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~~INTERSTATE COMMERCE COMMISSION~~

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CONDITIONAL SALE AGREEMENT

Dated as of January 1, 1975

between

EXCHANGE NATIONAL BANK OF CHICAGO,  
as Trustee under a Trust Agreement  
dated as of the date hereof with  
International Paper Equipment Leasing Corporation

and

FMC CORPORATION

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CONDITIONAL SALE AGREEMENT dated as of January 1, 1975, between the corporation named in Item 1 of Annex A hereto (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof) and EXCHANGE NATIONAL BANK OF CHICAGO, acting as Trustee under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with International Paper Equipment Leasing Corporation (said bank, so acting, being hereinafter called the Vendee and said corporation being hereinafter called the Beneficiary).

WHEREAS the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto (hereinafter called the Equipment);

WHEREAS the Vendee is entering into a lease dated as of the date hereof with Apache Railway Company (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease); and

WHEREAS First Pennsylvania Bank N. A. (hereinafter called the Assignee) is acting as agent for an investor pursuant to the Finance Agreement dated as of January 1, 1975 (hereinafter called the Finance Agreement), among the Assignee, the Lessee and the party named in Schedule A thereto;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof between the Builder and the Assignee, as agent (such Agreement and Assignment being hereinafter called the Assignment).

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title, and interest of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in substantially the form of Annex D hereto (hereinafter called the Lease Assignment).

In addition, the Lessee proposes to enter into a Lessee's Consent and Agreement dated as of the date hereof, substantially in the form of Annex E hereto, and Southwest Forest Industries, Inc. (hereinafter called the Guarantor), the owner of all of the outstanding common stock of the Lessee, proposes to enter into a Guaranty Agreement dated as of the date hereof (hereinafter called the Guaranty Agreement) with the Vendee and the Agent, substantially in the form of Annex F hereto.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Asso-

ciation of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit (except to the extent, if any, referred to in Annex A hereto) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges, if any, prepaid in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act; and provided, further, that the Builder shall have no obligation to deliver any unit of the Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) of Article 16 hereof or clauses D and E of § 10 of the Lease or the occurrence of any event of default (as described in Article 16 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded from this Agreement. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the

materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 10 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of the Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to), the Builder (and any assignee of the Builder) will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of the Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid).

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted

by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such date (not earlier than February 27, 1975, and not later than June 30, 1975, such later date being herein called the Cut-Off Date), occurring not more than ten business days following presentation by the Builder to the Vendee of the invoice and of the Certificate or Certificates of Acceptance for the Equipment and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Vendor at least six business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Philadelphia, Pennsylvania, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group (i) an amount equal to 27.4% of the aggregate Purchase Price of such Group plus (ii) the amount, if any, by which (x) 72.6% of the Purchase Price of all units of the Equipment for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the Maximum Conditional Sale Indebtedness specified in Item 6 of Annex A and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this clause (ii); and

(b) in 30 semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called

the Conditional Sale Indebtedness) shall be payable on each January 1 and July 1, commencing January 1, 1976, to and including July 1, 1990 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness from time to time outstanding shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 10-3/4% per annum and such interest shall be payable, to the extent accrued, on July 1, 1975, and on each Payment Date thereafter. The instalments of principal payable on each of the Payment Dates shall be calculated so that the aggregate of principal and interest payable on each such Payment Date shall be substantially equal and the aggregate of such instalments of principal will amortize 100% of the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 11-3/4% per annum.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The obligation of the Vendee to pay to the Vendor any amount required to be paid pursuant to subparagraph (a) of the third paragraph of this Article with respect to any Group is specifically subject to the fulfillment, in a manner satisfactory to the Vendee, on or before the Closing Date in respect of such Group, of the following conditions (any of

which may be waived by the Vendee, and payment by the Vendee of the amount specified in subparagraph (a) of the third paragraph of this Article with respect to such Group shall be conclusive evidence that such conditions have been fulfilled or irrevocably waived):

(a) the Assignee shall have paid or caused to be paid to the Builder the amounts contemplated to be paid by it as provided in Article 1 hereof and in the Assignment and the documents required by the Assignment shall have been delivered;

(b) no Event of Default of the Lessee under the Lease, nor any event which with lapse of time and/or demand provided for in the Lease could constitute such an Event of Default, shall have occurred and be continuing; and

(c) the Vendee shall have received (i) the opinions of counsel required by § 15 of the Lease and (ii) such other documents as the Vendee may reasonably request.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof), but not limiting the effect of Article 23 hereof, it is understood and agreed by the Vendor that the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under and pursuant to this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the payments to be made pursuant to Article 20 hereof and subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. In addition, the Vendor agrees that the Vendee (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the

the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease or the Lease Assignment; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obliga-

ations hereunder or to proceed against the Lessee under the Lease. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

ARTICLE 5. Security Interest in the Equipment.

The Vendor shall and hereby does retain a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease. Any and all additions to the Equipment (except any communications, signal and automatic control equipment or devices having a similar use which have been added to such unit by the Lessee, the cost of which is not included in the Purchase Price of such unit and which are not required for the operation or use of such unit by the Interstate Commerce Commission, the Department of Transportation or any other regulatory body), and any and all parts installed on and additions and replacements made to any unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article

22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to

the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences; Insurance. The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good order and repair.

In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, or, in the opinion of the Vendee or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 180 consecutive days (such occurrences being herein called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accordance with the unpaid balance of each instalment, the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 4 hereof.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of the Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

Any insurance proceeds or condemnation payments received by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Vendee to the Vendor in respect of Casualty Occurrences pursuant to the second paragraph of this Article. If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence after the Vendee shall have made payments pursuant to this Article without deduction for such insurance proceeds or condemnation payments, the Vendor shall pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 8. Assignment of Lease. The Vendee, concurrently with the execution and delivery of this Agreement, is assigning to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title and interest of the Vendee in and to the Lease. The Vendee agrees that the "income and proceeds from the Equipment" (as defined in Article 4 hereof) received by the Vendor may be applied by the Vendor to discharge the obligations of the Vendee hereunder and the Vendor agrees to pay to the Vendee (or to the order of the Vendee at such address as the Vendee may specify in writing) any moneys paid to the Vendor under the Lease not constituting "income and proceeds from the Equipment".

