

14599/B

MILBANK, TWEED, HADLEY & McCLOY

MAR 22 1985 - 10 22 AM

1 CHASE MANHATTAN PLAZA  
NEW YORK, N. Y. 10005

14599 INTERNATIONAL SQUARE BUILDING  
1825 EYE STREET, N.W.  
WASHINGTON, D. C. 20006

INTERSTATE COMMERCE COMMISSION

(212) 530-5000

MAR 22 1985 - 10 22 AM

ALEXANDRA HOUSE  
16 CHATER ROAD  
HONG KONG

CABLE: MILTWEED NEW YORK

5-081A040

RAPIFAX 100:530-521  
I. T. T. 422962, 423893  
W. U. 12-5595

INTERSTATE COMMERCE COMMISSION

COLLEGE HILL  
LONDON EC4R 2RA, ENGLAND

DIRECT DIAL NUMBER  
(212) 530-5648

Date MAR 22 1985

NIPPON PRESS CENTER BUILDING  
2-1 UCHISAIWAI-CHO 2-CHOME  
SHINJUKU-KU, TOKYO 100

14599/B

Fee \$ 40.00

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MAR 22 1985 - 10 22 AM

Washington, D.C.

March 21, 1985

MAR 22 1985 - 10 22 AM

INTERSTATE COMMERCE COMMISSION

Documents for Recordation  
Texasgulf Inc. Railroad Equipment Lease  
Dated as of February 1, 1985

Office of the Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Room 2303  
Washington, D.C. 20423

To Whom It May Concern:

I have enclosed an original and one counterpart of the documents described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code. Each of these documents is a "primary document" as defined in 49 C.F.R. §1177.1(a).

A. Description of Documents to be Recorded

1. Lease of Railroad Equipment dated as of February 1, 1985 between:

The Connecticut National Bank, as Lessor  
777 Main Street  
Hartford, Connecticut 06115

and

Texasgulf Inc., as Lessee  
High Ridge Park  
Stamford, Connecticut 06904

2. Lease Supplement dated as of March 22, 1985 between The Connecticut National Bank, Lessor, and Texasgulf Inc., Lessee.

Albert H. Coons JR.

MAR 27 10 13 AM '85

3. Indenture and Security Agreement dated as of February 1, 1985 among:

The Connecticut National Bank  
as Owner Trustee  
777 Main Street  
Hartford, Connecticut 06115

and

Wachovia Bank and Trust Company, N.A. ✓  
as Indenture Trustee  
301 North Church Street  
Winston Salem, North Carolina 27102

4. Trust Agreement dated as of February 1, 1985 among:

Nichimen America, Inc., as Beneficiary ✓  
1185 Avenue of the Americas  
New York, New York 10036

and

The Connecticut National Bank, as Trustee  
777 Main Street  
Hartford, Connecticut 06115

B. Description of the Railroad Equipment

The leased equipment consists of 134 railroad tank cars as described below:

Type

DOT classification 111A100W1 100-ton,  
non-coiled, 6" polyurethane foam, 3/16"  
soft chlorobutyl rubber lining

Shell Capacity

14,500 gallons

Jacket

All welding 11 guage carbon steel,  
2-piece shell with 3-piece head

Commodity Hauled

Phosphoric acid 54% and/or super  
phosphoric acid 70%

Car Numbers

TGAX 131400-131533

C. Summary of the Documents to Appear in the Index

The following documents relate to the lease of 134 railroad tank cars by Texasgulf Inc., Lessee. The cars are 100-ton capacity, rubber lined tank cars -- car numbers TGAX 131400-131533.

1. Lease of Railroad Equipment dated as of February 1, 1985 between The Connecticut National Bank, Lessor, and Texasgulf Inc., Lessee.
2. Lease Supplement dated March 22, 1985 between The Connecticut National Bank, Lessor and Texasgulf Inc., Lessee.
3. Indenture and Security Agreement dated as of February 1, 1985 among The Connecticut National Bank as Owner Trustee and Wachovia Bank and Trust Company, N.A. as Indenture Trustee.
4. Trust Agreement dated as of February 1, 1985 among Nichimen America, Inc., as Beneficiary and The Connecticut National Bank, as Trustee.

A filing fee of \$40 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to Eric F. Silverman, Esq., Milbank, Tweed, Hadley & McCloy, 1 Chase Manhattan Plaza, New York, New York 10005.

Thank you for your assistance in this matter.

Very truly yours,



Eric F. Silverman

Interstate Commerce Commission  
Washington, D.C. 20423

3/22/85

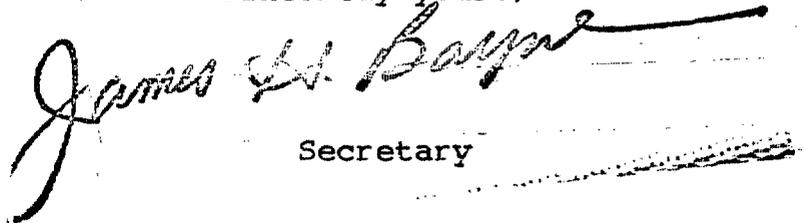
OFFICE OF THE SECRETARY

Eric F. Silverman, Esq.  
Milbank, Tweed, Hadley & McCloy  
One Chase Manhattan Plaza  
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/22/85 at 10:20am and assigned re-  
recording number(s). 14599, 14599-A, 14599-B & 14599-C

Sincerely yours,

  
Secretary

Enclosure(s)

14599

RECORDATION NO. \_\_\_\_\_ FILE 145

MAR 22 1985 10 20 AM

INTERSTATE COMMERCE COMMISSION

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LEASE OF RAILROAD EQUIPMENT

Dated as of February 1, 1985

between

THE CONNECTICUT NATIONAL BANK,  
not in its individual capacity  
but solely as Owner Trustee,

Lessor,

and

TEXASGULF INC.,

Lessee

---

Filed with the Interstate Commerce Commission pursuant to 49  
U.S.C. § 11303 on March 22, 1985, at 10:20 A.M., recordation  
number 14599.

LEASE OF RAILROAD EQUIPMENT

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LEASE OF RAILROAD EQUIPMENT, dated as of February 1, 1985, between THE CONNECTICUT NATIONAL BANK, a national banking association, not in its individual capacity but solely as Owner Trustee under the Trust Agreement (the "Lessor"), and TEXASGULF INC., a Delaware corporation (the "Lessee").

