within the purview of 46 U.S.C.A. § 181 et seq.

20. Both-to-Blame Collision Clause. If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, Mariners, Pilot or the servants of the Owner of the Vessel in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder will indemnify the Owner of the Vessel against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or non-carrying ship or her owners to the owners of said cargo and set-off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying Vessel or Owners. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact.
21. **General Average Clause.** General average shall be adjusted, stated, and settled, according to York–Antwerp Rules 1950, at such port or place in the United States as may be selected by the Owner of the Vessel, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such adjustment, disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the Vessel. Average agreement or bond and such additional security, as may be required by the Owner, must be furnished before delivery of the cargo. Such cash deposit as the Owner or his Agents may deem sufficient as additional security for the contribution of the cargo and for any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees, or owners of the cargo to the Owner before delivery. Such deposit shall, at the option of the Owner, be payable in United States money, and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the general average and refunds or credit balances, if any, shall be paid in United States money.

22. **Amended Jason Clause.** In the event of accident, danger, damage, or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which the Owner is not responsible by statute, contract, or otherwise, the cargo, shippers, consignees, or owners of the cargo shall contribute with the Vessel and its Owner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the cargo. If a salving vessel is owned or operated by the Owner, salvage shall be paid for as fully as if the salving vessel or vessels belong to strangers.

23. **Liberties Clauses.** (a) In any situation whatsoever and whereassoever occurring and whether existing or anticipated before commencement of or during the voyage, which in the judgment of the Owner or Master is likely to give rise to risk of capture, seizure, detention, damages, delay or disadvantage to or loss of the Vessel or any part of her cargo, or to make it unsafe, imprudent, or unlawful for any reason to commence or proceed on or continue the voyage or to enter or discharge the cargo at the port of discharge, or to give rise to delay or difficulty in arriving, discharging at or leaving the port of discharge or the usual place of discharge in such port, the Owner or Master may before loading or before the commencement of the voyage, require the shipper or other person entitled thereto to take delivery of the cargo at port of shipment and upon their failure to do so, may
warehouse the cargo at the risk and expense of the cargo; or the Owner or Master, whether or not proceeding toward or entering or attempting to enter the port of discharge, or reaching or attempting to reach the usual place of discharge therein or attempting to discharge the cargo there, may discharge the cargo into depot, lazaretto, craft or other place; or the Vessel may proceed or return, directly or indirectly, to or stop at any such port or place whatsoever as the Master or the Owner may consider safe or advisable under the circumstances, and discharge the cargo, or any part thereof, at any such port or place; or the Owner or the Master may retain the cargo on board until the return trip or until such time as the Owner or the Master thinks advisable and discharge the cargo at any place whatsoever as herein provided or the Owner or the Master may discharge and forward the cargo by any means at the risk and expense of the cargo. The Owner or the Master is not required to give notice of discharge of the cargo, or the forwarding thereof as herein provided. When the cargo is discharged from the Vessel, as herein provided, it shall be at its own risk and expense; such discharge shall constitute complete delivery and performance under this Contract and the Owner and the Vessel shall be freed from any further responsibility. For any service tendered to the cargo as herein provided the Owner or the Vessel shall be entitled to a reasonable extra compensation.

(b) The Owner, Master and Vessel shall have liberty to comply with any orders or directions as to loading, departure, arrival, routes, ports of call, stoppages, discharge, destination, delivery or otherwise howsoever given by the government of any nation or department thereof or any person acting or purporting to act with the authority of such government or of any department thereof, or by any committee or person having, under the terms of the war risk insurance on the Vessel, the right to give such orders or directions. Delivery or other disposition of the cargo in accordance with such orders or directions shall be a fulfillment of the contract voyage. The Vessel may carry contraband, explosives, munitions, warlike stores, hazardous cargo, and may sail armed or unarmed and with or without convoy.

(c) In addition to all other liberties herein the Owner and the Vessel shall have the right to withhold delivery of, reship to, deposit or discharge the cargo at any place whatsoever, surrender or dispose of the cargo in accordance with any direction, condition or agreement imposed upon or exacted from the Owner of the Vessel by any government or department thereof or any person purporting to act with the authority of either of them. In any of the above circumstances the cargo shall be solely at its risk and expense and all expenses and charges so incurred shall be payable by the owner or consignee thereof and shall be a lien on the cargo.

24. **Scope of Voyage.** (a) The scope of voyage herein contracted for shall include usual or customary or advertised ports of call whether
named in this contract or not, also ports in or out of the advertised, geographical, usual or ordinary route or order, even though in proceeding thereto the Vessel may sail beyond the port of discharge or in a direction contrary thereto or return to the original port, or depart from the direct or customary route, and includes all canals, straits and other waters. The Vessel may call at any port for the purposes of the current voyage or of a prior or subsequent voyage. The Vessel may omit calling at any port or ports whether scheduled or not, and may call at the same port more than once; may for matters occurring before loading the cargo, known or unknown at the time of such loading and matters occurring after such loading, either with or without the cargo or passengers on board, and before or after proceeding toward the port of discharge, adjust compasses, dry dock, with or without cargo aboard go on ways or to repair yards, make trial trips or tests, take fuel, passengers, crew or stores, remain in port, sail with or without pilots, tow and be towed, and save or attempt to save life or property; and all of the foregoing are included in the contract voyage.

25. Exceptions. The Vessel, her Master and Owner, shall not, unless otherwise in the Charter expressly provided, be responsible for any loss or damage or delay or failure in performing hereunder, arising or resulting from: Any act, neglect, default or barratry of the Master, Pilots, Mariners or other servants of the Owner in the navigation or management of the Vessel; fire, unless caused by the personal design or neglect of the Owner; collision, stranding, or peril, danger or accident of the sea or other navigable waters; saving or attempting to save life or property; wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or vice of the cargo; any act or omission of the Charterer, the Owner, shipper or consignee of the cargo; their agents or representatives; insufficiency of packing, insufficiency or inadequacy of marks; explosion, bursting of boilers, breakage of shafts, or any latent defects in hull, equipment or machinery; unseaworthiness of the Vessel unless caused by want of due diligence on the part of the Owner to make the Vessel seaworthy or to have her properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual personal fault or privity of the Owner. And neither the Vessel, the Master or Owner, nor the Charterer, shall, unless otherwise in the Charter expressly provided, be
§ 29.52 SHIPS AND BOATS Ch. 29

responsible for any loss or damage or delay or failure in performing hereunder arising or resulting from: Act of God, act of war, act of public enemies, pirates, or assailing thieves; arrest or restraint of princes, rulers or people, or seizure under legal process; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion. The Vessel shall have liberty to sail with or without pilots, to tow or to be towed, to go to the assistance of vessels in distress and to deviate for the purpose of saving life or property or of landing any ill or injured person on board or to repair or go on drydock either with or without cargo aboard. No exemption afforded to the Charterer under this clause shall diminish its obligations for payment of any sums due the Owner under the other provisions of this Charter.

