

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
FILED

JUL 11 2003

CLERK  
J. KENNEDY, CLERK  
DEBTOR DEPUTY

MISSISSIPPI CHEMICAL COMPANY, ET AL<sup>1</sup>

MOTION NO.

03 - 01294

CASE NO. 03-02984  
JOINTLY ADMINISTERED  
MOTION NO. \_\_\_\_\_

CATERPILLAR FINANCIAL SERVICES CORPORATION

CREDITOR

**MOTION TO COMPEL ACCEPTANCE OR REJECTION OF  
A LEASE AGREEMENT AND TO LIFT THE AUTOMATIC STAY**

COMES NOW, Caterpillar Financial Services Corporation, ("Caterpillar") by counsel, and moves the Court to compel acceptance or rejection of a lease agreement and to lift the automatic stay as follows

1 Caterpillar is the holder of a lease agreement executed by Triad Nitrogen, LLC, covering a Caterpillar model 950G wheel loader, bearing serial number 3JW02586, a true and correct copy of the lease agreement is attached hereto as "Exhibit A"

2 These lease agreement is in default Acceptance or rejection of this lease agreement should be compelled by the Court Whether the lease agreement is accepted or rejected, the automatic stay should now lift as to Caterpillar and as to this property

3 Caterpillar requests that the order granting relief from the automatic stay entered in this case be excepted from the stay provisions of *Bankruptcy Rule 4001(a)(3)*

WHEREFORE, Caterpillar moves the Court to compel acceptations or rejections of lease

---

<sup>1</sup> The debtor is the following entities Mississippi Chemical Corporation, Mississippi Nitrogen Inc, Mississippi Chemical Nitrogen, LLC Mississippi Chemical Company, LP, Mississippi Chemical Management Company, Mississippi Phosphates Group, Inc Mississippi Potash Inc Eddy Potash Inc Triad Nitrogen, LLC, and Melamine Chemicals, Inc

agreement and to lift the automatic stay as aforesaid, and, Caterpillar requests such other relief to which it may be entitled in the premises

Respectfully submitted,

CATERPILLAR

By

  
LARRY SPENCER, ITS ATTORNEY

KING & SPENCER, ATTORNEYS  
POST OFFICE BOX 123  
JACKSON, MS 39205-0123  
PHONE (601) 948-1547  
MB# 7730

CERTIFICATE OF SERVICE

I, Larry Spencer, attorney for Caterpillar Financial Services, do hereby certify that I have this day mailed, via United States mail, postage prepaid, a true and correct copy of the above and foregoing *Motion to to Compel Acceptance or Rejection of a Lease Agreement and to Lift the Automatic Stay* to

James W O'Mara, Esquire  
Post Office Box 23066  
Jackson, MS 39225-3066  
ATTORNEY FOR DEBTOR

Honorable Ronald H McAlpin  
100 W Capitol Street, Suite 1232  
Jackson, MS 39269  
ASST U S TRUSTEE

SO CERTIFIED, this the 10th day of July, 2003

  
LARRY SPENCER

## CATERPILLAR FINANCIAL SERVICES CORPORATION LONG-TERM RENTAL AGREEMENT

Dated as of 7-16-02

LESSEE Triad Nitrogen L.L.C.

LESSOR CATERPILLAR FINANCIAL SERVICES CORPORATION

ADDRESS 39041 Hwy 18 West  
Donaldsonville, LA 70346ADDRESS 2120 West End Avenue  
Nashville, TN 37203

Lessor in reliance on Lessee's selection of the equipment described below ("Unit" or "Units"), agrees to acquire and lease the Units to Lessee and Lessee agrees to lease the Units from Lessor subject to the terms and conditions below and on the reverse side

Description of Unit(s)

(1) New 950G

Caterpillar Wheel Loader

Serial#

3JW02586

Monthly Rent

\$4,671.00

Purchase Price

\$55,774.62

AND CERTIFIED BY CATERPILLAR  
FINANCIAL SERVICES CORPORATION  
AS THE ORIGINALBY J.R. English  
TITLE EXECUTIVE VICE PRESIDENT

Rent to be paid in arrears (starts one month after Delivery Date) and every month thereafter

Lease Term 36 Months

Utilization Date: August 18 2007

Purchase Options: ☒ Cat Value (Section 14) ☐ Fair Market Value (Section 15) ☐ none is applicable to this Lease (check one)Location of Unit(s) 39041 HWY 18 WEST  
DONALDSONVILLE, LA 70346 ASCENSION

Depreciation Period: Lessor shall be entitled to depreciation deduction for each unit based on a recovery period of 5 years.

ADDITIONAL PROVISIONS

RIDERS.

## TERMS AND CONDITIONS OF LEASE

1. **LEASE TERM** The Lease term for each Unit shall start on its Delivery Date (the date (a) Lessor executes this Lease, (b) Lessor takes title to the Unit, or (c) Lessee or its agent takes control or physical possession of the Unit, whichever is latest) provided the Delivery Date is on or before the utilization date stated above, and shall continue for the number of months stated above. If the Delivery Date is not on or before the utilization date, Lessee shall, at the option of Lessor, assume Lessor's obligations to purchase and pay for the Unit. Lessee shall execute and send Lessor's Delivery Supplement to Lessor promptly after delivery of a Unit.