WHEREAS, pursuant to the Participation Agreement the Lessor, subject to the terms and conditions thereof, shall purchase from the Lessee certain rail tank cars more specifically described therein, such purchases to be made on the Closing Date provided for in the Participation Agreement;

WHEREAS, the Lessee desires to lease the Rail Cars at the rentals and for the term and upon the conditions hereinafter provided; and

WHEREAS, in order to secure certain borrowings made by the Lessor to finance a portion of the Purchase Price of the Rail Cars, the Lessor has granted to Wachovia Bank and Trust Company, N.A., a national banking association, acting as the Indenture Trustee under the Indenture, a first and prior security interest in the Equipment and has assigned to the Indenture Trustee this Lease and certain of the payments to be made by the Lessee hereunder.

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, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Lessor hereby leases to the Lessee the Rail Cars sold to the Lessor by the Lessee pursuant to the Participation Agreement upon the following terms and conditions:

Section 1.

DEFINITIONS

All terms defined in the Participation Agreement are used herein with the same meanings assigned thereto therein. The following terms shall have the following meanings for all purposes of this Lease Agreement (as modified, amended or supplemented from time to time) and such meanings shall be equally applicable to both the singular and plural forms of the terms herein defined:

"Basic Rent" means the rent payable for a Rail Car identified as "Basic Rent" and payable pursuant to Section 4.1 hereof.

"Default" means any event which with the lapse of time or the giving of notice, or both, would constitute an Event of Default.

"Equipment" means the Rail Cars, collectively.

"Event of Default" has the meaning specified in Section 14.1 hereof.

"Event of Loss" with respect to any Rail Car means any of the following events with respect to such Rail Car:

(i) such Rail Car shall be or become worn out, lost, stolen, destroyed, or, in the reasonable good faith opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Rail Car is returned pursuant to Section 15 or Section 18 hereof, or (ii) such Rail Car remains in a condition which renders it physically inoperable for a period of six (6) consecutive months, provided that such period shall be extended for a period equal to any period (not to exceed three (3) months) during which such Rail Car cannot be put into operable condition due to strikes, work stoppages or other events beyond the Lessee's reasonable control, or (iii) title to such Rail Car shall be taken by any governmental entity by condemnation or otherwise, or (iv) use of such Rail Car shall be taken or requisitioned by the United States Government or any other governmental entity for an indefinite period or a stated period which shall equal or exceed the then remaining term or renewal term of this Lease, or (v) use of such Rail Car shall be taken or requisitioned by any foreign governmental entity for a stated

period longer than one year or for an indefinite period which shall extend for more than one year, or (vi) as a result of any rule, regulation, order or other action by the United States Government or any agency or instrumentality thereof, the use of such Rail Car in the normal course of interstate rail transportation shall have been prohibited for a continuous period of six months; provided, however, that such a prohibition shall not constitute an Event of Loss if any economically reasonable modification, alteration or other change to such Rail Car would permit such Rail Car to be used in interstate rail transportation.

"Excepted Cars" as of any date means all Rail Cars which shall on such date be located in Canada or Mexico (provided that, if and for so long as the Lessee shall have satisfied the conditions set forth in the third sentence of clause (a) of Section 16.2 hereof to the unrestricted use of Rail Cars in Canada, the term "Excepted Cars" shall not include Rail Cars located in Canada).

"Fair Market Purchase Price" has the meaning specified in Section 17.4 hereof.

"Fair Market Rental" has the meaning specified in Section 17.2 hereof.

"Lease Agreement", "this Lease", "this Agreement", "herein", "hereunder", "hereof", "hereby" or other like words means or refers to this Lease of Railroad Equipment, as this Lease Agreement shall have been originally executed or as modified, amended or supplemented from time to time to the extent permitted by the Indenture, including, without limitation, supplementation hereof by one or more Lease Supplements and any amendments thereto entered into pursuant to the applicable provisions hereof.

"Lease Supplement" means a Lease Supplement substantially in the form of Exhibit A hereto, to be entered into between the Lessor and Lessee for the purpose of leasing Rail Cars under and pursuant to the terms of this Lease Agreement.

"Lessor Liens" means (i) Liens which the Lessor or the Owner Participant is required to discharge pursuant to Section 6.01(a) of the Participation Agreement or (ii) any lien which results from claims against the Lessor or the Owner Participant unrelated to its ownership of, or interest in, the Rail Cars or the transactions contemplated by the Basic Agreements or, in the case of the Lessor, its administration of the Trust Estate.

"Participation Agreement" means the Participation Agreement, dated as of the date hereof, among the Lessee, the Owner Participant, the Lessor, the Loan Participant and the Indenture Trustee, as such Participation Agreement may hereafter

from time to time be modified, amended or supplemented.

"Permitted Liens" has the meaning specified in Section 7 hereof.

"Rail Car" means each of the 14,500 gallon tank cars more specifically listed in Appendix A hereto.

"Rent" means, collectively, Basic Rent and Supplemental Rent.

"Rent Payment Date" means the July 1, October 1, January 1 and April 1 of each year during the Term, commencing July 1, 1985.

"Rental Period" means (i) the period commencing on the Closing Date and ending on (but excluding) the first Rent Payment Date, and (ii) each of the subsequent consecutive three-month periods throughout the Term, such subsequent periods each commencing on the expiration of the immediately preceding period and ending on (but excluding) the next succeeding Rent Payment Date.

"Stipulated Loss Payment Date" with respect to any Rail Car means the Principal Repayment Date next succeeding the date on which an Event of Loss with respect to such Rail Car has occurred or is deemed to have occurred pursuant to Section 8.1 hereof.

"Stipulated Loss Value" has the meaning specified in Section 8.4 hereof; provided however, that in any event the Stipulated Loss Value as of any date shall be at least sufficient to pay in full, as of such date, any payments of principal and interest then required to be made in respect to the Loan Certificates then outstanding.

"Supplemental Rent" means any and all amounts, liabilities and obligations (other than Basic Rent) which the Lessee assumes or agrees to pay to any person hereunder or under any other Basic Agreement, including, without limitation, payments of Stipulated Loss Value and Termination Value and amounts measured by reference thereto and payments pursuant to the Tax Indemnification Agreement and the Participation Agreement.

"Term" means the period commencing upon the Closing Date and, unless sooner terminated in accordance with the provisions hereof, ending on the eightieth (80th) Rent Payment Date.