26. **Ice Clause.** The Vessel shall not be ordered to nor bound to enter any icebound place or any place where lights, lightships, marks and buoys on Vessel's arrival are or are likely to be withdrawn by reason of ice or where there is risk that ordinarily the Vessel will not be able on account of ice to enter, reach or leave the place. The Vessel shall not be obliged to force ice. If on account of ice the Master considers it dangerous to remain at the loading or discharging place for fear of the Vessel being frozen in and/or damaged, he has the liberty to sail to a convenient open place and await the Charterer's further instructions. Detention through any of the above causes to be for the Charterer's account.

27. **Definition of “Owner”.** Wherever the word “Owner” appears herein without further definition it refers to the Owner of the Vessel, and shall be deemed to include a Time Charterer, Demise Charterer, Requisition Charterer, Disponent Owner or user.

28. **Part I and Part II.** This Charter Party consists of this Part II and of Part I on the reverse hereof. Unless in this Part II otherwise provided, all of the provisions of said Part I shall be part of this Charter Party as though fully incorporated herein. In the event of conflict between the provisions of this Part II and those of Part I, the provisions of Part I shall govern to the extent of such conflict.

**COMMENT**

The voyage charter is the leasing of the vessel or ship to the charterer who wishes to engage the vessel to carry a full cargo on a single voyage. As with the time charter but unlike the bareboat charter the control of the vessel is retained by the owner through the master who is selected and paid by the owner. The owner pays all the operating expenses of the vessel and the charterer merely has the use of the vessel for the charter money which he pays. See Norris, Your Boat and the Law (1965).
§ 29.53 Voyage Charter Party—Another Form

It is this day mutually agreed between ___, of ___, Owner of the good steamship or vessel called the ___, of ___, of the burden of ____ tons, or thereabouts, registered measurement, whereof ____ is Master, now at ___, of the one part, and ___, of ___, Charterer, of the other part, as follows:

1. Ship, Cargo, Voyage and Freight. The said steamship, being tight, staunch, and strong, and in every way fitted for the voyage, shall at once sail and proceed to ____ alongside such wharf on arrival as directed by ___, and there take on board as tendered a full and complete cargo of ____, of say ____ tons, not exceeding what she can reasonably stow and carry over and above her tackle, apparel, provisions, and furniture, and, being so loaded, shall with all practicable dispatch proceed to ____ and deliver the same to the Charterer or assigns alongside any wharf as ordered where she can safely deliver, on being paid freight as follows: At the rate of ____ dollars per ton of 2,240 pounds delivered, being in full of all port charges and pilotages. Cash at the port of loading not exceeding ____ dollars shall be advanced if required on signing bills of lading.

2. Bills of Lading. The Master shall, before the ship proceeds to sea, call at the office of the Charterer's agents in ____, and there sign, as presented, the bills of lading for the cargo (to be prepared on the form hereto attached), (and in default thereof there shall be payable to the Charterer the sum of ____ dollars).

3. Loading and Discharging. The cargo shall be loaded and discharged with customary steamship dispatch as fast as the steamer can receive and deliver during the ordinary working hours of the respective ports, Sundays and holidays, unless used in both loading and discharging, excepted. Any time lost through riots, strikes, lockouts, or by reason of accidents to machinery, obstruction in the railway and the docks, or by reason of floods, frosts, storms, or any cause beyond the control of Owner or Charterer, is not to be computed as part of the loading and discharging time. Should the steamer be detained beyond the time stipulated as above for loading or discharging, demurrage shall be paid at ____ dollars per day and pro rata for any part thereof. Cargo shall be brought to and taken from alongside the steamer at the Charterer's risk and expense.

4. Excepted Perils. The Owner shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea or other waters, by fire from any cause, or wheresoever occurring, by barratry of the master or crew, by enemies, pirates, or robbers, by arrest and restraint of princes, rulers, or people, by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, by collisions, stranding, or other accidents of navigation of whatsoever kind, even when occasioned by the negligence, default, or error of judgment in the pilot, master mariners, or other servants of the
§ 29.53 SHIPS AND BOATS

shipowner, not resulting, however, in any case, from want of due diligence by the owners of the ship, or any of them, or by the ship's husband or manager.

5. **Lien.** The Master or Owner shall have a lien on the cargo for freight, dead freight, and demurrage (the Charterer's liability ceasing when the cargo is shipped).

6. **Penalty.** Penalty for nonperformance of this agreement shall be proved damages, not exceeding the estimated amount of freight.

Dated ______, 19__.

[Signatures]

§ 29.54 Bareboat Charter Party

This Charter Party, made in the City of ______ on the ______ day of ______, 19__, between ______, Owner of the good American steamship ______, provided with proper certificate for hull and machinery and classed ______ with the American Bureau of Shipping, of about ______ tons deadweight, or thereabouts, on summer freeboard, inclusive of bunkers and stores, and ______, Charterer, witnesseth:

**Term.** The Owner agrees to let and Charterer agrees to hire said steamer from the time of delivery for a period of about ______ on the following terms and conditions:

1. **Port of Delivery, Acceptance.** The steamer shall be delivered to the Charterer at the port of ______, and being on her delivery tight, staunch, strong, and well and sufficiently tackled, appraised, furnished, and equipped, and in every respect seaworthy and in good running order, condition and repair so far as the exercise of due diligence can make her. The delivery to the Charterer of said steamer and the acceptance of said steamer by the Charterer shall constitute a full performance by the Owner of all of the Owner's obligations hereunder, and thereafter the Charterer shall not be entitled to make or assert any claim against the Owner on account of any representations or warranties expressed or implied with respect to said steamer, but the Owner shall be responsible for repairs or renewals occasioned by latent defects in the vessel, her machinery or appurtenances, existing at the time of delivery under the charter, which defects are not discovered on the survey.

2. **Time for Delivery, Cancellation Date.** If required by the Charterer, time not to commence before ______, 19__, and, should steamer not be ready for delivery on or before ______, 19__, Charterer, or his agent, to have the option of canceling this charter; such option to be declared by noon of the following day, and, if not so declared, charter to be considered in force.