2. **RENT** Lessee shall pay to Lessor at PO Box 730681 Dallas, TX 75373-0681 or such other location Lessor designates in writing, rent for each Unit as stated above starting (a) on its Delivery Date if the rent is to be paid in advance or (b) one month (or other period as stated above) after its Delivery Date if the rent is to be paid in arrears. An amount equal to the first rent payment for each Unit must accompany this document when it is submitted to Lessor. If Lessor executes this document, the amount shall be the first rent payment. If Lessor does not execute this document, the amount shall be returned to Lessee. If Lessor does not receive a rent payment on the date it is due, Lessee shall pay to Lessor on demand, a late payment charge equal to five percent (5%) of the rent payment not paid when due or the highest charge allowed by law, whichever is less.

3. **NO ABATEMENT** Lessee shall not be entitled to abatement or reduction of rent or setoff against rent for any reason whatsoever. Except as otherwise provided, this Lease shall not terminate because of or nor shall the obligations of Lessor or Lessee be affected by any defect in, damage to, destruction of, or loss of possession or use of a Unit, the attachment of any lien, security interest or other claim to a Unit, any interference with Lessee's use of a Unit, Lessor's insolvency or the commencement of any bankruptcy or similar proceeding by or against Lessee, or any other cause whatsoever.

4. **DISCLAIMER OF WARRANTIES** Lessee acknowledges and agrees that Lessor is not the manufacturer of the Unit(s) and that Lessee has selected each Unit based on Lessee's own judgment without any reliance whatsoever on any statements or representations made by Lessor. AS BETWEEN LESSOR AND LESSEE, THE UNIT(S) ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND. LESSOR HEREBY EXPRESSLY DISCLAIMS: a) ALL WARRANTIES OF MERCHANTABILITY b) ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, AND c) ALL WARRANTIES AGAINST INFRINGEMENT OR THE LIKE. Lessor assigns to Lessee its interest in any of the manufacturer's warranties on the Unit(s).

5. **POSSESSION, USE AND MAINTENANCE** Lessee shall not (a) use, operate, maintain or store a Unit improperly, carelessly, unsafely or in violation of any applicable law or regulation or for any purpose other than in the conduct of Lessee's business, (b) abandon a Unit, (c) sublease a Unit, permit the use of a Unit by anyone other than Lessee, change the use of a Unit from that specified in the Application Survey/Usage Rider attached hereto or change the location of a Unit from that specified above, without the prior written consent of Lessor, or (d) create or allow to exist any lien, claim, security interest or encumbrance on any of its rights hereunder or a Unit. A Unit is and shall remain personal property regardless of its use or manner of attachment to realty. Lessor and its agent shall have the right (but not the obligation) to inspect a Unit and maintenance records relating to it, and observe its use. Lessee, at its expense, shall maintain each Unit in good operating order, repair and condition and shall perform maintenance at least as frequently as stated in any applicable operator's guide, service manual, or lubrication and maintenance guide. Lessee shall not alter any Unit or affix any accessory or equipment to it if doing so will impact its originally intended function or use or reduce its value. Lessee shall not make any non-reversible addition (as defined for federal income tax purposes) to a Unit without the prior written consent of Lessor. Any alteration or addition to a Unit shall be the responsibility of and at the sole risk of Lessee. If an Event of Default has occurred and is continuing, all parts, accessories and equipment affixed to a Unit shall become property of Lessor.

## SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS

Lessee: Triad Nitrogen, L.L.C.

Lessor: CATERPILLAR FINANCIAL SERVICES CORPORATION

By: By: 

Name (PRINT) Hanson Leonard

Name (PRINT) Felicia A. Sims  
Documentation Manager

Title Vice-President &amp; General Manager

Title

Date 7-11-02

Date JUL 16 2002

6. **TAXES** Lessor shall promptly pay or reimburse Lessor for all fees and taxes of any nature, together with any penalties, fines or add-on to tax and interest thereon (all of the foregoing hereinafter the "impositions") levied upon Lessee by any taxing authority with respect to or in connection with a Unit from the time it is purchased by Lessor until it is returned to Lessor. Excluded, however, are taxes measured by Lessor's net income but not excluded are net income taxes which by the terms of the statute imposing the tax expressly relieve Lessor or Lessor from the payment of any impositions which Lessee would otherwise be obligated to pay or reimburse. If Lessor is not entitled to an equal deduction with respect to any impositions which Lessee is required to pay or reimburse hereunder and payment or reimbursement constitutes income to Lessor, then Lessee shall also pay to Lessor the amount of any impositions which Lessor is obligated to pay in respect of (a) the payment or reimbursement by Lessee and (b) any payment by Lessee made pursuant to this sentence. Lessee shall prepare and file in a manner satisfactory to Lessor any reports or returns which may be required with respect to a Unit. For purposes of this section, "Lessor" shall include any affiliated group, within the meaning of Section 1404 of the Internal Revenue Code of 1986 of which Lessor is a member for any year in which a consolidated or combined income tax return is filed for the affiliated group.