"Termination Date" with respect to any Rail Car means a Principal Repayment Date which has been specified by the Lessee, pursuant to Section 8.8 hereof, as the date of termination with respect to such Rail Car; provided, however, that no such Termination Date shall occur with respect to any Rail Car prior to April 1, 1995, except that such Termination Date may occur prior to April 1, 1995 (but in no event prior to April 1, 1990),

if, but only if, the Lessee shall have correctly certified in writing to the Lessor that, within the three (3) month period prior to such Termination Date, the Lessee disposed of a number of railroad tank cars used to transport phosphoric acid which when added to the Rail Cars, equal at least 50% of all such cars then owned or leased by the Lessee and shall not have replaced same and has no intention to replace same.

"Termination Value" with respect to any Rail Car means the amount of Stipulated Loss Value (as it may be adjusted from time to time pursuant to the Participation Agreement) of such Rail Car on the Termination Date with respect to such Rail Car plus an amount equal to any prepayment premium payable pursuant to Section 2.10 of the Indenture on such Termination Date in respect of the Loan Certificates to be prepaid by the Lessor on such Termination Date.

## Section 2.

### NET LEASE

This Lease is a net lease. Each of the Lessee's obligations to pay all rentals and other amounts hereunder, under the Tax Indemnification Agreement and under the Participation Agreement shall be absolute and unconditional and the Lessee shall not be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against rent or such other

amounts, 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 Owner Participant, the Indenture Trustee, the holder of any Loan Certificate or any other person or entity, either under this Lease or otherwise; 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 Rail Cars from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Rail Cars, the prohibition of or other restriction against the Lessee's use of all or any of the Rail Cars, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease or any other Basic Agreement, any defect in the title to, compliance with plans or specifications for, condition, design, fitness for use, operation, damage or destruction of all or any of the Rail Cars, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, Lessor or any other person 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 and under the Tax Indemnification Agreement and the

Participation Agreement shall continue to be payable in all events in the manner and at the times herein and therein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease or the Tax Indemnification Agreement or the Participation Agreement. 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 this Lease as to any of the Rail Cars 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 (except for any excess payment made in manifest error) from the Lessor, the Owner Participant, the Indenture Trustee, the Reference Bank, or any holder or former holder of a Loan Certificate for any reason whatsoever.

### Section 3.

#### DELIVERY AND ACCEPTANCE OF RAIL CARS

On the Closing Date, the Lessee shall execute and deliver to the Lessor a Bill of Sale substantially in the form of Exhibit C to the Participation Agreement and a Lease Supplement substantially in the form of Exhibit A hereto relating to the Rail Cars being acquired on such Closing Date by the Lessor pursuant to (and in the manner and subject to the conditions set

forth in) the Participation Agreement. Upon delivery of such Bill of Sale and Lease Supplement, title to the Rail Cars subject thereto shall pass to the Lessor and each such Rail Car shall be deemed to have been delivered to and accepted by the Lessee for all purposes of this Lease and thereupon shall be subject to all of the terms and conditions of this Lease. The Lessee's execution and delivery of the Lease Supplement shall be conclusive proof that the Rail Cars listed therein have been leased to the Lessee subject to the terms hereof.

#### Section 4.

##### RENTALS

4.1. Basic Rent. The Lessee agrees to pay to the Lessor, as rental for each Rail Car subject to this Lease, 80 consecutive quarterly payments of Basic Rent on each Rent Payment Date, commencing on July 1, 1985, to and including April 1, 2005. The installment of Basic Rent due and payable on each January 1 and July 1 shall be in an amount equal to the interest due and payable on such day under the Loan Certificates then outstanding except that the Basic Rent payment due on July 1, 1985 shall not include any amount of interest paid by the Owner Participant pursuant to Section 3.05 of the Participation Agreement. The installment of Basic Rent due and payable on each October 1 and April 1 shall consist of a Fixed Component and a Variable Component, determined as follows: (a) the Fixed Component of each

such installment of Basic Rent shall be an amount equal to that percentage listed in Appendix C hereto opposite the applicable Rent Payment Date multiplied by the aggregate Lessor's Cost of all Rail Cars in respect of which Basic Rent is then payable hereunder and (b) the Variable Component of each such installment of Basic Rent shall equal the aggregate amount of interest due and payable on the Loan Certificates then outstanding on the date on which such installment is payable.

In any event, the Basic Rent payable on any Rent Payment Date shall be at least sufficient to pay in full, as of such Rent Payment Date, any payments of principal and interest then required to be made in respect of the Loan Certificates then outstanding.

The Fixed Component, if any, of each installment of Basic Rent shall be treated as having accrued ratably over the six month period ending on the day preceding the Rent Payment Date on which such Fixed Component is due and payable. All other Basic Rent shall be treated as having accrued over the same period and under the same accrual method as the interest on the Loan Certificate, with respect to which such Basic Rent is measured.

4.2. Adjustments. Each of the foregoing Fixed Components of Basic Rent are subject to adjustments in accordance with the provisions of Section 10 of the Participation Agreement, which

are hereby incorporated into, and made a part of, this Lease.

4.3. Supplemental Rent. In addition to its obligation to pay Basic Rent hereunder, the Lessee shall pay Supplemental Rent to whomever due as and when the same shall become due and owing and in the event of any failure on the part of the Lessee to pay the same when due and owing, the Lessor shall have all rights, powers and remedies provided for herein or at law or in equity or otherwise in the case of nonpayment of Basic Rent. The Lessee also agrees to pay to the Lessor or such other person as shall be entitled thereto, upon demand, as Supplemental Rent, to the extent permitted by applicable law, interest at the Past Due Rate in effect from time to time on (i) any part of any installment of Basic Rent not paid when due for each day for which the same shall be overdue, and (ii) any payment of Supplemental Rent (other than such interest) not paid when due for each day for which the same shall be overdue until the same shall be paid. Any amount refunded to the Owner Trustee pursuant to Section 10.16 of the Indenture shall promptly be paid by the Owner Trustee to the Lessee as repayment of Supplemental Rent to the extent the Lessee had previously paid Supplemental Rent in respect of such amounts so refunded.

4.4. Payments on Nonbusiness Days. If any payment date referred to in Section 4.1, Section 4.2 or Section 4.3 hereof is not a Business Day, the rental payment otherwise payable on such

date shall be payable on the next succeeding Business Day.