3. **Trading Limits.** The steamer shall be employed in carrying lawful merchandise in such lawful trades between safe port and/or

718
§ 29.54

ports ______. In the event of serious outbreak of pestilence, war, acts of God, force majeure, or other causes beyond the Charterer's control, making the use of the steamer in such trade commercially impracticable, the steamer may be placed or may be sublet for employment in any other safe trades, upon first securing the approval of the Owner.

4. Surveys. The steamer shall be surveyed before delivery and on redelivery to determine the condition of the steamer, under the terms of the charter, and the cost of such survey on delivery shall be paid for by the Charterer and the cost of such survey on redelivery shall be paid for by the Owner.

5. Charterer to Provide. The Charterer shall, at its own expense, man, operate, victual, fuel, and supply the steamer, the master and chief engineer, however, to be subject to the approval of the Owner, and the Owner shall have the right to require the removal of the master or chief engineer, if it shall have reason to be dissatisfied. So far as reasonably practicable, the crew to be employed by the Charterer shall be American citizens.

6. Port Charges. The Charterer shall pay all port charges, pilotages, and all other costs and expenses incident to the use and operation of the steamer.

7. Maintenance. The Charterer shall, at its own expense, keep the said vessel in good running order and condition and in substantially the same condition as when received from Owner except reasonable wear and tear and ordinary depreciation and have her regularly overhauled and repaired when necessary. Vessel shall be dry-docked, cleaned, and painted by the Charterer as may be necessary, but at least once in every eight calendar months from date of charter.

8. Hire. The Charterer shall pay to the Owner for the use of said steamer at the rate of ______ per deadweight ton per month on steamer's total deadweight capacity, summer freeboard as above stated, commencing on and from the day and hour of her delivery to the Charterer, and at and after the same rate for any part of a month; hire to continue until the day and hour when the steamer is redelivered to the Owner. If the steamer is lost, hire shall be paid up to and including the day of her loss [if the time of her loss be uncertain, then up to and including the day she is last heard from ]. Payment of hire shall be made to the Owner at _______, in cash on delivery for the remainder of that calendar month, and thereafter monthly in advance on the first day of each month, and in default of such payment the Owner may forthwith withdraw the steamer from the service of the Charterer without prejudice to any claim which the Owner may have against the Charterer pursuant to this charter. Should any dispute arise between the Owner and the Charterer with respect to responsibility for repairs, renewals or replacements or as to the condition of the vessel at the time of redelivery, either the Charterer or the Owner may, without prejudice to its contentions, make and pay for such repairs,
renewals or replacements, or any part thereof before or after tender of redelivery, and may recover the cost thereof from the party for whose account it may be under the terms of the charter. In the event Charterer's liability for such repairs, renewals or replacements is established, the Charterer shall pay hire for all time lost thereby.

9. **Hire for Fractional Month.** Should the steamer be on her voyage toward port of redelivery at time when payment of hire becomes due, said payment shall be made for such length of time as the Owner and the Charterer may agree upon as the estimated time necessary to complete the voyage, and when the steamer is redelivered to the Owner any difference shall be refunded by the Owner or paid by the Charterer, as the case may require.

10. **Fuel and Stores.** The Charterer shall accept and pay for all fuel and consumable stores on board at time of steamer's delivery and the Owner shall accept and pay for all such fuel and stores left on board on redelivery (with the exception of perishable stores) at the current market prices at the respective ports of delivery and redelivery; but if redelivery be taken at a port other than the port of redelivery named in the charter, the Owner shall pay for the fuel and stores left on board on redelivery at the current market prices at the port of redelivery named in the charter party.

11. **Use of Equipment.** The Charterer shall have the use of all outfit, equipment and appliances now on board the steamer without extra cost (with the exception of the submarine signal apparatus, blinker lights, and radio equipment), provided the same or their substantial equivalent shall be returned to the Owner on redelivery in the same good order and condition as when received, ordinary wear and tear excepted.

12. **Inventories.** A complete inventory of the steamer's entire equipment, outfit, appliances and of all consumable stores shall be taken and mutually agreed upon at the time of delivery and a similar inventory shall be taken and mutually agreed upon at the time of redelivery.

13. **Liens Against Steamer.** Neither the Charterer nor the master of the steamer shall have any right, power, or authority to create, incur, or permit to be imposed upon the steamer any liens whatsoever except for crew's wages and salvage. The Charterer agrees to carry a properly certified copy of this charter party with the ship's papers and on demand to exhibit the same to any person having business with the steamer which might give rise to any lien thereon, other than liens for crew's wages and salvage. The Charterer agrees to notify any person furnishing repairs, supplies, towage, or other necessities to the steamer that neither the charter nor the master has any right to create, incur, or permit to be imposed upon the steamer any liens whatsoever except for crew's wages and salvage. Such notice, as far as may be practicable, shall be in writing. The Charterer further
agrees to fasten to the steamer in a conspicuous place, and to maintain during the life of this charter, a notice reading as follows:

"This steamer is the property of the United States of America. It is under charter to _______, and by the terms of the charter neither the Charterer nor the master has any right, power or authority to create, incur, or permit to be imposed upon the steamer any liens whatsoever except for crew's wages and salvage."

14. Bills of Lading. The Charterer shall cause all bills of lading issued for cargo carried on the steamer to contain all the exemptions and stipulations usual to the particular trade or service in which the steamer may be engaged, including the "Jason" clause, in the form as quoted in clause 15 of this charter party, and said bills of lading shall provide that the carriage of goods shall be subject to all the provisions of and exemptions contained in the act of Congress of February 13, 1893, known as the Harter Act [46 U.S.C.A. §§ 190–195], and it shall reserve a lien upon the cargoes for freight, advance charges on goods, extra compensation, demurrage, forwarding charges, general average claims, any demands made and liability incurred by the carrier in respect of the goods (not required under the bills of lading to be borne by the carrier).

15. Jason Clause. The bills of lading used by the Charterer shall contain a "Jason" clause substantially as follows:

"If the Owner shall have exercised due diligence to make the steamer in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from fault or error in navigation or in the management of the steamer, or from any latent or other defect in the steamer, her machinery and appliances, or from unseaworthiness, although existing at the time of shipment or at the beginning of the voyage (provided the defect or unseaworthiness was not discoverable by the exercise of due diligence) the shippers, consignees, or owners of the cargo shall nevertheless pay salvage and any special charge incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril."