7. **TAX INDEMNITY** This Lease is entered into on the basis that Lessee shall be entitled to (a) depreciation deductions with respect to a Unit, in accordance with Section 168(c) of the Internal Revenue Code of 1986 as amended (the "Code") based upon the applicable depreciation method and recovery period specified in Sections 168(b) and (c) of the Code as identified by Lessee; and (b) for state income tax purposes, deductions analogous to (a) (all of the foregoing hereinafter the "Tax Benefits"). If Lessor, for any reason other than those stated in (i) through (iv) below, shall lose or have the right to claim or, if there shall be disallowed, deferred or equated with respect to Lessor, any of the Tax Benefits with respect to any Unit (any of the foregoing hereinafter a "Loss"), then, within thirty (30) days after written notice to Lessee by Lessor that a Loss has occurred, Lessee shall pay Lessor an amount which, in the reasonable opinion of Lessor, will cause Lessor's net after-tax use of funds over the term of this Lease to equal the net after-tax use of funds that would have been realized if Lessor had been entitled to its anticipated utilization of all of the Tax Benefits. Lessor shall not be entitled to payment for any Loss arising solely as a direct result of any of the following: (i) a failure of Lessor to timely or properly claim the Tax Benefits for a Unit; (ii) a foreclosure by any person holding a lien through Lessor on any Unit, which foreclosure results solely from an act of Lessor; (iii) a Casualty Occurrence if the Casualty Value in connection therewith has been paid by Lessor; or (iv) the failure of Lessor to have sufficient taxable income or net liability to utilize it if a Tax Benefit. Lessee shall be under no obligation to consent to any action which may result in a Loss. Lessee acknowledges and confirms that Lessor's classification of a Unit in accordance with Section 168(c) of the Code and Lessor's entitlement to the Tax Benefits is based solely upon Lessee's representations as to the proper classification of a Unit as aforesaid. "Lessor" shall include any affiliated group (within the meaning of Section 1404 of the Code) of which Lessor is a member for any year in which a consolidated or combined income tax return is filed for the affiliated group.

8. **LOSS OR DAMAGE** Lessee shall bear the risk of any Casualty Occurrence (the Unit is worn out, lost, stolen, destroyed, taken by governmental action or, in Lessor's opinion, irreparably damaged) or other damage from the time it is purchased by Lessor until it is returned to Lessor. Lessee shall give Lessor prompt notice of a Casualty Occurrence or other damage. If, in Lessor's opinion, the damage is not a Casualty Occurrence, Lessee shall, as an expense, promptly restore the Unit to the condition required by Section 5. If a Casualty Occurrence, Lessee shall pay to Lessor on the first rent payment due following the Casualty Occurrence (within 30) days after the Casualty Occurrence if there is no net payment due remaining) all amounts then due under this Lease with respect to the Unit, plus a sum equal to the applicable Casualty Value of the Unit as shown in the applicable attached Exhibit. Upon making this payment, the term of the Lease with respect to the Unit shall terminate and Lessor shall be entitled to possession of the Unit. Lessee shall be entitled to any recovery of the Unit from insurance or otherwise to the extent it does not exceed the amount of the Casualty Value paid by Lessee.

9. **WAIVER AND INDEMNITY** LESSEE HEREBY AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS LESSOR, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND ASSIGNS FROM AND AGAINST ANY CLAIMS OF LESSEE OR THIRD PARTIES INCLUDING CLAIMS BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, PERSONAL INJURY, PROPERTY DAMAGE, STRICT LIABILITY OR NEGLIGENCE, FOR ANY LOSS, DAMAGE OR INJURY CAUSED BY OR RELATING TO THE DESIGN, MANUFACTURE, SELECTION, DELIVERY, CONDITION, OPERATION, USE, OWNERSHIP, MAINTENANCE OR REPAIR OF ANY UNIT. FURTHER, LESSEE AGREES TO BE RESPONSIBLE FOR ALL COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, INCURRED BY LESSOR OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND ASSIGNS IN DEFENDING SUCH CLAIMS OR IN ENFORCING THIS PROVISION. UNDER NO CONDITION OR CAUSE OF ACTION SHALL LESSOR BE LIABLE FOR ANY LOSS OF ACTUAL OR ANTICIPATED BUSINESS OR PROFITS OR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

10. **INSURANCE** Lessee, at its expense, shall keep each Unit insured for the benefit of Lessor against all risks for not less than its Casualty Value and shall maintain comprehensive public liability insurance (including product and brand form contractual liability) covering the Unit for not less than \$1,000,000 combined coverage for bodily injury and property damage. All insurance shall be in a form and with companies as Lessor shall require, shall specify Lessor and Lessee as named insureds, shall be primary without the right of contribution from any other insurance carried by Lessor, and shall provide that the amounts may not be canceled or altered so as to affect the amount of Lessor without at least ten (10) days prior written notice to Lessor. All amounts covering loss or damage to a Unit shall name Lessee as loss payee. Lessee shall not make adjustments with insurers except with Lessor's prior written consent and hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to receive payment of and to settle all checks, drafts and other documents and to take any other actions necessary to procure insurance claims and recover payments if Lessee fails to do so. Lessee shall promptly notify Lessor of any occurrence which may become the basis of a claim and shall provide Lessor with all requested pertinent data. Lessee shall promptly deliver to Lessor evidence of such insurance coverage.

11. **EVENTS OF DEFAULT** Each of the following constitutes an event of default ("E" or "Event of Default"): (a) Lessee fails to make any payment when due; (b) any representation or warranty to Lessor which is incorrect or misleading; (c) Lessee fails to observe or perform any covenant, agreement or warranty made by Lessee and the failure continues for ten (10) days after written notice to Lessee; (d) any default occurs under any other agreement between Lessee and Lessor or any affiliate of Lessor; (e) Lessee or any guarantor of this Lease ceases to do business, becomes insolvent, makes an assignment for the benefit of creditors or files any petition or action under any bankruptcy reorganization, insolvency or moratorium law or an other law or laws for the relief of, or relating to, debtors; (f) filing of an involuntary petition under any bankruptcy statute against Lessee or any guarantor; (g) Lessee or appointment of a receiver, trustee, custodian or similar official to take possession of the properties of Lessee or any guarantor of this Lease, unless the petition or appointment ceases to be in effect within thirty (30) days after filing or appointment; and (g) breach or repudiation of a guaranty obtained by Lessor in connection with this Lease.