4.5. Place of Rent Payment. Except as otherwise provided in Section 16.1, each installment of Basic Rent shall be paid to the Lessor and all amounts of Supplemental Rent shall be paid to the person entitled thereto at such address as the Lessor or such person, as the case may be, shall have provided to the Lessee in writing. If the Lessee shall have been advised by the Indenture Trustee in writing that the Indenture has been terminated in accordance with Section 10.01 thereof, all payments provided for hereunder shall be made to the Lessor in immediately available funds in the manner provided hereunder.

4.6. Payment in Immediately Available Funds; Calculations. The Lessee agrees to make each payment provided for hereunder in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made. All interest, fees and other amounts provided for under this Lease (other than the Fixed Component of Basic Rent) which are to be calculated on an annual basis shall be computed on the basis of a 360-day year for the actual number of days elapsed (including the first day but excluding the last day).

## Section 5.

### TERM OF LEASE

5.1. Beginning and Termination; Survival. The term of

this Lease as to each Rail Car shall begin on the Closing Date under the Participation Agreement and, subject to the provisions of Sections 8, 14 and 17 hereof, shall terminate on the date of the last Rent Payment Date. Notwithstanding anything contained in the preceding sentence to the contrary, the obligations of the Lessee hereunder (including, but not limited to, the obligations under Sections 7, 8, 11, 12, 13 and 18 hereof) shall survive the expiration of the term of this Lease and continue in full force and effect until the same shall have been fully performed by the Lessee.

5.2. Rights and Obligations of Lessee Subject to Indenture. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Rail Cars are subject to the rights of the Indenture Trustee. If an Event of Default under the Indenture should occur, the Indenture Trustee may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term, all as provided therein; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of Section 16.1 hereof and (iii) the Indenture Trustee is entitled to apply the payments received by it pursuant to Section 16.1 hereof in accordance with the Indenture, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession and use provided under

Section 16 hereof.

Section 6.

IDENTIFICATION MARKS

6.1. Identifying Numbers; Legend; Changes. The Lessee will cause each Rail Car to be kept numbered with the identification number as shall be set forth in the Lease Supplement and, within 30 days after the Closing Date and thereafter, the Lessee will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Rail Car, in letters not less than one inch in height, the words "OWNED BY THE CONNECTICUT NATIONAL BANK, AS OWNER TRUSTEE, AND SUBJECT TO A TRUST INDENTURE AND SECURITY INTEREST IN FAVOR OF WACHOVIA BANK AND TRUST COMPANY, N.A., AS INDENTURE TRUSTEE FILED WITH THE INTERSTATE COMMERCE COMMISSION" 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 title to and the Indenture Trustee's interest in such Rail Car and the rights of the Lessor under this Lease and of the rights of the Indenture Trustee under the Indenture. The Lessee will replace promptly any such words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Rail Car unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Indenture

Trustee and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Indenture shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Indenture Trustee and the Lessor an opinion of counsel in form and substance reasonably satisfactory to the Lessor and the Indenture Trustee to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Indenture Trustee's and the Lessor's interests in such Rail Cars and that no other filing, recording, deposit or giving of notice with or to any other Federal, State or local government or agency thereof is necessary to protect the interests of the Indenture Trustee and the Lessor in such Rail Cars.

6.2. Insignia of Lessee. The Rail Cars may be lettered with the names or initials or other insignia customarily used by the Lessee or its permitted sublessees but Lessee will not allow the name of any other person, association or corporation to be placed on any Rail Car as a designation that might be interpreted as a claim of ownership.

#### Section 7.

#### RESTRICTION ON LIENS

The Lessee will not directly or indirectly create, incur, assume or suffer to exist, and will promptly discharge at

its expense, any Lien on or with respect to the Rail Cars, the Trust Estate, the Indenture Estate or any part thereof, title thereto or any interest therein or in this Lease except the following (herein referred to as "Permitted Liens"): (i) the respective rights and interests of the Lessee, the Participants, the Owner Trustee and the Indenture Trustee, as provided in the Basic Agreements, (ii) Liens for taxes either not yet due or being contested by Lessee in good faith by appropriate proceedings and as to which adequate reserves are being maintained in accordance with generally accepted accounting principles, so long as such proceedings do not involve any danger of the sale, forfeiture or loss of any part of the Rail Cars or any interest therein, (iii) materialmen's, mechanics', workmen's, repairmen's or other like Liens arising in the ordinary course of business for amounts the payment of which is either not yet delinquent or is bonded, (iv) Liens arising out of judgments or awards against the Lessee with respect to which at the time an appeal or proceeding for review is being diligently prosecuted in good faith and there shall have been secured a stay of execution pending such appeal or proceeding for review and for the payment of which adequate reserves have been provided, so long as such proceedings do not involve any danger of the sale, forfeiture or loss of any part of the Rail Cars or any interest therein, and (v) Lessor Liens.

Section 8.

PAYMENT FOR EVENT OF LOSS; TERMINATION; INSURANCE

8.1. Event of Loss; Payments. Upon the occurrence of any Event of Loss with respect to any Rail Car or Rail Cars, the Lessee shall promptly (and in any event within 20 days) and fully notify the Lessor and the Indenture Trustee with respect thereto. For purposes of this Section 8.1 and the definition of "Stipulated Loss Payment Date", however, an Event of Loss which occurs five (5) or fewer days prior to a Rent Payment Date shall be deemed to have occurred on such Rent Payment Date. Subject to the provisions of the next paragraph, on the Stipulated Loss Payment Date with respect to the Rail Car or Rail Cars which shall have suffered such Event of Loss, the Lessee shall pay to the Lessor a sum equal to the Stipulated Loss Value of each such Rail Car as of such Stipulated Loss Payment Date, plus the installment of Basic Rent and all other amounts due hereunder in respect of such Rail Car as of such date; provided, however, that if an Event of Loss shall occur during the period that an Event of Default shall be continuing or any Rail Car is being returned or stored pursuant to Section 15 or 18 hereof, then notwithstanding anything else in this Section 8.1 contained, the Lessee shall make such payment of Stipulated Loss Value and all other amounts then due to the Lessor on a date which shall in no event be more than 30 days after such Event of Loss. Upon the making of such payment by the Lessee in respect of any Rail Car,

the Basic Rent for such Rail Car shall cease to accrue as of the applicable Stipulated Loss Payment Date, the term of this Lease as to such Rail Car shall terminate and the Lessor shall be entitled to recover possession of such Rail Car, subject to the right of the Lessee to dispose of such Rail Car as agent for the Lessor as provided in the second paragraph of this Section 8.1.