16. General Average. Said bills of lading shall provide that general average, if any, shall be according to ______, and as to matters not therein contained, according to the law and usages of the port of ______. General average shall be adjusted at ______; in case general average statement be required, the same to be adjusted by an adjuster to be appointed by the Charterer, subject to the approval of the Owner, and said adjuster to attend to the settlement and collection of the average, subject to the customary charges.
17. **Liens Upon Cargo.** The Owner shall have a lien upon all cargoes and all subfreights for any amounts due under this charter, and the Charterer shall have a lien on the ship for all moneys paid in advance to the Owner and not earned.

18. **Insurance.** The Owner shall, at its own expense, fully insure the steamer for Owner's account with the Marine Insurance Department, United States Shipping Board Emergency Fleet Corporation, under the form of policy attached hereto and made a part hereof. The Owner and/or insurer shall not have any right of recovery or subrogation against the Charterer on account of loss of or any damage to the vessel or her machinery or appurtenances covered by such insurance, or on account of payments made to discharge claims against or liabilities of the vessel or Owner covered by such insurance.

The Charterer shall, at its own expense, enter the steamer in the American Steamship Owners' Mutual Protection & Indemnity Association, Inc., and the cover under this association shall be made available to the Owner, and the Charterer shall furnish to the owner proper evidence of such entries immediately upon the signing of this charter.

In the event that any act or negligence of the Charterer shall vitiate any of the insurance hereinbefore provided for, the Charterer shall pay to the Owner all losses and indemnify the Owner against all claims and demands which would otherwise have been covered by such insurance.

**Repairs.** The Charterer shall, subject to the approval of the Owner's representative, effect all insured repairs for account of the Marine Insurance Department, and the Charterer shall undertake settlement of all miscellaneous expenses in connection with such repairs as well as all insured charges, expenses and liabilities, to an amount of not exceeding $10,000; reimbursement to be secured through the Marine Insurance Department for such expenditures upon presentation of accounts. Individual bills for insurance repairs or other insured charges, expenses and liabilities in excess of $10,000 shall be submitted to and paid by the Marine Insurance Department.

19. **Redelivery.** The steamer shall at the expiration of the charter period be redelivered to the Owner (unless lost) at ______ in the same or as good order and condition as that in which she was when delivered, ordinary wear and tear excepted, but any repairs covered by insurance and any repairs or replacements due to latent defects in the vessel, machinery, or appurtenances at the time of delivery are to be paid for in the manner hereinabove provided.

20. **Off-Hire.** In the event of loss of time caused by damages to or by steamer covered by insurance, or in making repairs or replacements for which the Owner is liable, preventing the working of the steamer for more than forty-eight consecutive hours, hire shall cease for the time thereby lost. The Owner shall not be responsible, however,
for any expenses as are incident to the use and operation of the steamer for such time as may be required to make such repairs.

21. **Damage.** In the event of damage to the vessel covered by insurance under clause 18 of this charter in excess of the sum of thirty thousand dollars ($30,000), the owner has the option of canceling this charter, in which event hire to be computed as earned up to date and hour of accident.

22. **Inspection.** The steamer shall be inspected to determine her condition at least once every four (4) months by the United States Salvage Association, known as syndicate A—expense of such survey, in the amount of $75, to be borne equally by the Owner and Charterer.

23. **Reports.** The Charterer, immediately upon the receipt of such information, shall keep the Owner informed of the arrival and departure of this steamer at and from all ports of call. At end of each voyage the Charterer shall supply deck and engine room logs of the voyage, if required by Owner.

24. **Special Equipment.** The submarine signal apparatus, blinker lights, and radio equipment, if any, on the vessel at time of delivery shall be kept and maintained by the Charterer, and the Charterer shall assume the obligations and liabilities of the Owner under any contracts in connection therewith and shall reimburse the Owner for all expenses incurred in connection therewith. The Charterer shall carry a radio operator at all times when the steamer is in actual service.

25. **Salvage.** All derelicts and salvage shall be prorated—25 per cent to the owner and 75 per cent to the Charterer, after deducting Owner's and Charterer's expenses and crew's proportion. However, hire of the steamer shall not be considered an item of the Charterer's expense hereunder.

26. **Bond.** The Charterer shall furnish, before delivery of steamer, a bond in the sum of $_______ guaranteeing full performance of its obligations under this charter.

27. **Alterations.** The Charterer shall not make any structural changes in the steamer without first securing the approval of the Owner.

28. **Conference.** The Charterer agrees, in the event of entering any trade controlled by conferences in which American tonnage is interested, to join such conferences before placing this steamer in this trade, and further agrees to maintain conference rates prescribed by the conference.

29. **Libels.** The Charterer shall indemnify and hold harmless the Owner against any liens of whatsoever nature upon said steamer and against any claims against the Owner arising out of the operation of said steamer by the Charterer or out of any act or neglect of the Charterer in relation to said steamer, except in so far as such liens or claims arise out of any matter covered by the insurance provided...
herein. If a libel should be filed against said steamer or if said steamer is otherwise levied against or taken into custody by virtue of legal proceedings in any court because of any such lien or claim, the Charterer shall within fifteen (15) days thereof cause the said steamer to be released and the lien to be discharged. This clause shall not in any way authorize the creation of any liens against the steamer or in any way affect or impair the provisions of clause 13 of this charter.

30. Default. If at any time after the delivery of the said steamer to the Charterer hereunder, the Charterer shall fail to perform any of its duties or obligations or shall violate any of the prohibitions imposed upon it under this charter, or if the Charterer shall be dissolved or be adjudged a bankrupt or shall have a petition in bankruptcy filed against it, or shall make a general assignment for the benefit of creditors, or if a receiver or receivers shall be appointed for the Charterer, the Owner may, without prejudice to any other rights which it may have under this charter, withdraw and retake the said steamer, wherever the same may be found, whether upon the high seas or in any port, harbor or other place and without prior demand and without legal process, and for that purpose may enter upon any dock, pier or other premises where the steamer may be and may take possession thereof.

31. Redelivery Notice. The Charterer shall give the Owner at least ten days' notice of expected date of redelivery and redelivery port.

Owner

By __________________________

Witness: __________________________

Witness: __________________________

Charterer

By __________________________

COMMENT

A bareboat charter is the leasing of the entire ship or boat wherein the owner relinquishes possession, command, and navigation of her. The master becomes the agent and representative of the charterer. The operating expenses, such as wages, fuel, subsistence, wharfage, etc., are paid by the charterer.