ARTICLE 9. Reports and Inspections. On or before March 31 in each year, commencing with the year 1976, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or are then withdrawn from use pending such repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 10 hereof have been preserved or replaced.

ARTICLE 10. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the road number of the Lessee as set forth in Annex B hereto, or, in the case of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions

thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings that may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership.

ARTICLE 11. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 12. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor. This Agreement shall not be modified or amended in a manner that might adversely affect the Lessee without the Lessee's consent.

The Vendee may also lease the Equipment to any other railroad company, but only with the prior written consent of the Vendor, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) such lease shall be assigned to the Vendor as security on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

ARTICLE 13. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or

to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 14. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The agreement of the parties relating to the Build-

er's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 15. Assignments. The Vendee will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee to a vendee, assignee or transferee without the assumption by such party of any of the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 14 hereof, or relieve the Vendee of its respective obligations to the Builder contained in Articles 2, 3, 4, 6, 8 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee and the Lessee, respectively, of the notification of any such assignment, all payments there-

after to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee, as the case may be, against and only against the Builder.

The Vendee will (a) in connection with each settlement for the Equipment, deliver to the Assignee, on the Closing Date for the Equipment, all documents required by the terms of the Assignment to be delivered to the Assignee by the Vendee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for the Assignee, and (b) cause to be furnished to the Assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4

or 23 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for five days; or

(b) the Vendee (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Vendee) shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a proceeding shall be commenced by or against the Vendee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, re-adjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee or under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) or for its respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) the Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or

retransfer to the Vendee of such Agreement, interest or right; or

(e) an Event of Default as defined in the Lease shall occur; provided, however, that such Event of Default under the Lease shall not be deemed to be an event of default hereunder if the default under the Lease causing such Event of Default thereunder is cured by the Vendee's remedying such default prior to a Declaration of Default; provided, further, however, that the Vendee shall not have the right to remedy more than two such defaults and any additional Events of Default under the Lease shall constitute events of default hereunder whether or not so remedied;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the term of the Lease immediately upon such notice to terminate, but without affecting the indemnities which by the provisions of the Lease survive the termination of its term and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the provisions of Articles 4 and 23 hereof. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred

of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from the possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Lessee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Lessee for the delivery of the Equipment to the Vendor, the Vendee will, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on the lines of the Lessee as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Lessee until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the

Vendee agrees to cause to be furnished, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee, may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or

continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, or any other party claiming from, through or under the Vendee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fee and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor and the Vendee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered

for sale. The Vendee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall, subject to the limitations of the last paragraph of Article 4 hereof, pay the amount of such deficiency to the Vendor upon demand, together with the

interest from the date of such demand to the date of payment at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such demand was made, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then, subject to the limitations of the last paragraph of Article 4 hereof, in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Vendee will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 21. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 22. Notice. Any notice hereunder to any

of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at its chief place of business at the following specified addresses:

(a) to the Vendee, at 130 South LaSalle Street, Chicago, Illinois 60690, with copies to the Beneficiary at 220 East 42nd Street (Suite 3005), New York, N. Y. 10017, Attention of John F. Duncan,

(b) to the Builder, at the address specified in Item 1 of Annex A hereto,

(c) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 23. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Beneficiary, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement. The obligations of the Vendee under the second paragraph of Article 17 and under Articles 3, 6, 7 (other than the second sentence of the second paragraph thereof), 9, 10, 11, 13, 14 and 19 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by Exchange National Bank of Chicago or for the purpose or with the intention of binding the said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon the said bank as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the said bank or the Beneficiary or on account of any representation, undertaking or agreement of the Vendee or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under any of them, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

ARTICLE 24. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 25. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in

the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

FMC CORPORATION

by *J. T. Edelman*  
Vice President

[CORPORATE SEAL]

Attest:

*Robert L. Day*  
Assistant Secretary

EXCHANGE NATIONAL BANK OF CHICAGO,  
as Trustee,

by *Gene Charles Anderson*  
Vice President

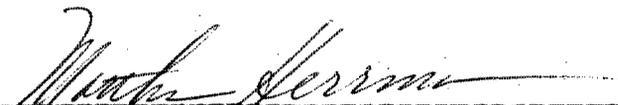
[CORPORATE SEAL]

Attest:

*Vernon B. ...*  
Assistant Trust Officer

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this *sixth* day of *February* 1975, before me personally appeared *J. T. Edelman*, to me personally known, who, being by me duly sworn, says that he is Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

*my Commission expires February 14, 1976*



Annex A

to

Conditional Sale Agreement

- Item 1: FMC Corporation, a Delaware corporation, having an address at 4700 Northwest Front Avenue, Portland, Oregon 97210.
- Item 2: The Equipment shall be settled for in not more than two Groups of units of the Equipment delivered to and accepted by the Vendee unless a greater number shall be agreed to by the parties hereto.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called this Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Vendee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities under Articles 2, 3 and 4 of the Agreement and Item 4 of this Annex A, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Vendee of any of its rights under this Item 3.

Item 4: Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee and, as third party beneficiaries hereof, the Lessee and the Beneficiary from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Lessee, the Beneficiary, its or their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Pursuant to the Lease, the Lessee likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by

the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee or the Vendee to more fully effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Lessee of any claim known to the Builder from which liability may be charged against the Lessee hereunder and the Vendee will give notice to the Builder of any claim known to the Vendee from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

- Item 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$2,890,000.
- Item 6: The Maximum Conditional Sale Indebtedness referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$2,100,000.