Following any payment of Stipulated Loss Value by the Lessee, provided that no Default or Event of Default shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all sale proceeds or condemnation or requisition payments in respect of such Rail Car up to the amount of such Stipulated Loss Value, and any excess shall be paid over to, or retained by, the Lessor for its own account. In the event under the circumstances contemplated by the preceding sentence such Rail Car shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation or requisition payments in an amount equal to such Stipulated Loss Value previously paid to Lessor, then, upon notice to the Lessor, the Lessee shall dispose of such Rail Car as agent for the Lessor, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation or requisition payments theretofore received by the Lessee shall equal such Stipulated Loss Value previously paid to the Lessor, and the balance of such proceeds shall be promptly

paid to the Lessor.

8.2. Requisition Not Constituting an Event of Loss. In the event of the requisition for use of any Rail Car which does not constitute an Event of Loss hereunder, all of the Lessee's obligations under this Lease with respect to such Rail Car (including, without limitation, the obligation to make all payments of Basic and Supplemental Rent) shall continue to the same extent as if such requisition had not occurred. All payments received by the Lessor or the Lessee from the United States Government or any other governmental entity for the use of such Rail Car during the term of this Lease (other than a use of such Rail Car constituting an Event of Loss) shall be paid over to, or retained by, the Lessee provided no Default or Event of Default shall have occurred and be continuing.

8.3. Payments After Expiration of Lease. If the date upon which the making of the payment by the Lessee in Section 8.1 hereof in respect of any Rail Car as required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Rail Car, no Basic Rent for such Rail Car shall accrue after the end of such term.

8.4. Amount of Stipulated Loss Value. The "Stipulated Loss" of each Rail Car shall be an amount which shall be equal to the sum of (a) that percentage of the Lessor's Cost of such Rail Car as is set forth in Appendix B hereto opposite the date on

which an installment of Basic Rent is due and payable hereunder next succeeding the actual date of such Event of Loss, or if there is no such payment date, the last date on which an installment of Basic Rent is due and payable hereunder plus (b) the aggregate amount of interest due and payable on such date on the then outstanding Loan Certificates.

8.5. No Release. Except as hereinabove in Sections 8.1 and 8.3 provided with respect to payment of Basic Rent, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Event of Loss to any Rail Car from and after delivery and acceptance thereof by the Lessee hereunder.

8.6. Insurance to Be Maintained. (a) The Lessee will at all times prior to the return of the Rail Cars to the Lessor pursuant to the terms hereof and at the Lessee's own expense, cause to be carried and maintained with financially sound and reputable insurers (i) comprehensive general public liability insurance with respect to the Equipment against third party personal injury and property damage in an amount not less than \$10 million per occurrence or the amount customarily maintained with respect to similar equipment by corporations of established reputation engaged in the same or similar business as the Lessee, whichever amount shall be higher from time to time and (ii) property insurance in respect of the Rail Cars at the time leased

hereunder, said property insurance to be in amounts at least equal at all times to the aggregate Stipulated Loss Value of such Rail Cars as computed on the next succeeding Rent Payment Date; provided, however, that the Lessee may, in the case of property insurance, self-insure such Rail Cars to the extent that such self-insurance is (x) consistent with prudent industry practice and, in any event, (y) in an amount (considered in relation to the then current value of such Rail Cars) no greater than the amount of self-insurance maintained with respect to other similar equipment, if any, then owned or leased by the Lessee (considered in relation to the then current value of such similar equipment); and provided, further, that public liability insurance may provide for such deductibles as are consistent with prudent industry practice. Except as otherwise provided in the provisos to the foregoing sentence, the Lessee will carry such insurance for such risks and with such deductibles as are reasonably satisfactory to the Lessor and the Indenture Trustee and in any event consistent with prudent industry practice and at least comparable in amounts and against risks customarily insured against by the Lessee and corporations of established reputation engaged in the same or similar business as the Lessee. The proceeds of any such insurance shall be payable to the Indenture Trustee (pursuant to a standard mortgagee loss payable clause in the case of property insurance), the Lessor and, so long as no Default or Event of Default shall have occurred and be

continuing, the Lessee, as their respective interests may appear, so long as the Indenture shall not have been terminated in accordance with its terms, and thereafter to the Lessor, and, so long as no Default or Event of Default shall have occurred and be continuing, the Lessee, as their respective interests may appear. All policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice to the Lessor, the Owner Participant, the Indenture Trustee and the holder of any Loan Certificate of cancellation, expiration or material change in coverage, (ii) name the Lessor and the Indenture Trustee and, in the case of public liability insurance, the Owner Participant and the holder of any Loan Certificate as additional named insureds or as loss-payees, as their respective interests may appear and (iii) waive any right to claim any premiums or commission against the Lessor, the Indenture Trustee, the Owner Participant and the holder of any Loan Certificate. Such policies shall not require contributions from other policies held by the Lessor or the Indenture Trustee and shall not be invalidated by any action or inaction of the Lessee or any other person and shall insure the Lessor, the Indenture Trustee, the Owner Participant and the holder of any Loan Certificate regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person. Prior to the Closing Date, and thereafter not less than 30 days prior to the expiration dates of

the expiring policies theretofore delivered pursuant to this Section 8, the Lessee shall deliver to the Lessor, the Indenture Trustee, the Owner Participant and the holder of any Loan Certificates a certificate issued by the insurer(s) for the insurance maintained pursuant to this Section 8; provided, however, that if the delivery of any certificate is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the certificate upon receipt thereof. Prior to the Closing Date and thereafter upon the written request of the Lessor, the Lessee will furnish to the Lessor, the Owner Participant, the Indenture Trustee, the holder of any Loan Certificates a certificate of an independent insurance broker of recognized standing evidencing the maintenance of all insurance required hereunder.

(b) In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest on the amount of the cost to the Lessor of such insurance which the Lessee shall have failed to maintain at the rate per annum specified in Section 20 hereof.