12. **REMEDIES** If an Event of Default occurs, Lessor may (a) proceed by court action to enforce performance by Lessee of the covenants of this Lease or to recover damages for their breach or (b) by notice or writing to Lessee terminate this Lease, in which event all rights of Lessee to use a Unit shall terminate, but Lessee shall remain liable as provided herein and Lessor may do any one or more of the following: (i) require Lessee to return each Unit pursuant to Section 13; (ii) enter the premises where any Unit may be and take possession of it without notice, liability or legal process; (iii) recover from Lessee (whether or not Lessor takes possession of Unit) all amounts due or accrued on the date of termination, ( ) recover all damages for loss of bargain and not as a penalty a sum equal to the Casualty Value of a Unit, and (iv) recover any other damages incurred by Lessor because of the breach of any covenant, agreement or warranty other than payment of rent. If an Event of Default occurs and Lessee returns Unit pursuant to Section 13, Lessor shall undertake commercially reasonable efforts to sell or re-lease it and the proceeds of any sale or re-lease shall be applied in the following order: (a) to reimburse Lessor for all expenses of retaking, holding, preparing for sale or re-lease and selling or re-leasing the Unit, including any taxes, charges, costs, expenses and reasonable attorney's fees incurred by Lessor; (b) to pay Lessor all amounts which under the terms of this Lease are due or have accrued as of the date of Lessor's receipt of the proceeds, and (c) to reimburse Lessee for any sum previously paid to Lessor as damages for loss of bargain. Any surplus shall be returned by Lessor to the extent permitted by law. Lessee shall promptly pay any deficiency to Lessor. Lessee acknowledges that sale of a Unit to a wholesaler, retailer or user for cash or credit may be commercially reasonable. Lessee agrees to pay all charges, costs, expenses and reasonable attorney's fees incurred by Lessor in enforcing this Lease. The remedies provided to Lessor shall be cumulative and shall be in addition to all other remedies existing at law or in equity. If Lessee fails to perform any of its obligations under this Lease, Lessor may perform the obligations and the expenses incurred by Lessor as a result shall be payable by Lessee upon demand.

13. **RETURN OF UNIT** Upon expiration of the term of this Lease or if Lessor shall rightfully demand possession of a Unit, Lessee, at its expense, shall promptly deliver possession of the Unit to Lessor, properly protected and in the condition required by Section 5, at the option of Lessor: (a) to the premises of the nearest Caterpillar dealer selling equipment of the same type as the Unit, or (b) on board a carrier named by Lessor and shipping at, freight collect, to the destination designated by Lessor. If the Unit is not in the condition required by Section 5, Lessee shall pay to Lessor, on demand, all costs and expenses incurred by Lessor to bring the Unit into the required condition.

14. **CAT VALUE OPTION** If Cat Value Option has been checked, and if no Event of Default shall have occurred and be continuing, Lessee may, by notice delivered to Lessor not less than sixty (60) days prior to the end of the term of the Lease, elect to purchase the Unit at the end of the term for the Purchase Price. Lessor and Lessee agree the Purchase Price is a reasonable estimate of the Fair Market Value of the Unit at the end of the term. Upon receipt of the Purchase Price, plus any taxes due in connection with the sale of the Unit, Lessor shall deliver to Lessee, upon request, a bill of sale without warranties except that the Unit is free of all encumbrances of any person claiming through Lessor. Lessee shall purchase the Unit AS IS, WHERE IS, WITH ALL FAULTS.

15. **FAIR MARKET VALUE OPTION** If Fair Market Value (FMV) is checked, If no Event of Default shall have occurred and be continuing, Lessee may, by notice delivered to Lessor not less than sixty (60) days prior to the end of the term of the lease of a Unit, elect to purchase it AS IS, WHERE IS, WITH ALL FAULTS, for a purchase price equal to the then Fair Market Value of the Unit. Fair Market Value is the amount which would be obtained in an arm's length transaction between an informed and willing buyer under no compulsion to buy (other than a used equipment dealer or a buyer currently in possession) and an informed and willing seller under no compulsion to sell and, in the determination thereof, costs of removal from the current location shall not be a deduction from such value. If Lessor and Lessee have not agreed upon the Fair Market Value of the Unit four (4) months prior to the end of the term, Lessee shall either (a) rescind the election to purchase it, or (b) apply to the American Appraisers Association for appointment of an appraiser with instructions to determine its Fair Market Value within thirty (30) days after its appointment and communicate the determination in writing to Lessor and Lessee. The determination shall be conclusively binding upon Lessor and Lessee. The expenses and fees of the appraiser shall be paid by Lessee. Upon receipt of the purchase price, plus any taxes due in connection with the sale of the Unit, Lessor shall deliver to Lessee upon request a bill of sale without warranties except that the Unit is free of all encumbrances of any person claiming through Lessor. Failure of Lessee to apply for appointment of an appraiser shall be deemed a rescission of the election to purchase the Unit.

16. **LESSEE ASSURANCES AND REPRESENTATIONS** Lessee and Lessor intend that this Lease shall be a "true lease" of the Unit(s), and not a sale of the Unit(s). Title to the Unit(s) shall remain in Lessor and Lessee shall not acquire any interest in the Unit(s) other than the beneficial interest described herein. Nevertheless, Lessee hereby grants to Lessor a security interest in the Unit(s), and all replacements or substitutions therefor and any proceeds therefrom, including but not limited to, proceeds, in the form of chattel paper as security for the payment and performance by Lessee of all its obligations under this Lease in the event a court of competent jurisdiction determines that Lessee and Lessor created a security interest in the Unit(s).