§ 29.55 Bareboat Charter Party—Another Form

This agreement, made and entered into this _____ day of _____, 19___, by and between _____, of _____, Owner, and _____, of _____, Charterer, witnesseth:

1. Term, Possession. The Owner agrees to charter and lease to the Charterer said dredge and its appurtenances for the term of
§ 29.56 Charter of Yacht (Time)

Agreement made this _____ day of _____, 19___, between _____ of _____, hereinafter called the Owner, and _____ of _____, hereinafter called the Hirer.

1. Term. The Owner will let and the Hirer will take the _____ ton _____ rigged yacht [name] from noon of the _____ day of _____, 19___, or from the time thereafter at which the yacht is placed at the disposal of the Hirer, until the _____ day of _____, 19___, both days inclusive, on the conditions herein set forth.

2. Delivery to Hirer. The Owner will have had the bottom of the yacht scrubbed and dressed within one week before the commencement of the hiring, and will place the yacht in a seaworthy condition at the disposal of the Hirer at the port of _____ at noon on the _____ day of _____, 19___, or within forty-eight hours thereafter. In the event of the yacht not being at the port of _____ by 8 a.m. on the _____ day of _____, 19___, the Owner will give the Hirer notice of the fact by telegram, and will also notify him by telegram of her arrival and of her readiness to receive the Hirer.

3. Owner to Pay Crew's Wages, etc. The Owner will pay the wages of the crew, viz., skipper, cook, steward and _____ deck hands (all of whom provide their own food), and will supply their clothes and
§ 29.56 SHIPS AND BOATS Ch. 29

pay all premiums for insuring the yacht, and the cost of all repairs and outgoings other than those hereafter specified.

4. **Hirer to Pay Working Expenses, etc.** The Hirer will pay for all fuel and water consumed on the yacht during the hiring, and all oil so consumed in the lamps, both on deck and below, and all gasoline, grease and oil consumed on the motor launch, and all repairs to or replacements of glass, china and other articles or fittings broken or injured by himself or his friends, and all harbor dues, towage charges and all pilotage in foreign waters and all laundresses' bills (except for crew), including those necessary to put the yacht's linen and bedding in the same state of cleanliness as when the yacht was placed at his disposal.

5. **Direction of Yacht's Movements.** The skipper [name] is to be responsible for the safe navigation of the yacht, and is to be sole judge as to whether it is reasonable or prudent to sail at any given time, having regard to the state of the weather and the surrounding circumstances, and also as to whether any specified anchorage is reasonably safe, but, subject as above, he and the crew are to obey all reasonable orders of the Hirer, and to do their best to sail the yacht to such safe ports and places as the Hirer may desire to visit on the ____ coast from ____ to ____; provided, that the yacht can at such ports or places always lie afloat.

6. **Provision in Case Yacht Incapacitated.** In the event of any accident happening to the yacht, which shall incapacitate her from going to sea for a period of [two] days from the time of such accident, then if such accident is caused by the negligence or unskillfulness of the crew, or any of them, or by the negligent navigation of any other vessel, or is attributable to any defect in the vessel or her outfit, the hirer may immediately terminate the hiring, and shall in that case be entitled to have a proportionate part of the sum paid for the hire returned or allowed to him (as the case may require) in respect of the unexpired residue of the said hiring term. He shall, however, not be entitled to any such return or allowance for any other cause than the above.

7. **Limitation of Owner's Liability.** The Owner, having exercised all reasonable care in the selection of the skipper and crew, shall not be responsible for any injury suffered by the Hirer or his friends, either in person or property, by reason of the negligence of the skipper, or of any of the crew, or of any other person or persons employed by the owner on or about the yacht.

8. **Hire.** The Hirer shall pay for the hire and use of the yacht the sum of $_____, and in the event of the yacht not being delivered up by him on the said ____ day of _____, 19__, a further sum at the rate of $____ for every twenty-four hours commencing from the said ____ day of _____, 19___, and continuing until she is placed by him at the disposal of the owner. The Hirer shall pay the said sum of
§ 29.59 by two installments in cash, the first payment to be made on
the signing of this charter and the second payment on the _____ day
of _____, 19___.

9. Dogs and Children. No dogs shall be taken on board the
yacht, and no children under _____ years of age shall reside on
board.

10. Night Sailing. The skipper is not to be obliged to keep the
yacht out at sea for two consecutive nights, unless he thinks fit, or
unless the Hirer and his friends consent to keep watch, so as to allow of
one deck hand being below at a time.

11. Redelivery to Owner. The Hirer will place the yacht at the
disposal of the Owner on or before noon on the _____ day of _____,
19___, at some safe port on the _____ between _____ and _____,
inclusive, at his option.

In Witness Whereof, etc.

§ 29.57 Clauses in Charter Parties—Expenses

The Charterer shall provide and pay for all coal, oil, gasoline, port
charges, pilotage, provisions, wages of crew, deck, engine room and
other necessary stores, and all other charges whatsoever, and shall
maintain the yacht in a thoroughly efficient state, in hull and machin­
ery, for and during the term of service.

§ 29.58 Clauses in Charter Parties—Loss of Vessel

The Charterer shall assume no responsibility for loss or damage to
the yacht. Should the yacht be lost, hire paid in advance, and not
earned, reckoned from the day of her loss, shall be returned to the
Charterer.

§ 29.59 Clauses in Charter Parties—War Risks

1. The Master shall not be required or bound to sign Bills of
Lading for any blockaded port or for any port which the Master or
Owners in his or their discretion consider dangerous or impossible to
enter or reach.

2. (A) If any port of discharge named in this charter party or to
which the vessel may properly be ordered pursuant to the terms of the
Bills of Lading be blockaded, or (B) if owing to any war, hostilities,
warlike operations, civil war, civil commotions, revolutions, or the
operation of international law (a) entry to any such port or discharge of
cargo intended for any such port be considered by the Master or
Owners in his or their discretion dangerous or prohibited or (b) it be
considered by the Master or Owners in his or their discretion dangerous
or impossible for the vessel to reach such discharging port—the cargo
or such part of it as may be affected shall be discharged at any other
safe port in the vicinity of the said port of discharge as may be ordered

727
by the Charterers (provided such other port is not blockaded or that entry thereto or discharge of cargo thereat is not in the Master’s or Owners’ discretion dangerous or prohibited). If no such order be received from the Charterers within ______ hours after they or their agents have received from the Owners a request for the nomination of a substitute discharging port, the Owners shall then be at liberty to discharge the cargo at any safe port which they or the Master may in their own or his discretion decide on and such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of cargo being discharged at any such other port the Owners shall be entitled to freight as if the discharge had been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port shall be paid by the Charterers and/or Cargo Owners, and the Owners shall have a lien on the cargo for freight and all such expenses.