8.7. Insurance Proceeds. If the Indenture Trustee (or the Lessor, if the Indenture shall have been terminated in accordance

with Section 10.01 thereof) shall receive any insurance proceeds in respect of any Rail Cars suffering an Event of Loss, the Indenture Trustee (or the Lessor) shall pay the entire amount of such proceeds to the Lessee; provided, that no Default or Event of Default shall have occurred and be continuing and the Lessee shall have made payment in full of the Stipulated Loss Value thereof and accrued rentals and all other amounts payable by the Lessee in respect of such Rail Car to the Lessor. All insurance proceeds received by the Indenture Trustee (or the Lessor, if the Indenture shall have been terminated in accordance with Section 10.01 thereof) in respect of any Rail Car not suffering an Event of Loss shall be paid to the Lessee upon receipt by the Indenture Trustee (or the Lessor, if the Indenture shall have been terminated in accordance with Section 10.01 thereof) of an Officer's Certificate of the Lessee stating that any damage to such Rail Car in respect of which such proceeds were paid has been fully repaired.

8.8. Optional Termination. In the event that the Lessee shall, in its reasonable judgment evidenced by a written certificate to such effect signed on behalf of the Lessee by an Authorized Officer and delivered to the Lessor and the Indenture Trustee, determine in good faith that all but not less than all of the Rail Cars then subject to this Lease have become either (i) surplus to its product delivery requirements or uneconomic to its needs or (ii) economically obsolete, and that it has

discontinued or intends to discontinue using such Rail Cars, the Lessee shall have the right, at its option and on at least 180 days' prior written notice (or such shorter period as to which Lessor and Lessee may agree) (which notice shall be accompanied by such written certificate) to the Lessor, the Owner Participant, the Indenture Trustee and the holder of any Loan Certificate, to terminate this Lease (a "Termination") with respect to such Rail Cars as of the Termination Date specified in such notice, provided, that (i) no Default or Event of Default shall have occurred and be continuing; (ii) on the Termination Date each such Rail Car shall be in the same condition as if being redelivered pursuant to Section 15 hereof; and (iii) Lessee shall have complied in full with the further provisions of this Section 8.8.

During the period after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of all such Rail Cars, and the Lessee shall at least five business days prior to such Termination Date certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be the Lessee or a corporation or individual affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends to purchase or lease back such Rail Car) submitting such bid. On the Termination Date, the Lessor shall sell, without recourse or warranty, express or implied, except as

to Lessor Liens, all such Rail Cars for cash to the bidder or bidders who shall have submitted the highest bid or bids prior to the Termination Date and shall warrant to such bidder or bidders that the title to such Rail Cars shall be free and clear of all Lessor Liens. The total sale price realized at such sale shall be paid to the Indenture Trustee (for application pursuant to the Indenture) or, if the Indenture shall have been terminated pursuant to Section 10.01 thereof, to the Lessor.

On such Termination Date, the Lessee shall pay to the Indenture Trustee (for application pursuant to the Indenture), or, if the Indenture shall have been terminated pursuant to Section 10.01 thereof, to the Lessor, (i) the excess, if any, of the Termination Value for each such Rail Car computed as of such date over the proceeds of the sale of such Rail Car after the deduction of all expenses incurred by the Lessor under the Lease in connection with such termination and (ii) the Basic Rent payment due on such Termination Date (including all payments with respect to such Terminated Rail Cars) and all other unpaid rental payments, if any, then due under the Lease.

In the event of any such sale and the receipt in immediately available funds by the Lessor or the Indenture Trustee, as the case may be, of the amounts above described in respect of any Rail Cars, the obligation of the Lessee to pay Basic Rent pursuant to Section 4 hereof in respect of such Rail

Cars on each date on which an installment of Basic Rent is due and payable hereunder (as well as all other obligations of the Lessee hereunder in respect of such Rail Cars) shall continue to and including the Termination Date but shall then terminate provided that the Lessee shall have complied with all of the other provisions of this Section 8.8 with respect to such Rail Cars. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all the Lessor's right, title and interest in and to such Rail Cars to the purchasers named in the highest bid or bids certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all the Lessee's rights to such Rail Car, but otherwise shall be made without warranties other than against Lessor Liens.

If no sale shall occur on the date scheduled therefor as provided above, then this Lease shall continue in effect with respect to such Rail Cars as though such election to terminate this Lease with respect thereto had not been made, but in such event the Lessee shall pay all expenses incurred by the Lessor pursuant to this Section 8.8.

## Section 9.

### REPORTS

On or before June 1 in each year, commencing with the calendar year 1986, the Lessee will furnish to the Lessor, the Owner Participant, the Indenture Trustee and each holder of a Loan Certificate who specifically so requests in writing an Officer's Certificate (a) setting forth as at the preceding March 31 the total number, description and identification numbers of all Rail Cars then leased hereunder, the total number, description and identification numbers of all Rail Cars that have suffered an Event of Loss during the preceding calendar year or are then undergoing repairs (other than running repairs), or then withdrawn from use pending repairs (other than running repairs), the total number, description and identification numbers of all Excepted Cars and setting forth such other information regarding the condition and state of repair of the Rail Cars as the Lessor, the Owner Participant, the Indenture Trustee or such holder may reasonably request, (b) stating that, in the case of all Rail Cars repainted or repaired during the period covered by such statement, the numbers and markings required by Section 6.1 hereof have been preserved or replaced, (c) stating that the Lessee is in compliance under the Lease and has performed or has caused to be performed the required maintenance of the Rail Cars and that no Default or Event of Default has occurred, (d) further identifying those Rail Cars to which the Lessee has made

additions and accessions pursuant to Section 12.2 hereof and describing such additions and accessions and the costs thereof. The Lessor, the Owner Participant, the Indenture Trustee and the holder of any Loan Certificate shall each have the right by its agent to inspect the Rail Cars and the Lessee's records with respect thereto at such reasonable times as the Lessor, the Owner Participant, the Indenture Trustee or the holder of any Loan Certificate may request during the continuance of this Lease. On or before June 1 of each year commencing on June 1, 1986, the Lessee will furnish to the Lessor a written report for the twelve month period ending on the immediately preceding March 31 as to the number of days each Rail Car subject to this Lease during such period was used outside the United States.