Annex B  
to

Conditional Sale Agreement

Type	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Unit Base Price	Total Base Price	Estimated Time and Place of Delivery
100-ton highside gondola woodchip car; AAR Mechanical Designation GTS.	No. 17629 dated January 19, 1975, in substitution for No. R-5037-74 dated May 1974.	Portland, Oregon	100	APA 1500-1599	\$26,650.39	\$2,665,039	February-March 1975 at Builder's Plant

LEASE OF RAILROAD EQUIPMENT

Dated as of January 1, 1975

between

APACHE RAILWAY COMPANY

and

EXCHANGE NATIONAL BANK OF CHICAGO,  
as Trustee under a Trust Agreement  
dated as of the date hereof with  
International Paper Equipment Leasing Corporation

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LEASE OF RAILROAD EQUIPMENT dated as of January 1, 1975, between APACHE RAILWAY COMPANY, an Arizona corporation (hereinafter called the Lessee), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting as Trustee under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with International Paper Equipment Leasing Corporation, a Delaware corporation (said bank, so acting, being hereinafter called the Lessor, and said corporation being hereinafter called the Beneficiary).

WHEREAS the Lessor is entering into a conditional sale agreement dated as of the date hereof with FMC Corporation, a Delaware corporation (such corporation being hereinafter called the Builder and such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS under an Agreement and Assignment dated as of the date hereof (hereinafter called the Assignment) the Builder is assigning its interest in the Security Documentation to First Pennsylvania Bank N.A., a national banking association, as agent (hereinafter, together with its successors and assigns, called the Vendor) under a Finance Agreement dated as of the date hereof with the Lessee and the party named in Schedule A thereto (hereinafter called the Finance Agreement);

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the Security Documentation (hereinafter called the Units) at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS Southwest Forest Industries, Inc., a Nevada corporation (hereinafter called the Guarantor), of which the Lessee is a subsidiary, has agreed to guarantee to the Lessor, as provided in a guaranty agreement dated as of January 1, 1975 (hereinafter called the Guaranty Agreement), with the Lessor, the due and punctual payment of the sums payable by, and the due and punctual performance of the obligations of, the Lessee under this Lease and the

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 31 consecutive semiannual payments payable on January 1 and July 1 in each year, commencing July 1, 1975. The rental payment payable on July 1, 1975, shall be in an amount equal to the sum of (a) .008182% of the Purchase Price (as defined in the Security Documentation) of each Unit subject to this Lease for each day elapsed from the date of delivery of each Unit, as evidenced by the Certificate of Acceptance for such Unit, to the date of such payment; provided, however, that the amount of this portion of such rental payment shall in no event be less than the amount that would have been payable if 90 days had elapsed between the date of delivery of each Unit subject to this Lease and July 1, 1975; plus (b) an amount equal to the interest payment due and payable on July 1, 1975, pursuant to paragraph 4 of Article 4 of the Security Documentation. The next 30 rental payments shall each be in an amount equal to 5.300% of the Purchase Price of each Unit then subject to this Lease. As additional rental hereunder, the Lessee agrees to pay, on July 1, 1975, such amounts as equal the amounts required to enable the Vendor to comply with the third paragraph of Paragraph 1 and the last paragraph of Paragraph 4 of the Finance Agreement.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 17 hereof. If any of the semiannual rental payment dates referred to above is

Lessee's Consent and Agreement dated as of the date hereof (hereinafter called the Consent), by the terms of which the Lessee consents to the assignment of the Lease dated as of the date hereof (hereinafter called the Lease Assignment);

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor, the Builder or the Vendor; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Philadelphia, Pennsylvania, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor, first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, subject to the limitations contained in the last paragraph of Article 4 of the Security Documentation and, second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available Philadelphia or Federal funds.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. The Security Documentation shall not be modified or amended in a manner that might adversely affect the Lessee without the Lessee's consent. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that if the Lessee has not defaulted in the performance of its obligations under this Lease and the Vendor takes possession of the Units pursuant to the Security Documentation, the Lessee shall have no further obligation for payment of rentals or other amounts or liabilities under this Lease except for amounts incurred or arising as a result of or growing out of acts, events, occurrences,

or possession of the Units prior to the termination of the Lessee's possession thereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit, the rights of the Lessor under this Lease and the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words that may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect set forth in subparagraph (I) F of § 15 hereof in respect of such statement. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Beneficiary for collection or other charges and will be free of expense to the Lessor and the Beneficiary with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Beneficiary in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income

based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the state and city in which the Beneficiary has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein; provided, however, that the Lessee shall not be responsible for the payment of any impositions levied or imposed in connection with any assignment of this Lease other than the Lease Assignment. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Beneficiary or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor and the Beneficiary, adversely affect the title, property or rights of the Lessor and the Beneficiary hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to Article 6 of the Security Documentation, or the Beneficiary shall become obligated to make payment to the Lessor pursuant to any similar provision with respect to taxes in the Trust Agreement, not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional

amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor or the Beneficiary to fulfill completely its obligations pursuant to said provision.

In the event any reports with respect to impositions are required to be made, the Lessee will make such reports in such manner as to show the interest of the Lessor and the Vendor in such Units.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in the Lessor's name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever requested by the Lessor or the Beneficiary, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor and the Beneficiary of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor or the Beneficiary reasonably may require to permit the Beneficiary's compliance with the requirements of taxing jurisdictions.

§ 7. Payment for Casualty Occurrences; Insurance.  
In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 180 consecutive days (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount

equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

<u>Date</u>	<u>Percentage</u>
July 1, 1975	104.01979
January 1, 1976	104.58424
July 1, 1976	105.40280
January 1, 1977	105.77812
July 1, 1977	105.79232
January 1, 1978	105.45179
July 1, 1978	104.76376
January 1, 1979	99.06902
July 1, 1979	97.70922
January 1, 1980	96.02632
July 1, 1980	94.02991
January 1, 1981	87.23940
July 1, 1981	84.94532
January 1, 1982	82.47516
July 1, 1982	79.83734
January 1, 1983	72.36328
July 1, 1983	69.39491
January 1, 1984	66.26365
July 1, 1984	62.97831
January 1, 1985	59.53706
July 1, 1985	55.96038
January 1, 1986	52.25052
July 1, 1986	48.42979
January 1, 1987	44.50098

<u>Date</u>	<u>Percentage</u>
July 1, 1987	40.46276
January 1, 1988	36.30961
July 1, 1988	32.04026
January 1, 1989	27.76185
July 1, 1989	23.53503
January 1, 1990	19.34988
July 1, 1990	15.00000

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 15% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessee shall be entitled to recover possession of such Unit.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment and, in any event, comparable in amounts and against risks insured against by the Lessee in respect of similar equipment owned by it. If the Lessor shall receive any such insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this § 7 without deduction for such insurance proceeds or condemnation payments, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory

to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports. On or before March 31 in each year, commencing with the calendar year 1976, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or are then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced. The Lessor and the Beneficiary shall have the right, by their agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Beneficiary may request during the continuance of this Lease.