Lessee shall, at its expense, do any and all actions and execute acknowledgments, deliver, file, register and record any documents, which Lessor deems desirable in its discretion to protect Lessor's title or rights in a Unit and Lessor's rights and benefits under this Lease. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact for the signing and filing of such documents and authorizes Lessor to delegate these limited powers.

Lessee represents and warrants to Lessor that ( ) Lessee has the power to make, deliver and perform under this Lease, (b) the person executing and delivering this Lease is authorized to do so on behalf of Lessee and (c) this Lease constitutes a valid obligation of Lessee, legally binding upon it and enforceable in accordance with its terms. Lessee shall, during the lease term, display in a prominent place on the Unit labels supplied by Lessor stating that the Unit is leased from Lessor. Lessee further represents and warrants to Lessor that Lessee is and shall remain a Limited Liability Corporation registered in the state of MS ( "Business Lessee"), and Lessee will not change its form of business organization or Business Location without prior written notice to Lessor.

17. **ASSIGNMENT; COUNTERPARTS** The rights of Lessor under this Lease and title to the Unit may be assigned by Lessor at any time. If notified by Lessor, Lessee shall make all payments due under this Lease to the party designated in the notice without offset or deduction. If assignment or any right or obligation under it may be made by Lessor without the prior written consent of Lessor. This Lease shall be binding upon and benefit Lessor and Lessee and their respective successors and assigns. If this Lease is assigned by Lessor to a partnership or trust, the term "Lessor" shall thereafter mean and include the partnership or trust and shall also include, for purposes of Sections 4, 5, 9 and 10 each partner or beneficiary of the partnership or trust. Although multiple counterparts of this document may be signed, only the counterpart accepted, acknowledged and certified by Caterpillar Financial Services Corporation on the signature page hereof as the original will constitute original chattel paper.

18. **EFFECT OF WAIVER; ENTIRE AGREEMENT; MODIFICATION OF LEASE; NOTICES** A delay or omission by Lessor to exercise any right or remedy shall not impair any right or remedy and shall not be construed as a waiver of any breach or default. Any waiver or consent by Lessor must be in writing. This Lease completely states the rights of Lessor and Lessee and supersedes all prior agreements with respect to this Unit. No variation or modification of this Lease shall be valid unless in writing. All notices shall be in writing, addressed to the other party at the address stated on the front or at such other address as may hereafter be furnished in writing.

This Agreement shall be governed by and construed under the laws of the State of Tennessee, without giving effect to the conflict-of-laws principles thereof, and Lessee hereby consents to the jurisdiction of this court or federal court located within the State of Tennessee. THE PARTIES HERETO HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE OBLIGATIONS ON THE COLLATERAL.

19. **SEVERABILITY; SURVIVAL OF COVENANTS** If any provision of this Lease shall be invalid under any law, it shall be deemed omitted but the remaining provisions hereof shall be given effect. All obligations of Lessee under this Lease shall survive the expiration or termination of this Lease to the extent required for their full observance and performance.

# UCC FINANCING STATEMENT

Return To

LexisNexis Document Solutions  
801 Adlai Stevenson Drive  
Springfield, IL 62703  
Phone (217) 544-5900



8531272 1

Debtor TRIAD NITROGEN LLC  
uris NOT FOUND LA

Caddo  
Parish

FILED & RECORDED  
CADDOPARISH  
SHREVEPORT, LA

09-10-1861

2002 JUL 18 PM 3 00

GARY OFTIN  
CLERK OF COURT

DPY CLERK & RECORDER

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME insert only one debtor name (1a or 1b) do not abbreviate or combine names				
1a. ORGANIZATION'S NAME TRIAD NITROGEN, LLC				
OR 1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX				
1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY				
39041 HWY 18 WEST DONALDSONVILLE LA 70346 USA				
1d. TAX ID # SSN OR EIN ADD'L INFO RE 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID # if any				
08-043-9529 ORGANIZATION LLC LA 34798804Q NONE				
2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME insert only one debtor name (2a or 2b) do not abbreviate or combine names				
2a. ORGANIZATION'S NAME				
OR 2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX				
2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY				
2d. TAX ID # SSN OR EIN ADD'L INFO RE 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID # if any				
NONE				
3. SECURED PARTY'S NAME (or NAME OF TOTAL ASSIGNEE of ASSIGNOR SP) insert only one secured party name (3a or 3b)				
3a. ORGANIZATION'S NAME CATERPILLAR FINANCIAL SERVICES CORPORATION				
OR 3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX				
3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY				
2120 WEST END AVE. NASHVILLE TN 37203 USA				

4. The FINANCING STATEMENT covers the following collateral:  
(1) CAT 950G WHEEL LOADER SN 3JW02586 and substitutions, replacement, additions and accessions thereto, now owned or hereafter acquired and proceeds thereof is a precatonary filing and is not to be deemed as an admissions by any party that the lease agreement is other than a true lease

5. ALTERNATIVE DESIGNATION if applicable	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG LIEN	NON-UCC FILING
6. THE FINANCING STATEMENT is to be filed (for record) (or records) in the REAL ESTATE RECORDS Attach Affidavit 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) All Debtors Debtor 1 Debtor 2						
8. OPTIONAL FILER REFERENCE DATA LA-Caddo Parish C-212698						

ACKNOWLEDGMENT COPY NATIONAL UCC FINANCING STATEMENT (FORM UCC-1) (REV 07/28/98)

LexisNexis Document Solutions  
801 Adlai Stevenson Dr  
Springfield IL 62703-4881

DELIVERY SUPPLEMENT

This pertains to the Lease, dated as of 7-11-02, between Caterpillar Financial Services Corporation as Lessor and Triad Nitrogen, L.L.C. as Lessee

This confirms that the Lessee physically received the following Unit on the possession date below. As of the date of signature of this form, (i) the Unit is in all respects satisfactory to Lessee for leasing under the Lease, and (ii) Lessor has performed all of its obligations under the Lease.