#### Section 10.

##### DISCLAIMER OF WARRANTIES; WARRANTY OF TITLE

NEITHER THE LESSOR, THE OWNER PARTICIPANT, THE TRUSTEE, THE REFERENCE BANK NOR THE HOLDER OF ANY LOAN CERTIFICATE MAKES OR HAS MADE, OR SHALL BE DEEMED TO MAKE OR HAVE MADE, ANY 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 RAIL CARS DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE LESSOR, THE OWNER PARTICIPANT, THE INDENTURE TRUSTEE, THE REFERENCE BANK NOR THE HOLDER OF ANY LOAN CERTIFICATE MAKES ANY WARRANTY OF MERCHANTABILITY OF FITNESS

OF THE RAIL CARS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE RAIL CARS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY RAIL CAR, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as among the Lessor, the Owner Participant, the Indenture Trustee, the Reference Bank, the holder of any Loan Certificate 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 manufacturer of each Rail Car or any component thereof; 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. Neither the Lessor, the Owner Participant, the Indenture Trustee, the Reference Bank nor the holder of any Loan Certificate shall have any 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 Rail Cars 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 Rail Cars 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 Rail Cars. The Lessee's delivery of a Bill of Sale as described in Section 3 hereof shall be conclusive evidence as between the Lessee and the Lessor that the Rail Cars 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, the Owner Participant, the Indenture Trustee, the Reference Bank or the holder of any Loan Certificate based on any of the foregoing matters. The Lessor warrants that, upon its leasing of the Rail Cars to the Lessee pursuant to this Lease, title to the Rail Cars shall be of the same quality as was conveyed to the Lessor. The Lessor covenants that, during the term of this Lease, or during any renewal term thereof, the Lessor shall not create or suffer or permit any Lessor Liens attributable to it on the Rail Cars and, should any such Lessor Lien arise during the term of this Lease or during any renewal term thereof, the Lessor shall promptly discharge all such Lessor Liens.

During any renewal term of this Lease and only if the Indenture has been terminated according to its terms, the Lessor may create or permit Liens on the Rail Cars, provided, that no such Lien shall materially effect Lessee's operation or use of

the Rail Cars during such renewal term.

Section 11.

LAWS AND RULES

11.1. Compliance. The Lessee agrees, for the benefit of the Lessor, the Owner Participant and the Indenture Trustee, to comply in all material respects, either individually or in the aggregate (including, without limitation, with respect to the use, maintenance and operation of each Rail Car), with all laws of the jurisdictions in which its operations involving the Rail Cars may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Rail Cars, to the extent that such laws and rules affect the title, operation or use of the Rail Cars, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Rail Car, 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 Indenture Trustee, adversely affect the property or rights of the Lessor or the Indenture Trustee under this Lease or under the Indenture or result in any

liability, criminal or otherwise, on the part of the Lessor, the Owner Participant, the Indenture Trustee, the holder of any Loan Certificate or the Reference Bank.

11.2. Reports by Lessee. The Lessee agrees to prepare and deliver to the Lessor and the Indenture Trustee within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor and the Indenture Trustee) any and all reports (other than income tax returns) to be filed by the Lessor or the Indenture Trustee with any Federal, State or other regulatory authority by reason of the ownership by the Lessor or the Indenture Trustee of the Rail Cars or the leasing thereof to the Lessee. The Lessor and the Indenture Trustee each agree to inform the Lessee of any request for such reports received by it.

## Section 12.

### MAINTENANCE

12.1. Rail Cars in Good Operating Order. The Lessee agrees that, at its own cost and expense, during the Term of this Lease with respect to each Rail Car it will maintain and keep such Rail Car (including any parts installed on or replacements made to such Rail Car and considered an accession thereto as hereinbelow provided) fit for its intended purpose, in compliance with all manufacturer's mandatory safety bulletins, in good operating

order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the interchange rules of the Association of American Railroads or other applicable regulatory body, and in at least as good condition as other similar equipment owned or leased by the Lessee.

12.2. Additions and Accessions. (a) Subject in all events to Sections 11.1 and 12.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Rail Cars during the term of this Lease as are readily removable without causing material damage to the Rail Cars (and do not adversely and materially affect the value of the Rail Cars). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with Section 12.2(b) hereof.

(b) Any and all parts installed on and additions and replacements made to any Rail Car (i) which are not readily removable without causing material damage to such Rail Car and were installed or were added to such Rail Car in contravention of the Lessee's agreements contained in Section 12.2(a) hereof, (ii) the cost of which is included in the Lessor's Cost of such Rail Car, (iii) in the course of ordinary maintenance of the Rail Cars

or (iv) which are required by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body, for the operations or use of such Rail Car in railroad interchange, shall constitute accessions to such Rail Car and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Indenture and Lessor Liens) shall immediately be vested in the Lessor, and the Lessee shall comply with all provisions of Section 19 hereof applicable to such accessions.

#### Section 13.

#### INDEMNIFICATION

13.1. All of the provisions of Sections 7 and 8 of the Participation Agreement are hereby incorporated herein as though set forth at length herein.

#### Section 14.

#### DEFAULT

14.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal hereof, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur (whatsoever

the reason for its occurrence, whether the same shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, order or decree of any court or any other rule or regulation of any administrative commission, agency or authority):

(1) default shall be made in payment of any amount provided for in §4, 8 or 17 hereof, and such default shall continue for 5 Business Days;

(2) default shall be made in payment of any Supplemental Rent provided for in this Lease (other than payments of Stipulated Loss Value or Termination Value), and such default shall continue for 20 days after the same shall become due;

(3) any other payments from the Lessee under the Participation Agreement, this Lease or any other of the Basic Agreements shall not be made within 5 days after written notice to the Lessee from the Lessor, the Owner Participant, the Indenture Trustee or any holder of a Loan Certificate that the same has not been paid when due;

(4) the Lessee shall make or permit any assignment or

transfer of this Lease, or any interest herein, or of the right to possession of the Rail Cars, or any thereof except as expressly permitted by Section 16.2 hereof;

(5) the Lessee shall at any time fail to maintain in full force and effect insurance in accordance with all of the provisions of Section 8.6 hereof;

(6) default shall be made in the observance or performance of any of the covenants, conditions or agreements on the part of Lessee contained in Sections 14.4, 16.2, 16.3 and 19 hereof;

(7) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in any Basic Agreement and such default shall continue for 30 days after written notice from the Lessor, the Owner Participant, the Indenture Trustee or the holder of any Loan Certificate to the Lessee specifying the default and demanding that the same be remedied;