The Lessee will furnish to the Lessor and, in duplicate, to the Vendor and will cause the Guarantor to furnish to the Lessor and, in duplicate, to the Vendor (i) within 90 days after the end of each of the first three quarterly fiscal periods of the Lessee and the Guarantor, consolidated balance sheets of the Lessee and the Guarantor and the consolidated subsidiaries of each as of the close of such periods, together with the related statements of income and surplus, all in reasonable detail and certified by the Treasurer of the Lessee and the Guarantor and (ii) within 120 days after the close of each of the fiscal years of the Lessee and the Guarantor, consolidated balance sheets of the Lessee and the Guarantor and the consolidated subsidiaries of each as of the close of such fiscal years, together with the related consolidated statements of income and surplus and source and application of funds for such fiscal years, all in reasonable detail and, in the case of the Lessee, certified by the Lessee's Treasurer, and, in the case of the Guarantor, certified by a recognized national firm of independent public accountants, such certification including their certificates and accompanying comments, and (iii) within 120 days after the close of the fiscal year of the

Lessee, a certificate of the Lessee, signed by a principal financial officer, to the effect that the signer has reviewed the relevant terms of this Lease and the Security Documentation and has made, or caused to be made under his supervision, a review of the transactions and condition of the Lessee during the preceding fiscal year, and that such review has not disclosed the existence during such period, nor does the signer have knowledge of the existence, as at the date of such certificate, of any condition or event which constitutes an Event of Default or which, after notice or lapse of time or both, would constitute an Event of Default or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Lessee has taken or is taking or proposes to take with respect thereto, (iv) promptly upon the filing of the same each year, the annual report of the Guarantor under the Securities Exchange Act of 1934, and (v) from time to time such other information as the Lessor may reasonably request. The Lessee will furnish the Lessor from time to time on request such information as the Lessee or the Lessor may be required to furnish to any person pursuant to the Security Documentation.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the

Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition.

Any and all additions to any Unit (except any communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit

by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body) and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documentation) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself. The Lessee shall not permit any special device or assembly to be attached or affixed to any Unit which may not be readily removed from such Unit without materially impairing such Unit or the value thereof unless such special device or assembly is to be considered an accession to such Unit.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Beneficiary and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities to the extent not covered by the Builder's indemnity contained in Item 4 of Annex A to the Security Documentation, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default or an Event of Default under the Security Documentation or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

At the request of the Lessor, the Lessee will prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by

reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for four days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements contained herein or in the Guaranty Agreement by the Lessee or the Guarantor, respectively, and such default shall continue for 25 days after written notice from the Lessor or the Vendor to the Lessee and/or the Guarantor specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

E. any other proceedings shall be commenced by or against the Lessee or the Guarantor for any relief

which includes, or might result in, any modification of the obligations of the Lessee hereunder, or of the Guarantor under the Guaranty Agreement, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder, or of the Guarantor under the Guaranty Agreement), and unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, or of the Guarantor under the Guaranty Agreement, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or the Guarantor or for the property of the Lessee or the Guarantor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free

from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6.595% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Beneficiary in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Beneficiary, be equal to all or such portion of the Investment Credit (as defined in § 17 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Beneficiary as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease or any inaccuracy of the assumptions contained in § 17 hereof resulting by reason of an Event of Default under this Lease or

the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause the Beneficiary's net return under this Lease to be equal to the net return that would have been available to the Beneficiary if it had been entitled to utilization of all or such portion of the ADR Deduction and the Interest Deduction (as such deductions are defined in § 17 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, any inaccuracy of the assumptions contained in § 17 hereof resulting by reason of an Event of Default under this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Beneficiary for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall

forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner and at the usual speed place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9, 10 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively).

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; provided, however, that the Lessee shall not use or permit the use of any Unit outside the United States of America. The Lessee may receive and retain compen-

sation for such use from other railroads so using any of the Units. The Lessee represents and warrants to the Lessor and the Vendor that the Units will be used, and are intended for use, in connection with interstate commerce.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Renewal Option; Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for one additional five-year period commencing on the scheduled expiration of the original term of this Lease at a rental equal to the lesser of (a) a "Fair Market Rental" payable in semiannual payments on January 1 and July 1 in each year of such extended term, and (b) a rental payable in semiannual payments on January 1 and July 1 in each year of such extended term, each such payment being in an amount equal to 2.6500% of the Purchase Price of each Unit then subject to this Lease.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall

be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

The Lessor agrees that (provided no default hereunder shall have occurred and be continuing) it will not sell the Units, or any of them, unless the Lessor shall have given the Lessee at least 30 business days' prior written notice of such sale, specifying the sale price and terms of such sale, and, within such 30-day period, the Lessee shall not have agreed in writing to purchase such Unit or Units at the same price and on the same terms as specified in such notice. The foregoing right of the Lessee shall expire 90 days after the termination of this Lease or any renewal thereof.

Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by

the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such bill or bills of sale. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; provided, however, that the foregoing clause shall not in any way affect the survival of the indemnities of the Lessee under this Lease which continue after the termination of the Lease or relieve the Lessee of its obligations pursuant to § 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. Opinion of Counsel. The Lessee represents and warrants that:

On each Closing Date (as defined in the Security Documentation) the Lessee will deliver to the Lessor

(I) two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, and for the benefit also of the Beneficiary, to the effect that:

A. the Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of Arizona and is duly qualified and authorized to do business wherever necessary to carry on its present business and operations and to own its properties and to perform its obligations under this Lease and the Consent;

B. the Lessee has the full corporate power, authority and legal right to enter into and perform its obligations under this Lease and the Consent and the execution, delivery and performance of this Lease and the Consent have been duly authorized by all necessary corporate action on the part of the Lessee, do not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of the Lessee, or such required approvals and consents have heretofore been duly obtained, certified copies thereof having been delivered to the Lessor, and do not contravene any law binding on the Lessee or contravene the certificate of incorporation or by-laws of the Lessee or any material indenture, mortgage, contract or other agreement of which such counsel has knowledge, to which the Lessee is a party or by which the Lessee is bound as guarantor or otherwise, or any law, governmental rule, regulation or order;

C. neither the execution and delivery by the Lessee of this Lease and the Consent, nor the consummation of any of the transactions by the Lessee contemplated hereby or thereby, requires the consent or approval of, the giving of notice to, or the registration with, or the taking of any other action in respect of, the Interstate Commerce Commission or any other Federal, state or foreign governmental authority or agency, except the filing and recording of such document with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act;

D. to the knowledge of such counsel, there are no pending or threatened actions or proceedings before any court or administrative agency which will materially adversely affect the condition, business or operations of the Lessee and its subsidiaries, taken as a whole, or the ability of the Lessee to perform its obligations under this Lease and the Consent;

E. this Lease and the Consent have been duly authorized, executed and delivered by the Lessee and constitute legal, valid, binding and enforceable agreements of the Lessee;

F. the Security Documentation, the Assignment, this Lease, the Lease Assignment and the Consent have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government or agency thereof is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units in the United States of America; and

G. to the knowledge of such counsel, no mortgage, deed of trust, or other lien of any nature whatsoever, presently in effect, which now covers or affects or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; provided, however, that such liens may attach to the leasehold interest of the Lessee hereunder in and to the Units; and

(II) two counterparts of the written opinion of counsel for the Guarantor, addressed to the Lessor and the Vendor, and for the benefit also of the Beneficiary, to the effect that:

A. the Guarantor is a corporation legally incorporated and validly existing, in good standing,

under the laws of the State of Nevada, with adequate corporate power to enter into the Guaranty Agreement;

B. the Guaranty Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes a legal, valid and enforceable agreement binding upon the Guarantor;

C. no approval is required of any governmental agency or public regulatory body with respect to the entering into or performance of the Guaranty Agreement by the Guarantor, or, if any such approval is required, it has been duly obtained; and

D. the entering into and performance of the Guaranty Agreement will not result in any breach of, or constitute a default under, any material indenture, mortgage, deed of trust or other agreement or instrument to which the Guarantor is a party or by which it may be bound and of which such counsel has knowledge.

In giving the opinions specified in subparagraphs I(E) and II(B) of this § 15, counsel may qualify any opinion to the effect that any agreement is a legal, valid, binding and enforceable instrument by (i) a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) stating that no opinion is expressed that any particular provision of such agreement is specifically enforceable other than an obligation to pay money.

§ 16. Recording. The Lessee, at its own expense, will cause this Lease, the Lease Assignment, the Security Documentation and the Assignment to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments (except an instrument in connection with an assignment of this Lease or the Security Documentation other than the assignments under the Lease Assignment and the Assignment)

required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation, the Lease Assignment or the Assignment; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 17. Federal Income Taxes. As between the Beneficiary and the Lessee, the Beneficiary, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, (a) the depreciation deduction with respect to the Units authorized under section 167 of the Code, (b) deductions pursuant to section 163 of the Code with respect to interest payable under the Security Documentation (such deductions being herein called the Interest Deduction) and (c) the investment credit pursuant to section 38 and related sections of the Code (herein called the Investment Credit) with respect to the Purchase Price of the Units.

For purposes of this § 17, the term "Beneficiary" shall include any affiliated group, within the meaning of section 1504 of the Code, of which the Beneficiary is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing which would increase the amount of rentals required to be taken into income by the Beneficiary over the amount specified to be payable under this Lease on the dates due hereunder and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Beneficiary such records as will enable the Beneficiary

to determine the extent to which it is entitled to the benefit of the Investment Credit and the ADR Deduction (hereinafter defined) with respect to the Units.

The rental payable hereunder has been calculated on the assumptions that (i) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under section 50 of the Code; (ii) at the time the Beneficiary becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code and at the time the Beneficiary becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Beneficiary; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code, and the Lessee will not at any time during the term of this Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of section 48(a) of the Code; (iv) for Federal tax purposes all amounts includible in the gross income of the Beneficiary with respect to the Units will be treated as derived from, or allocable to, sources within the United States; (v) the Beneficiary will be entitled to the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code based on the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25 in accordance with section 167(m) of the Code, employing the double-declining method of depreciation, and switching to the sum-of-the-years-digits method when most beneficial to the Beneficiary (such deduction being herein called the ADR Deduction); (vi) the Beneficiary will be entitled to a 7% Investment Credit in 1975 with respect to the Purchase Price of the Units; and (vii) the Equipment will have a value at the termination of this Lease or any extension thereof, when discounted to present value at 6%, of at least 5% of the Purchase Price thereof and a useful life at the termination of this Lease or any extension thereof of at least two years. The Lessee will maintain sufficient records to verify the use of the Units during the term of the Lease, which records will be furnished to the Beneficiary within 30 days after receipt of a written demand therefor.