3. The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destination, zones, waters, delivery or in any other wise whatsoever given by the government of the nation under whose flag the vessel sails or any other governmental or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations, anything is done or is not done such shall not be deemed a deviation.

If by reason of or in compliance with any such direction or recommendation the vessel does not proceed to the port or ports originally designated or to which she may have been ordered pursuant to the terms of the Bills of Lading, the vessel may proceed to any safe port which the Master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment and the Owners shall be entitled to freight as if discharge had been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port shall be paid by the Charterers and/or Cargo Owners, and the Owners shall have a lien on the cargo for freight and all such expenses.

Source of Form
From the record in The Florida, 133 F.2d 719 (5th Cir.1943), rehearing denied 320 U.S. 811, 64 S.Ct. 31, 88 L.Ed. 490.
§ 29.60 Clauses in Charter Parties—General Exceptions

Neither the Vessel nor the Master nor the Owner shall be or shall be held liable for any loss of or damage or delay to the cargo or for any failure in performing hereunder arising or resulting from:—Any act, neglect or default of the Master, pilots, mariners or other servants of the Owner in the navigation or management of the vessel; barratry; fire, unless caused by the personal design or neglect of the owner; collision; stranding; perils, dangers or accidents of the seas or other navigable waters; saving or attempting to save life or property; wastage in weight or bulk or any loss or damage arising from inherent defect, quality or vice of the cargo; any act or omission of the Charterer, shipper, consignee, owner of the goods or holder of the bill of lading, their agents and representatives; insufficiency of packing; insufficiency or inadequacy of marks; explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery, equipment or appurtenances; unseaworthiness of the vessel whether existing at the beginning of the voyage or developing during the voyage unless caused by want of due diligence on the part of the Owner to make the vessel seaworthy or to have her properly manned, equipped, and supplied; leakage; shrinkage; evaporation; change in quality of the cargo; handling or transportation losses; difference between actual or reported intake and outturn quantities; stowage or contact with or leakage from other cargo; discoloration; contamination; deterioration; any consequence arising out of shipping more than one grade of cargo; or from any other cause arising without the actual fault or privity of the Owner. And neither the Vessel, her Master or Owner, nor the Charterer shall, unless otherwise in this Charter expressly provided, be responsible for any loss of or damage or delay to or failure to discharge or deliver the cargo arising or resulting from:—act of God; act of war; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people; seizure under legal process provided bond is promptly furnished to release the vessel or cargo; strikes, lockouts, stoppage or restraint of labor from whatever cause whether partial or general; or riot or civil commotion. No exemption afforded the Charterer under this clause shall relieve the Charterer of or diminish its obligations for payment of any sums due the Owner under other provisions of this Charter.

§ 29.61 Clauses in Charter Parties—Force Majeure

The tow, its captain and Owner shall not, unless otherwise in this charter expressly provided, be responsible for any loss or damage arising or resulting from: any act, neglect, default or barratry of the captain, pilots, mariners or other servants of the Owner in the navigation or management of the vessel; fire, unless caused by the personal design or neglect of the Owner; collision, stranding, or peril, danger or accident of navigable waters; saving or attempting to save life or
§ 29.61 SHIPS AND BOATS

property; wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or vice of the cargo; any act or omission of the Charterer; Owner, shipper or consignee of the cargo, their agents or representatives; insufficiency or inadequacy of marks; explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery; unseaworthiness of the tow unless caused by want of due diligence on the part of the Owner to make the tow seaworthy or to have it properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault or privity of the Owner. And neither the tow, its captain or Owner, nor the Charterer, shall, unless otherwise expressly provided, be responsible for any loss or damage or delay or failure in performing hereunder arising or resulting from:—act of God; act of war; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rules, or people, or seizure under legal process provided bond is promptly furnished to release the tow or cargo; strike or lockout, or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion.

§ 29.62 Clauses in Charter Parties—Liberties

In any situation whatsoever and wheresoever occurring which in the judgment of the carrier or master is likely to give rise to risk of detention, damages, delay or disadvantage to or loss of the ship or any part of her cargo, or to make it unsafe, imprudent, or unlawful for any reason to commence or proceed on or to continue the voyage, the ship may proceed to or stop at any such port or place whatsoever as the master of the carrier may consider safe or advisable under the circumstances, and discharge the goods, or any part thereof, at any such port or place; or the carrier or the master may discharge and forward the goods by any means at the risk and expense of the goods. The carrier or the master is not required to give notice of discharge of the goods or the forwarding thereof as herein provided. When the goods are discharged from the ship, as herein provided, they shall be at their own risk and expense; such discharge shall constitute complete delivery and performance under this contract and the carrier shall be free from any further responsibility. For any services rendered to the goods as herein provided the carrier shall be entitled to a reasonable extra compensation.

§ 29.63 Clauses in Charter Parties—Release

The cargo shall be transported at the sole risk of such cargo, in so far as loss or damage to such cargo is concerned, and neither Owner nor any person employed by Owner, nor any vessel, barge or other equipment used hereunder, shall be liable for any loss of or damage to such cargo regardless of the causes of such loss or damage, provided only that Owner shall have exercised due diligence to make such vessel and
other equipment seaworthy and properly manned, equipped and supplied, and provided that reasonable care shall have been exercised in the receipt, stowage, handling, care and delivery of the cargo which shall be in the possession of the tow from the time that the petroleum products reach the barge pipe in loading until the products reach the shore line hose connection in unloading. Owner shall be entitled to the exoneration from liability under Section 3 of the Harter Act (46 U.S. C.A. § 192). Nothing in this contract shall be construed to deprive Owner of, or to limit Owner's rights to, any statutory protection or limitation of liability, which would otherwise be applicable.

§ 29.64 Bareboat Charter Contract—Pleasure Yacht

This Bareboat Charter Contract made this ________ day of ____, 19__, between ________, a Florida corporation, hereinafter referred to as "______", and ______________________, whose address is ____________________________; hereinafter referred to as "Charterer". ______ hereby lets, and Charterer hereby charters and takes for hire, on a bareboat basis, the following-described Yacht (hereinafter referred to as the "Yacht"), for the following dates, subject to the following terms, conditions and agreements:

Yacht: ______
Charter Dates: Start—noon ______; End—noon ______
Total Days Chartered: ______
Total Number of Persons in Party: ______
Charter Pick-up and Return Point: ______ dock at ______
Yacht Charter Rent Rate: $______ (U.S.)
Total Security Deposit Due: $______ (U.S.);
Amount Paid with this Contract: $______ (U.S.)