Description of Unit

(1) 950G                      New      Caterpillar Wheel Loader

Location                      DONALDSONVILLE, LA

County                      ASCENSION

Equipment Located              Inside \_\_\_\_ or Outside X City Limits

Possession Date                      \_\_\_\_\_

Triad Nitrogen, L.L.C.

Signature Hanson Leonard

Name (PRINT) Hanson Leonard

Title Vice-President & General Manager

Date 7-11-02

### GUARANTY OF PAYMENT

THIS GUARANTEE ("Guaranty") is made and entered into as of 7-14-02 by MISSISSIPPI CHEMICAL CORP., 3622 HWY 49, EPO BOX 388 YAZOO CITY, MS 39194 (hereinafter referred to as "Guarantor"), in favor of Caterpillar Financial Services Corporation, 2120 West End Avenue, Nashville Tennessee 37203-0001 (hereinafter referred to as "Caterpillar Financial"), guaranteeing the indebtedness (as hereinafter defined) of Triad Nitrogen, L.L.C. (hereinafter referred to as "Obligor").

WITNESSETH

FOR VALUE RECEIVED and/or as an inducement to, Caterpillar Financial to now, or hereafter enter into purchase or otherwise acquire the agreements, accounts and/or other obligations evidencing and/or securing Obligor's indebtedness and in consideration of and for credit and financial accommodations now or hereafter extended to or for the account of the Obligor (which includes Caterpillar Financial's consent to an assignment and/or assumption of the Indebtedness) which is in the best interest of Guarantor and which would not have been extended but for this Guaranty the Guarantor agrees as follows

**SECTION 1. Guaranty of Obligor's Indebtedness** Guarantor hereby absolutely, irrevocably and unconditionally agrees to and by these presents does hereby (a) guarantee the prompt and punctual payment, performance and satisfaction of all present and future indebtedness and obligations of Obligor to Caterpillar Financial, which Obligor now owes Caterpillar Financial or which Obligor shall at any time or from time to time hereafter owe Caterpillar Financial when the same shall become due in connection with or arising out of that certain by and between Obligor and Caterpillar Financial dated 7-16-03, including any and all existing and future additional schedules, amendments and/or related agreements thereto (the "Contract"), whether direct or contingent, due or to become due, joint or several, primary or secondary, liquidated or unliquidated, secured or unsecured, original or renewed or extended or by open account or otherwise and whether or not such indebtedness and obligations are evidenced by any instrument, and (b) undertake to pay, defend and indemnify Caterpillar Financial against all liabilities, claims, damages, costs and expenses (including attorney's fees and expenses which may be suffered by Caterpillar Financial by reason of Obligor's default or default of the Guarantor (with all of Obligor's indebtedness and/or obligations as stated above (including all costs, fees and expenses) being hereinafter individually and collectively referred to under this Guaranty as Obligor's "Indebtedness," which Indebtedness shall be conclusively presumed to have been created in reliance upon this Guaranty).

**SECTION 7. Joint, Several and Solidary Liability.** Guarantor further agrees that its obligations and liabilities for the prompt and punctual payment performance and satisfaction of Obligor's Indebtedness are independent of any agreement or transaction with any third parties and shall be on a "joint and several" and "solidary" basis along with Obligor to the same degree and extent as if Guarantor had been and/or will be a co-borrower, co-principal obligor and/or co-maker of Obligor's Indebtedness. In the event that there is more than one guarantor under this Guaranty or in the event that there are other guarantors, endorsers, sureties or any other party who may at any time become liable for all or any portion of Obligor's Indebtedness (each, an "Other Obligor"), the provisions hereof shall be read with all grammatical changes thereby rendered necessary and each reference to the Guarantor shall include each and every one of those parties liable for all or any portion of Obligor's Indebtedness and each Guarantor's obligations and liabilities hereunder shall be on a "joint and several" and "solidary" basis along with such Other Obligor.

**SECTION 3. Duration, Cancellation of Guaranty.** This Guaranty and Guarantor's obligations and liabilities hereunder shall remain in full force and effect until such time as Obligors Indebtedness shall be fully and finally paid, performed and/or satisfied until such time as this Guaranty may be cancelled by Caterpillar Financial under a written cancellation instrument in favor of Guarantor or otherwise as stated herein.

**SECTION 4. Default by Obligor.** Immediately upon Obligor's default under any of its indebtedness in favor of Caterpillar Financial, Caterpillar Financial may make demand upon Guarantor and Guarantor unconditionally and absolutely agree to pay the full then unpaid amount of all of Obligor's Indebtedness (whether at stated maturity by required prepayment, declaration acceleration or otherwise) and/or perform any covenant or agreement hereunder guaranteed. Such payment or payments shall be made immediately follow up demand by Caterpillar Financial at Caterpillar Financial's offices indicated above.