If (a) by reason of the inaccuracy in law or fact

of any of the assumptions set forth above or the retroactive repeal, modification, amendment or other change of or to any law or any regulation issued thereunder (except as a direct or indirect result of the occurrence of any Excluded Event set forth below) prior to the Lessor's obtaining a favorable ruling (herein called the Ruling) from the Internal Revenue Service as to the Beneficiary's being the owner of the Units and as to the Beneficiary's right to claim the Investment Credit, the ADR Deduction and the Interest Deduction, the Beneficiary shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture (any such event being hereinafter called a Loss), all or any portion of the Investment Credit, the ADR Deduction, or the Interest Deduction (hereinafter each called a Benefit) with respect to all or part of any Unit or (b) subsequent to the receipt of the Ruling, the Beneficiary shall incur a Loss with respect to any Unit due to (x) the inaccuracy of any statement in any letter or document furnished to the Beneficiary by the Lessee (or any officer, agent or employee thereof or of any affiliated company thereof) in connection with the application for the Ruling, (y) the noncompliance by the Lessee with any provision of the third paragraph of this § 17 or (z) the use of any Unit by the Lessee in a manner inconsistent with the Beneficiary's claim to the Investment Credit and the ADR Deduction, then in any such case the rental rate applicable to such Unit set forth in § 3 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Benefit cannot be claimed by the Beneficiary, or (if claimed and then disallowed or required to be recaptured) on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit as, in the reasonable opinion of the Beneficiary, will cause the Beneficiary's net return in respect of such Unit under this Lease to equal the net return (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit under this Lease that would have been available if the Beneficiary had been entitled to utilization of all of the Benefits, and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest or penalty which may be assessed by the United States against the Beneficiary attributable to the disallowance, recapture or loss of all or any portion of the Benefit; provided, however, that such rental rate shall not be so increased and such additional rental will not be paid if the Beneficiary shall have lost,

or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of any Benefit with respect to all or part of such Unit as a direct or indirect result of the occurrence of any of the following events (hereinafter called Excluded Events):

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor or the Beneficiary of any interest in such Unit or the voluntary reduction by the Lessor or the Beneficiary of its interest in the rentals from such Unit under this Lease unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Beneficiary to properly claim in a timely manner the Investment Credit, the ADR Deduction or the Interest Deduction; or

(iv) the failure of the Beneficiary to have sufficient liability for Federal income tax against which to credit the Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction, as applicable.

In the event that, due to a change in any law in respect of Federal income taxes (except for a change, as described below, in the tax rates provided in section 11 of the Code and/or a change, as described below, in the rate of the Investment Credit) or in any regulation issued thereunder, the Beneficiary's net return under this Lease shall be increased or retroactively decreased, then the rental rates set forth in § 3 hereof shall be increased (but only for the period for which any such change shall be applicable retroactively) or decreased by such amount as, in the reasonable opinion of the Beneficiary, will cause the Beneficiary's net return under this Lease to equal (but in the case of a law change which results in a retroactive decrease in net return, only for the retroactive period) the net return (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) that would have been available to the Beneficiary (assuming the Beneficiary's ability to fully utilize the same) had such law or regulation not changed; provided, however, that no such change shall reduce the amount of rentals below that which is necessary to

satisfy the obligation of the Lessor to pay the Purchase Price, and interest thereon, for the Units under the Security Documentation, notwithstanding any limitation of liability of the Lessor contained therein. If the Beneficiary is able to claim and take advantage of the Investment Credit at a rate greater than 7%, then the rental rates set forth in § 3 hereof shall be decreased to an amount that will permit the Beneficiary and the Lessee to share equally in the benefit of such increase in the rate of the Investment Credit; provided, however, that no such change shall reduce the amount of rentals below that which is necessary to satisfy the obligation of the Lessor to pay the Purchase Price, and interest thereon, for the Units under the Security Documentation, notwithstanding any limitation of liability of the Lessor contained therein. If the aggregate Federal income tax rate for corporations is changed for the year 1975 from the 48% provided by section 11 of the Code, then the rental rates set forth in § 3 hereof shall be adjusted to an amount that, in the reasonable opinion of the Beneficiary, will cause the Beneficiary's net return for the year 1975 under this Lease to equal the net return for 1975 (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) that would have been available to the Beneficiary had such aggregate Federal income tax rate not changed, provided, however, that no such change shall reduce the amount of rentals below that which is necessary to satisfy the obligation of the Lessor to pay the Purchase Price, and interest thereon, for the Units under the Security Documentation, notwithstanding any limitation of liability of the Lessor contained therein. No change in such aggregate Federal income tax rate, other than the change described in the immediately preceding sentence, shall result in a change in the rental rates set forth in § 3 hereof. In the event the rental rates shall be adjusted as hereinbefore provided, the Casualty Values set forth in § 7 hereof and the damages and amounts set forth in subparagraph (b) of § 10 hereof shall be adjusted accordingly; provided, however, that no such adjustment shall reduce the amount payable by the Lessee in consequence of a Casualty Occurrence in respect of a Unit below the amount necessary to satisfy the obligation of the Lessor to pay the Casualty Value (as defined in the Security Documentation) of such Unit under the Security Documentation, notwithstanding any limitation of liability of the Lessor contained therein.

The Lessor may, but is not required to, apply for and seek the Ruling. The Lessee will furnish such docu-

ments, records and representations as shall be deemed necessary and appropriate for any such request by the Lessor.

For purposes of this § 17 and clause (iii) of subparagraph (b) of § 10 hereof, if an amount is to be determined "in the reasonable opinion of the Beneficiary" and the Lessee disagrees with the Beneficiary's determination of such amount, then the determination of such amount shall be made by a third party acceptable to both the Lessee and the Beneficiary; provided, however, that until such third party shall have made a determination, the Beneficiary's determination shall govern.

§ 18. Interest on Overdue Rentals. Anything to the contrary herein notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 11-3/4% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid and addressed as follows:

(a) if to the Lessor, at 130 South LaSalle Street, Chicago, Illinois 60690, with a copy to the Beneficiary at 220 East 42nd Street (Suite 3005), New York, N. Y. 10017, Attention of John F. Duncan, and

(b) if to the Lessee, at P. O. Drawer E, Snowflake, Arizona 85937, Attention of the President;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the

rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 21. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§ 23. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by Exchange National Bank of Chicago or for the purpose or with the intention of binding said bank personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Beneficiary or on account of any representation, undertaking or agreement of the Lessor or the Beneficiary, either express or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

§ 24. Agreements for Benefit of Beneficiary. All rights of the Lessor hereunder (including, but not limited to,

its rights under §§ 6, 7, 9, 10 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Beneficiary and any of the Beneficiary's assigns under the Trust Agreement.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

APACHE RAILWAY COMPANY,

by

[Corporate Seal]

\_\_\_\_\_  
Vice President

Attest:

\_\_\_\_\_  
Assistant Secretary

EXCHANGE NATIONAL BANK OF CHICAGO,  
as Trustee,

by

[Corporate Seal]

\_\_\_\_\_  
Senior Vice President

Attest:

\_\_\_\_\_  
Assistant Trust Officer





SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
100-ton highside gondola woodchip car; AAR Mechanical Designation GTS	100	APA 1500-1599

Annex D to  
Conditional Sale Agreement

ASSIGNMENT OF LEASE AND AGREEMENT dated as of January 1, 1975 (hereinafter called this Assignment), by and between EXCHANGE NATIONAL BANK OF CHICAGO, acting as Trustee (hereinafter called the Lessor or the Vendee) under a Trust Agreement dated as of the date hereof with International Paper Equipment Leasing Corporation, and FIRST PENNSYLVANIA BANK N.A., as Agent (hereinafter called the Vendor) under a Finance Agreement dated as of the date hereof.