1. Rent and Security Deposit. Charterer agrees to pay F______ the yacht charter rent, based on the rate set forth above, along with the balance of the security deposit set forth above and any amounts due for provisioning or other options, by check or money order payable to "______" at its Stateside Office immediately upon presentation to Charterer of a statement of amount due six weeks prior to charter start date. Charterer may extend payment of the statement until not later than three weeks prior to charter start date, but in that case payment must be by cashier's check or certified check. All payments must be in U.S. dollars and must be drawn on a U.S. bank. Charterer also agrees to pay ________ such other charges as Charterer or his party incurs pursuant to this charter.
2. **Representations and Covenants of Charterer.** Charterer submits to ______ his boating resume including the completed form *Basic Charter Information*, which is hereby incorporated into this contract, and Charterer hereby warrants that the statements and representations contained in the resume and completed form are true and correct. Charterer certifies and warrants that Charterer is at least twenty-one years old and that he fully understands, and is experienced in, the navigation of the class and type of yacht hereby chartered and is experienced in the use of the equipment provided. Charterer further agrees and covenants that he will not operate the Yacht while under the influence of alcoholic, narcotics or illegal drugs or permit any other person to operate it while in such condition. Charterer also agrees and covenants that Charterer will neither use, nor permit the use of, the Yacht for any illegal purpose.

3. **Duties of ______ ______ shall have the Yacht available to Charterer at the charter pick-up point on the charter start date, specified above. The Yacht shall be seaworthy and in full commission. Acceptance or use of the Yacht by Charterer or his party will be deemed to be an acknowledgement that the Yacht and its equipment and furnishings are seaworthy and fit for the Charterer's purpose. The Yacht shall be outfitted, pursuant to the attached Schedule "A", with equipment and furnishings for live-aboard accommodations. Such equipment and furnishings shall be clean and ready for use. Provisioning is not included in this contract unless Charterer requests ______ to provide provisions and the Charterer pays ______ for the provisioning. If ______ fails, due to causes beyond its reasonable control, to make the Yacht available to the Charterer at the charter start time, then this contract may be cancelled by ______ upon repayment to the Charterer of all monies Charterer paid to ______ under this contract.

4. **Insurance.** ______ shall obtain insurance coverage on the Yacht's hull and machinery for its full value subject to a $1,000.00 (U.S.) deductible and third party liability insurance with limits of $1,000,000.00 (U.S.) subject to a $500.00 (U.S.) deductible. Charterer hereby fully releases ______ and its insurers from liability, if any, for losses in excess of the insurance coverage limits. Charterer agrees to notify ______ immediately of any loss or damage. Charterer agrees not to repair, attempt repair or authorize others to repair or attempt repair of any damage without the prior authorization of ______ and Charterer shall be responsible for the costs and consequences of any unauthorized repairs or attempted repairs. In case of loss or damage which is covered by the insurance, the Charterer shall not be liable for the deductible except to the extent of the Charterer's security deposit payable under this contract, as long as Charterer has complied with all of the terms, conditions and restrictions of this contract.

5. **Running Expenses.** Upon commencement of the charter, ______ shall supply a full load of ice, stove fuel, engine fuel, water and
paper products. The Charterer shall supply and pay for all running expenses thereafter, including but not limited to ice, stove fuel, engine fuel, water, paper products, other consumable items, pilotage, port charges, cruising taxes, towage, fines, expenses for preservation of the Yacht, compensation to rescuers, salvage fees, and all other expenses relating to this charter.

6. Restrictions and Limits on Navigation. The Charterer covenants and agrees that the Yacht will not be allowed to be underway by sail or engine before sunrise or after sunset. Charterer covenants and agrees that the Yacht shall not be removed from the geographic area and waters shown by the chart supplied by _____ (the "chart"), unless an authorized representative of _____ authorizes such removal in writing prior thereto. The Charterer covenants and agrees to abide by off-limit areas, navigational guides and anchorage notes as shown on the chart. The Charterer and his party shall be solely responsible for complying with all applicable laws and customs when entering and/or leaving any country or sovereignty. Notwithstanding the foregoing, _____ realizes that emergency navigation of the Yacht to protect and preserve property or lives may require that the foregoing restrictions be modified to fit the particular emergency conditions from time to time.

7. Accidents. Charterer fully releases _____ and its insurers from any and all liability for accidents, injuries or death arising out of swimming, diving (with or without masks, fins, snorkels and/or other equipment, regardless of who supplied any such equipment) or other activities in, around or relating to the Yacht, and such activities shall be the responsibility of the Charterer (as master of the Yacht) and his party.

8. Restrictions and Limitations on Use. Charterer and his party covenant and agree that the Yacht shall be used only for general pleasure cruising and recreation by the Charterer and his party, that they will not carry passengers or cargo for hire, that they will not formally or informally race the Yacht and that they will not bring aboard or attach to the Yacht anything that would constitute a violation of the law of any government within which the Yacht is or may be used.

9. Return of Yacht. On expiration (or earlier termination of this charter by _____ in accordance with this contract), Charterer shall return the Yacht to _____ at the return point specified at the beginning of this contract. Charterer covenants and agrees to return the Yacht free of all liens and encumbrances arising during the charter period. The Charterer covenants and agrees to return the Yacht in as good condition as when Charterer accepted it, ordinary wear and tear resulting from proper use thereof alone excepted. Charterer shall plan sufficient time for unforeseeable contingencies so as to assure the timely return of the Yacht, time being of the essence as to return of the Yacht. If Charterer fails to return the Yacht on time, Charterer agrees
§ 29.64  SHIPS AND BOATS  Ch. 29

to pay rent and demurrage pro rata to ______ for the time that return
is delayed plus losses sustained and expenses incurred by ______ on
other charters affected by the delay.

10. **Miscellaneous.** Charterer shall make no alterations in the
Yacht. Charterer shall not incur any maritime liens or other encum-
brances on the Yacht and shall not remove or deface any evidence on
the Yacht indicating ______’s interest in the Yacht. This contract is a
demise charter, and ______ maintains no immediate control over
Charterer’s use of the Yacht except as set forth herein; therefore,
Charterer shall indemnify ______ against any and all claims, de-
mands, actions, proceedings, damages and liabilities arising from or
connected with Charterer’s possession, use and return of the Yacht
which are not covered by the insurance obtained by _______, subject to
the terms of Paragraph 4 (Insurance) above. Charterer shall not assign
or sublet his rights or obligations under this contract without the prior
written consent of ______. ______ and its authorized representatives
shall have the right at any time to inspect or survey the Yacht to
ascertain its condition. Such inspections shall not unreasonably inter-
fere with Charterer’s use of the Yacht. Whenever used in this con-
tact, the term “Charterer” includes the masculine, feminine, singular
and plural, as the context requires.