**SECTION 5. Additional Covenants.** Guarantor further agrees that Caterpillar Financial may at its sole option, at any time, and from time to time, without the consent of or notice to Guarantor or to any other party and without incurring any responsibility to Guarantor or to any other party and without affecting, impairing or releasing the obligations of Guarantor under this Guaranty: (a) discharge or release any party (including but not limited to Obligor secondary obligors of Obligor's indebtedness or any co-guarantor under this Guaranty) who is or may be liable to Caterpillar Financial for Obligor's indebtedness, (b) sell at public or private sale exchange release, impair surrendered substitute, realize upon or otherwise deal with, in any manner and in any order and upon such terms and conditions as Caterpillar Financial deems best at its uncontrolled discretion, any leased equipment and/or any collateral listed in the Contract or now or hereafter otherwise directly or indirectly securing repayment of Obligor's Indebtedness (all such leased equipment and/or all such collateral shall hereinafter be referred to as the "Equipment") including without limitation the purchase of all or any part of such collateral for Caterpillar Financial's own account; (c) change the manner, place or terms of payment and/or available credit (including without limitation increase or decrease in the amount of such payments, available credit or any interest rate adjustments); or change or extend the time of payment of or renew as often and for such periods as Caterpillar Financial may determine, or other Obligor's indebtedness or grant any other indulgence to Obligor and/or any secondary obligors of Obligor's Indebtedness or any co-guarantor under this Guaranty; (d) settle or compromise Obligor's Indebtedness with Obligor and/or any third party or refuse any offer of performance with respect to or substitutions for, the Indebtedness; (e) take or accept any other security or guaranty for any or all of Obligor's Indebtedness and/or (f) enter into deliver modify amend or waive compliance with any instrument, agreement or arrangement evidencing, securing or otherwise affecting, all or any part of Obligor's Indebtedness.

**SECTION 6. No Release of Guarantor.** Guarantor's obligations and liabilities under this Guaranty shall not be released, impaired, reduced or otherwise affected by and shall continue in full force and effect, notwithstanding the occurrence of any event including without limitation any one or more of the following events: (a) death, insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution or lack of authority (whether corporate, partnership or trust) of Obligor (or any person acting on Obligor's behalf) or any Other Obligor or any other defense based on or arising out of the lack of validity or enforceability of the Indebtedness or any agreement or instrument relating thereto or any provisions thereof and/or Obligor's absence or cessation of liability hereunder for any reason including without limitation Caterpillar Financial's failure to preserve any right or remedy against Obligor; (b) any change in Obligor's financial condition; (c) partial payment or payments of any amount due and/or outstanding under Obligor's Indebtedness; (d) any change in Obligor's management, ownership, identity or business or organizational structure; (e) any payment by Obligor or any other party to Caterpillar Financial that is held to constitute a preferential transfer or a fraudulent conveyance under any applicable law or for any reason. Caterpillar Financial is required to fund such payment or pay such amount to Obligor or to any other person; (f) any sale, lease or transfer, whether or not commercially reasonable, of all or any part of Obligor's assets and/or any assignment, transfer or delegation of Obligor's Indebtedness to any third party (whereby this Guaranty shall continue to extend to all sums due from or for the account of Obligor and/or the new or substituted legal entity); (g) any failure to perfect any lien or security interest securing the Indebtedness or preserve any right, priority or remedy against any Equipment; (h) any interruption, change or cessation of relations between Guarantor and Obligor; (i) any defect in, damage to, destruction of or loss of or interference with possession or use of any Equipment for any reason by Obligor or any other person; (j) any act or omission by Caterpillar Financial which increases the scope of Guarantor's risk, including without limitation, negligent administration of transactions with Obligor and/or (k) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing, which might otherwise constitute a legal or equitable discharge, release or defense of a guarantor or surety or which might otherwise limit recourse against Guarantor.

**SECTION 7. Waivers by Guarantor.** Guarantor waives, for the benefit of Caterpillar Financial (which waivers shall survive until this Guaranty is released or terminated in writing by Caterpillar Financial) (a) notice of the acceptance of this Guaranty (b) notice of a ~~existence~~ ~~creation~~ ~~or incurrence of~~ new and/or additional debt owing from Obligor to Caterpillar Financial (c) presentment, protest and demand and notice of protest, demand, nonpayment, nonperformance and dishonor of any and all agreements notes or other obligations signed accepted indorsed or assigned to or by Caterpillar Financial or agreed to between Obligor and Caterpillar Financial (d) notice of adverse change in Obligor's financial condition or any other fact which might materially increase the risk of Guarantor (e) any and all rights in and notes and demands relating to any Equipment, including without limitation all rights notices advertisements or demands relating whether directly or indirectly to the foreclosure sale or other disposition of any or all such Equipment or the manner of such sale or other disposition (f) any claim, right or remedy which Guarantor now have here or hereafter acquire against the Obligor that arises hereunder and/or from the performance by any Other Obligor including, without limitation, any claim, remedy or right of subrogation reimbursement, exoneration, contribution indemnification or otherwise on a claim right or ~~and of Caterpillar Financial~~ against the Obligor or any security which Caterpillar Financial now has or hereafter acquires with respect to the Obligor whether or not such claim, right or remedy arises in equity under contract (express or implied) by statute under common law or otherwise, (g) notice of any default by Obligor or any other person obligated in any manner for all or any portion of Obligor's indebtedness and notice of any legal proceedings against such parties (h) any right of contribution from any Other Obligor (i) notice and hearing as to any pre-judgment remedies (j) any defense which is premised on an alleged lack of consideration of the obligation undertaken by Guarantor including without limitation any defense to the enforcement of this Guaranty based upon the timing of execution of this Guaranty and/or that the Guaranty had been executed after the execution date of any agreements evidencing the Indebtedness (k) all exemptions and homestead laws (l) any other demands and notices required by law (m) all self-help and counterclaims against Caterpillar Financial and/or Obligor (n) any defense based on the claim that Guarantor's liabilities and obligations exceed or are more burdensome than those of Obligor (o) any defense which the Obligor may assert or be able to assert on the underlying Indebtedness or which may be asserted by Guarantor including but not limited to (i) breach of warranty (ii) fraud, (iii) statute of frauds (iv) infancy (v) statute of limitations (vi) tender liability (vii) accord and satisfaction (viii) payment and/or (ix) usury