WHEREAS the Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documentation) with FMC Corporation (hereinafter called the Builder) providing for the sale to the Vendee of such units of railroad equipment (hereinafter called the Units) described in Annex B thereto as are delivered to and accepted by the Vendee thereunder;

WHEREAS the Lessor and Apache Railway Company (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documentation), the Lessor has agreed to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 11 hereof, the Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor as Vendee, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rent-

als, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to comply with the provisions of Paragraphs 1 and 4 of the Finance Agreement (as defined in the Lease) and to satisfy the obligations of the Lessor under the Security Documentation, subject to the limitations contained in the last paragraph of Article 4 of the Security Documentation, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder shall have occurred and be continuing, any balance shall be paid to and retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agree-

ment which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void. At the Lessor's sole cost and expense, the Lessor will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Lessor under the Lease.

4. The Lessor does hereby irrevocably constitute the Vendor the Lessor's true and lawful attorney, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessor's obligations under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. On each Closing Date (as defined in the Security Documentation) the Lessor will furnish the Vendor with an opinion of counsel that this Assignment has been duly authorized, executed and delivered by the Lessor and is a legal and valid agreement binding on the Lessor.

7. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the

interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Arizona, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 22 of the Security Documentation, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as an event of default under the Security Documentation has not occurred and is not then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

EXCHANGE NATIONAL BANK OF CHICAGO,  
as Trustee,

by

\_\_\_\_\_  
Senior Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Trust Officer

FIRST PENNSYLVANIA BANK N.A.,  
as Agent,

by

-----  
Vice President

[Corporate Seal]

Attest:

-----  
Assistant Secretary





Annex E to  
Conditional Sale Agreement

LESSEE'S CONSENT AND AGREEMENT

The undersigned, APACHE RAILWAY COMPANY, an Arizona corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the Assignment of Lease and Agreement dated as of January 1, 1975 (hereinafter called the Lease Assignment), between EXCHANGE NATIONAL BANK OF CHICAGO, acting as Trustee under a Trust Agreement dated as of January 1, 1975 (such agreement being hereinafter called the Trust Agreement and said bank being hereinafter called the Lessor), with International Paper Equipment Leasing Corporation (hereinafter called the Beneficiary), and FIRST PENNSYLVANIA BANK N.A., as Agent (hereinafter called the Agent) under the Finance Agreement referred to in the Lease Assignment, hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment.

As an inducement to the Investor, a party to the Finance Agreement (a copy of which has been delivered to the Lessee), to invest in the Conditional Sale Indebtedness, as that term is defined in the Conditional Sale Agreement referred to in the Lease Assignment, pursuant to which the Lessor is financing its purchase of units of railroad equipment (hereinafter called the Units), which Units the Lessor is leasing to the Lessee pursuant to the Lease; as an inducement to the Lessor to enter into the Lease; as an inducement to FMC CORPORATION (hereinafter called the Builder) to enter into the Conditional Sale Agreement; and in consideration of other good and valuable consideration, the Lessee agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease in respect of the Units leased thereunder, directly to the Agent, the assignee named in the Lease Assignment, at 15th and Chestnut Streets, Philadelphia, Pennsylvania 19101, Attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Agent); it being hereby agreed that

the obligation of the Lessee to pay all the aforesaid Payments is absolute and unconditional except as provided in § 4 of the Lease;

(2) the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Agent were named therein as the Lessor;

(3) the Payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the Lessee might have against the Lessor or otherwise, and the payment thereof to the Agent shall be final and shall not be subject to, and the Lessee hereby agrees to indemnify the Agent against, any liens, charges, security interests or claims of any nature whatsoever resulting from a breach by the Lessee of its obligations under the Lease prior to or pari passu with the right of the Agent to apply such payments as provided in the Lease Assignment;

(4) the Agent shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise;

(5) the Lease shall not, without the prior written consent of the Agent, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof; and

(6) if any Units shall be excluded from the Conditional Sale Agreement pursuant to Article 4 thereof, then the Lessee shall be obligated to purchase such Units and pay the full purchase price therefor, determined as provided in the Conditional Sale Agreement, such payment to be in cash on the delivery of such Units, either directly or, in case the Lessee shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Lessee shall determine and as shall be reasonably acceptable to the Builder.

This Consent and Agreement, when accepted by the

Agent, the Lessor, and the Builder by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Arizona and, for all purposes, shall be construed in accordance with the laws of said State.

APACHE RAILWAY COMPANY,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the first day of January 1975.

FIRST PENNSYLVANIA BANK N.A.,  
as Agent,

by

\_\_\_\_\_  
Vice President

EXCHANGE NATIONAL BANK  
OF CHICAGO, as Trustee,

by

\_\_\_\_\_  
Senior Vice President

FMC CORPORATION,

by

\_\_\_\_\_  
Vice President



Annex F to  
Conditional Sale Agreement

GUARANTY AGREEMENT

GUARANTY AGREEMENT dated as of January 1, 1975, among SOUTHWEST FOREST INDUSTRIES, INC., a Nevada corporation (hereinafter called the Guarantor), EXCHANGE NATIONAL BANK OF CHICAGO, acting as Trustee (hereinafter called the Lessor) under a Trust Agreement dated as of the date hereof with International Paper Equipment Leasing Corporation (hereinafter called the Beneficiary), and FIRST PENNSYLVANIA BANK N.A., acting as agent (hereinafter called the Agent) pursuant to a Finance Agreement dated as of January 1, 1975 (herein after called the Finance Agreement), among the Agent, Apache Railway Company (hereinafter called the Lessee) and the investor referred to therein (hereinafter called the Investor).