11. **Security Deposit.** The security deposit paid by the Charter-
er shall be security for performance of Charterer’s obligations under
this contract and for payment of insurance deductible in case of loss or
damage. At ______’s option, the security deposit may be applied to
satisfy any obligation of Charterer to ______ or others and/or to pay
the insurance deductible, but neither the making of this deposit nor
any use thereof by ______ shall excuse Charterer from performance of
any such obligation. Any portion of this deposit that has not been so
applied shall be returned to Charterer.

12. **Default.** Any failure of Charterer to pay the amounts due
hereunder or to perform in accordance with the terms, conditions and
agreements herein shall constitute an immediate default of this con-
tact, and ______ shall have the right to seize the Yacht wherever it
may be found, summarily and without notice, in which case this charter
shall terminate after Charterer has paid ______ in full for all rent and
other amounts to be paid pursuant to this contract. Charterer shall
forfeit any remaining time of the original charter period and shall
forfeit the security deposit. Charterer agrees to pay any and all
expenses, including attorneys fees, incurred in repossessing the Yacht
and collecting damages.

13. **Cancellation by Charterer.** The Charterer may cancel this
contract more than 60 days prior to the charter start date by giving
written notice of cancellation to ______ and paying a $______ cancel-
lation fee to ______ which must be received by ______’s Stateside
Office at least 60 days prior to the charter start date. The offeror may
cancel this contract thereafter on these terms only if a charter is obtained to replace the cancellation; otherwise, cancellations made by Charterer less than 60 days prior to the charter start date shall cause forfeiture to Fleet Indigo of the security deposit, pursuant to Paragraph 12 (Default).

14. **Law and Venue.** This contract shall in all respects be interpreted, construed and given effect according to the laws of the State of Florida, U.S.A. Any action, lawsuit or proceeding under this contract may be brought in the State of Florida, which is the location of ______'s Stateside Office.

15. **Execution and Effect.** This contract shall be executed in duplicate, each of which shall be considered an original. This contract shall be binding upon the heirs, administrators and successors of the parties. This contract is not binding upon ______ until signed by an authorized representative for ______.

IN WITNESS WHEREOF, the parties have executed this contract.

[Signed ] __________________ [L.S. ]
Charterer

[Signed ] __________________ [L.S. ]
Charterer

STATE OF _________
COUNTY OF _______

BEFORE ME, personally appeared _______, to me well known and known to me to be the person described in and who executed the foregoing BAREBOAT CHARTER CONTRACT, and acknowledged to and before me that ______ executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this ______ day of ______, A.D., 19___, in the aforesaid County and State.

__________________________
NOTARY PUBLIC
My commission expires:

Executed on behalf of ______ this ______ day of ______, 19___

By: _________________________
Authorized Representative

§§ 29.65–29.89 are reserved for supplementary material.

735
§ 29.90 Contract to Salvage Vessel

This agreement, made this ___ day of ___, 19__, between the steamship ___ and the owners thereof, represented herein by ___, master of said steamship (hereinafter "Master"), and ___ (hereinafter "Salvager"), witnesseth:

1. Services. Salvager hereby agrees and binds himself, his executors, administrators, personal representatives and assigns, to float and place in a safe anchorage at ___ as directed, the said steamship, which is now stranded at ___, to furnish all labor and material, at the cost of Salvager; to furnish divers and necessary apparatus to survey or examine the bottom of said steamship; and to complete the same within ___ days from the date hereof.

2. Compensation. Master agrees to pay to Salvager for such service, that is, when he has successfully floated said ship, as above set forth, the sum of ___ dollars; Master, however, reserving the right hereby to abandon the ship to and in favor of Salvager in lieu of the said amount agreed to be paid as aforesaid.

3. Default. It is further agreed that on failure to float and place in a position of safety, as above stated, said steamship, within the time hereinbefore specified, to wit, ___ days from date hereof, that Salvager shall receive no compensation whatever from Master for work performed, labor, tools or appliances furnished.

4. Cargo and Crew. Anything that may be discharged to enable the vessel to float shall be replaced when she is in a position of safety. It is also agreed and understood that the use of crew and engine shall be at the disposal of Salvager.

Witness the hand of ___, master of the steamship ___, for himself, said ship, and the owners, and the hand of ___, Salvager the day and year first above written.

[Signatures]

§ 29.91 Contract to Salvage Vessel—Lien for Contractor's Services

The Contractor shall immediately after the termination of the services or sooner notify the Committee of Lloyd's of the amount for which he requires security to be given; and failing any such notification by him not later than 48 hours after the termination of the services he shall be deemed to require security to be given for the sum named in Clause 1, or, if no sum be named in Clause 1, then for such
sum as the Committee of Lloyd’s in their discretion shall consider sufficient.

Pending the completion of the security as aforesaid, the Contractor shall have a maritime lien on the property salved for his remuneration. The salved property shall not without the consent in writing of the Contractor be removed from ______ or the place of safety to which the property is taken by the Contractor on the completion of the salvage services until security has been given to the Committee of Lloyd’s as aforesaid. The Contractor agrees not to arrest or detain the property salved unless the security be not given within 14 days of the termination of the services. In the event of security not being provided as aforesaid or in the event of any attempt being made to remove the property salved contrary to this agreement the Contractor may take steps to enforce his aforesaid lien. The Arbitrator or Arbitrators or Umpire [including the Committee of Lloyd’s if they act in either capacity] appointed under Clauses ______ or ______ hereof shall have power in their absolute discretion to include in the amount awarded to the Contractor the whole or such part of the expenses incurred by the Contractor in enforcing his lien as they shall think fit.

After the expiration of ______ days from the date of the completion of the security the Committee of Lloyd’s shall call upon the party or parties concerned to pay the amount thereof and in the event of nonpayment shall realize or enforce the security and pay over the amount thereof to the Contractor unless they shall meanwhile have received written notice of objection and a claim for Arbitration from any of the parties entitled and authorized to make such objection and claim or unless they shall themselves think fit to object and demand Arbitration.