**SECTION 2. Enforcement of Guarantor's Obligations and Liabilities.** Guarantor agrees that, should Caterpillar Financial deem it necessary to file an appropriate collection action to enforce Guarantor's obligations and liabilities under this Guaranty, Caterpillar Financial may commence such a civil action against Guarantor without the necessity of first (i) attempting to collect Obligor's Indebtedness from Obligor or from any Other Obligor, whether through filing of suit or otherwise, (ii) attempting to exercise any rights Caterpillar Financial may have against any party to the Equipment, whether through re-lease, the filing of an appropriate foreclosure action or otherwise, (iii) including Obligor or any Other Obligor as an additional party defendant in such a collection action against Guarantor, (iv) pursuing any other remedy in Caterpillar Financial's power or to mitigate damages. If there is more than one guarantor under this Guaranty, each Guarantor additionally agrees that Caterpillar Financial may file an appropriate collection and/or enforcement action against any one or more of them, without impairing the rights of Caterpillar Financial against any other guarantor under this Guaranty.

**SECTION 10 Successors and Assigns Bound** Guarantor's obligations and liabilities under this Guaranty shall be binding upon Guarantor's successors, heirs, legatees devisees administrators executors and assigns. Caterpillar Financial may assign this Guaranty and any and all rights and interests included herein in Caterpillar Financial's sole discretion without notice to Guarantor and the rights and remedies granted to Caterpillar Financial under this Guaranty shall also inure to the benefit of Caterpillar Financial's successors and assigns as well as in any and all subsequent holder or holders of any of Obligor's indebtedness subject to this Guaranty without setoff counterclaim, reduction, recoupment, abatement, deduction or defense based on any claim Guarantor may have against Caterpillar Financial such successors and assigns or subsequent holders of Obligor's indebtedness. Guarantor shall not assign this Guaranty without the prior written consent of Caterpillar Financial.

**SECTION 11. Termination.** This Guaranty is irrevocable and may be terminated only as to indebtedness created sixty (60) days after actual receipt by Caterpillar Financial of written notice of termination hereof, provided however, that all indebtedness incurred created or arising pursuant to a commitment of Caterpillar Financial made prior to the effective date of such termination (the "Termination Date") and any extensions, renewals or modifications of such indebtedness (including without limitation loan and/or other commitments) agreed to or instituted by Caterpillar Financial prior to the Termination Date shall not be effected by such termination and shall be deemed to have been incurred prior to termination (irrespective of whether indebtedness arising thereunder occurs after the Termination Date) and shall be fully covered by this Guaranty. Any termination of this Guaranty shall be ineffective unless upon the Termination Date Guarantor deposits with Caterpillar Financial collateral in the form of cash in an amount not less than the amount of the indebtedness outstanding on the Termination Date. Such cash shall be held by Caterpillar Financial in a separate account and shall be returned to Guarantor upon the full and indefeasible payment of all of the Indebtedness.

**SECTION 12. Governing Law: Waiver of Jury.** This Guaranty shall be construed liberally in favor of Caterpillar Financial and shall be governed and construed in accordance with the substantive laws of the State of Tennessee, without regard to the conflicts of laws principles thereof. ANY ACTION SUIT OR PROCEEDING RELATING DIRECTLY OR INDIRECTLY TO THIS GUARANTY OR THE RELATIONSHIP BETWEEN GUARANTOR AND CATERPILLAR FINANCIAL, WILL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE WITHOUT A JURY. AS SUCH, GUARANTOR HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY SUCH ACTION SUIT OR PROCEEDING. IN THE EVENT OF LITIGATION, THIS GUARANTY MAY BE FILED AS A WRITTEN CONSENT TO TRIAL BY THE COURT.

**SECTION 13. Severability.** If any provision of this Guaranty is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable, this Guaranty shall be enforceable and enforceable as if the illegal, invalid or unenforceable provision were not a part of it, and the remaining provisions of this Guaranty shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or provisions hereof.

IN WITNESS WHEREOF Guarantor has executed this Guaranty in favor of Caterpillar Financial on the day month and year first written above.

**GUARANTOR HAS READ AND FULLY UNDERSTANDS ALL OF THE PROVISIONS OF THIS GUARANTY**

GUARDIAN MISSISSIPPI CHEMICAL CORP

Signature Timothy A Dawson  
Name (PRINT) Timothy A Dawson

~~Title~~ CORPORATION Senior Vice President and  
Chief Financial Officer

(Corporate Address, Phone, SSN of Owner or an Individual)

Address 3622 HWY 49 F P O BOX 358

LAZAR CITY MS 39194

Phone: (662)746-4131

SSN \_\_\_\_\_