WHEREAS the Lessor has entered into a Conditional Sale Agreement dated as of January 1, 1975 (hereinafter called the Conditional Sale Agreement), with FMC Corporation (hereinafter called the Builder), providing for the sale to the Lessor of such units of railroad equipment (hereinafter called the Units) described in Annex B to the Conditional Sale Agreement as are delivered to and accepted by the Lessor thereunder;

WHEREAS the Builder has assigned its interests in the Conditional Sale Agreement to the Agent, acting under the Finance Agreement pursuant to an Agreement and Assignment dated as of January 1, 1975 (hereinafter called the Assignment);

WHEREAS the Lessor and the Lessee, a subsidiary of the Guarantor, have entered into a Lease of Railroad Equipment dated as of January 1, 1975 (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units;

WHEREAS the Lessor has assigned the Lease to the Agent pursuant to an Assignment of Lease and Agreement dated as of January 1, 1975 (hereinafter called the Lease Assign-

ment), by and between the Lessor and the Agent, and the Lessee has consented to the assignment of the Lease to the Agent by execution of the Lessee's Consent and Agreement dated as of January 1, 1975 (hereinafter called the Consent), and in connection with such Consent has agreed to pay to the Agent the Payments (as defined in the Consent); and

WHEREAS as an inducement to the Lessor to enter into the Lease with the Lessee and to lease the Units, or any of them, to the Lessee and as an inducement to the Investor, party to the Finance Agreement (a copy of which has been delivered to the Guarantor), to invest in the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) pursuant to which the Lessor is financing its purchase of the Units, the Guarantor has agreed to guarantee as hereinafter provided all obligations and covenants of the Lessee under the Lease and the Consent;

NOW, THEREFORE, in consideration of the premises and the execution and delivery of the Lease and the Finance Agreement and of other good and valuable consideration and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Guarantor hereby unconditionally guarantees to the Lessor and the Agent the due and punctual payment by the Lessee of all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease due and to be due under the Lease in respect of the Units thereunder, and to the Agent the due and punctual payment of all Payments provided for in the Consent, due and to become due under the Consent, and the due and punctual performance of all other obligations of the Lessee under the Consent, and to the Lessor and the Agent the due and punctual performance of all obligations of the Lessee under the Lease, and to the Builder, as third party beneficiary, the due and punctual performance of the obligations of the Lessee to the Builder under the Consent.

The Guarantor unconditionally agrees that, whenever an attorney is used to enforce this Agreement or to enforce, declare or adjudicate any rights or obligations under this Agreement, whether by suit or by any other means whatsoever, and provided that the Lessor or Agent is afforded or granted any relief, full or partial, all reasonable costs and fees of such attorney shall be payable by the Guarantor.

2. The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever) irrespective of the genuineness, validity, regularity or enforceability of the Lease, the Consent or this Agreement or any conduct of the Lessee and/or the Lessor which might constitute a legal or equitable discharge of a surety or guarantor and irrespective of any circumstances which might limit the recourse of the Agent or the Lessor to the Lessee. The Guarantor hereby waives diligence, presentment, demand for payment, notice of dishonor and protest. No waiver by the Lessor of any of its rights hereunder or under the Lease and no action by the Lessor to enforce any of its rights hereunder or under the Lease or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

No agreement, unless in writing and signed by the Lessor, and no course of dealing between the Lessee and/or the Guarantor and the Lessor shall be effective to change or modify or to discharge in whole or in part this Agreement. No consent or waiver of any rights or powers of the Lessor shall be valid unless in writing and signed by the Lessor.

The Lessor may, without notice to the Guarantor, renew, extend or modify any of the Lessee's obligations without affecting the Guarantor's liability hereunder, which shall be total and absolute.

The Guarantor waives any right to require that any action be brought against the Lessee or any other person before proceeding against the Guarantor hereunder. This Agreement shall not be limited to any specific time or period. Any final judgment recovered by the Lessor against the Lessee with respect to an obligation of the Lessee under the Lease shall be conclusive against the Guarantor insofar as it relates to the payment of money regardless of whether the Guarantor was joined as a party to the action. The Lessor shall use best efforts to give reasonable notice to the Guarantor of the institution by it of any proceedings against the Lessee; provided, however, that notwithstanding any failure to give such notice the obligations of the Guarantor hereunder shall not be affected.

3. The Guarantor hereby acknowledges that it has received copies of the Lease, the Conditional Sale Agreement, the Assignment, the Lease Assignment and the Consent and is

fully aware of all the terms and conditions of each such agreement.

The obligations of the Lessor and the Agent created under the documents referred to in the preceding paragraph shall conclusively be presumed to have been created, contracted or incurred in reliance upon, among other things, this Agreement.

4. Each reference herein to the Lessee shall be deemed to include its successors and assigns. Each reference herein to the Lessor, the Agent and the Builder shall be deemed to include their respective successors and assigns, it being further understood and agreed that as used herein the term "Lessor" also means the Beneficiary. Each reference herein to the Guarantor shall be deemed to include the legal representatives, successors and assigns of the Guarantor, all of whom shall be bound by the provisions of this Agreement.

5. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Nevada.

IN WITNESS WHEREOF, the parties, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals hereunder to be affixed and duly attested, as of the date first above written.

SOUTHWEST FOREST INDUSTRIES, INC.,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

EXCHANGE NATIONAL BANK OF  
CHICAGO, as Trustee,

by

\_\_\_\_\_  
Senior Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Trust Officer

FIRST PENNSYLVANIA BANK N.A.,  
as Agent,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary





STATE OF ILLINOIS, )  
 ) ss. :  
COUNTY OF COOK. , )

On this            day of            1975, before me personally appeared            to me personally known, who, being by me duly sworn, says that he is a Senior Vice President of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said national bank and that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank.

---

Notary Public

[Notarial Seal]

My Commission expires