(8) any representation or warranty made by the Lessee herein, in the Participation Agreement or in any

certificate or statement furnished to the Lessor, the Owner Participant, the Indenture Trustee or the holder of any Loan Certificate pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of making thereof;

(9) the Lessee shall make an assignment for the benefits of creditors or shall fail generally to pay its debts as they become due; or any order, judgment or decree shall be entered adjudicating the Lessee bankrupt or insolvent; or the Lessee shall petition or apply to any tribunal for the appointment of a trustee, receiver, custodian or liquidator of the Lessee or of any substantial part of its assets or shall commence any proceedings relating to the Lessee or any substantial part of its assets under any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect; or any such petition or application shall be filed, or any such proceedings shall be commenced, against the Lessee and the Lessee by any act shall indicate its approval thereof, consent thereto or acquiescence therein;

(10) any order, judgment or decree shall be entered

appointing any such trustee, receiver, custodian or liquidator or approving a petition in any such proceedings and such order, judgment or decree shall remain unstayed and in effect for more than 60 days; or any order, judgment or decree shall be entered in any proceedings against the Lessee decreeing its dissolution and such order, judgment or decree shall remain unstayed and in effect for more than 60 days; or

(11) final judgment or judgments for more than an aggregate of \$5,000,000 shall be rendered against the Lessee, and within 90 days after entry thereof such judgment or judgments shall not have been discharged or execution thereof stayed pending appeal, or within 90 days after the expiration of any such stay such judgment or judgments shall not have been discharged.

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; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the

Rail Cars 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, insofar as the Lessee may be lawfully authorized to so permit, where any of the Rail Cars may be located, without judicial process if such can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Rail Cars and thenceforth hold, possess, sell, operate, lease and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Rail Cars for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom (any such proceeds to be first applied to the Lessee's obligations hereunder); 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 as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion, shall specify, (i) a sum, with respect to

each Rail Car, which represents (x) the excess of the present value of installments of Basic Rent hereunder remaining unpaid at the time of such termination, over the then present value of the rental (determined (at the Lessee's expense) by an independent appraiser) to be obtainable for such Rail Car ("present value" in each case to be computed on the basis of a 13.5% per annum discount, computed semiannually for the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated) or, if such Rail Car is sold, the net proceeds of the sale plus (y) 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 or (ii) the sum of (x) an amount, as liquidated damages for loss of a bargain and not as a penalty, equal to the excess, if any, of the Stipulated Loss Value as of the Principal Repayment Date on or next preceding the date of termination (or as of the first Principal Repayment Date, if such termination occurs prior thereto) over the amount determined by an independent appraiser (at the Lessee's expense) to be the fair market sales value of such Rail Car at such time plus (y) any amounts described in clause (i) (y) above; provided, however, that in the event the Lessor shall have sold any Rail Car, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) (x) with respect to such

Rail Car, may demand that the Lessee pay to the Lessor and thereupon the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Stipulated Loss Value for such Rail Car as of the Principal Repayment Date on or next preceding the date of termination (or as of the first Principal Repayment Date, if such termination occurs prior thereto) over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Rail Car.

14.2. Remedies Not Exclusive; Waiver. The remedies provided in this Lease 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. Except as otherwise provided in this Lease, the Lessee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, any other requirements with respect to the enforcement of the Lessor's rights under this Lease and any and all rights of redemption; provided, however, that the Lessor shall use its best efforts to give the Lessee at least ten (10) days' prior notice of the time and place of any proposed sale of any Rail Car under this Section 14.

14.3. Failure to Exercise Rights Is Not Waiver. The failure of the Lessor, the Owner Participant, the Indenture Trustee or the holder of any Loan Certificate 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.

14.4. Notice of Event of Default. The Lessee agrees to furnish the Lessor, the Owner Participant, the Indenture Trustee, and any holder of a Loan Certificate who shall have requested of the Lessee in writing that notice of the type referred to below

be furnished to it, promptly upon any Responsible Officer becoming aware of any condition which constituted or constitutes a Default or an Event of Default, written notice specifying such condition and the nature and status thereof.

#### Section 15.

##### RETURN OF RAIL CARS UPON DEFAULT

15.1. Return of Rail Cars. If this Lease shall terminate pursuant to Section 5.2 or Section 14 hereof, the Lessee shall forthwith deliver possession of the Rail Cars to the Lessor. Each Rail Car so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, shall comply with all laws and rules referred to in Section 11.1, and shall have attached or affixed thereto any addition, modification or improvement considered an accession thereto as provided in Section 12 hereof and shall have removed therefrom if so requested by the Lessor or the Indenture Trustee at the Lessee's expense (i) any addition, modification or improvement which, as provided in Section 12 hereof, is owned by the Lessee and (ii) any insignia permitted pursuant to Section 6.2. For the purpose of delivering possession of any Rail Car or Cars as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including,

but not by way of limitation, to the extent legally required by applicable law, rules or regulations to protect the Lessor's or the Indenture Trustee's interest in the Rail Cars, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Rail Car or Cars have been interchanged or which may have possession thereof) return the Rail Car or Cars and place such Rail Cars upon such storage tracks or other facilities as the Lessor reasonably may designate;

(b) cause such Rail Cars to be stored on such tracks or facilities for a period not to exceed one year at the risk of the Lessee without charge to the Lessor, the Owner Participant, the Reference Bank, the Indenture Trustee or the holder of any Loan Certificate for insurance, rent or storage; and

(c) cause the same to be transported to any reasonable place within the continental United States as directed by the Lessor or the Indenture Trustee.

The assembling, delivery, storage, insurance and transporting of the Rail Cars 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 Rail Cars. During any storage period, the Lessee will, at its own risk, cost and expense, maintain and keep the Equipment in the manner set forth in Section 12.1 and the last paragraph of Section 18 hereof, insure the Rail Cars in accordance with the provisions of Section 8.6 hereof and permit the Lessor or any Person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or other user of any Rail Car, to inspect the same. All amounts earned in respect of the Rail Cars after the date of termination of this Lease whether as a result of an Event of Default or otherwise shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Indenture Trustee (or, upon termination of the Indenture in accordance with Section 10.01 thereof, to the Lessor). In the event any Rail Car is not assembled, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall, in addition, pay to the Indenture Trustee (or, upon termination of the Indenture, to the Lessor) for each day thereafter an amount equal to the per diem equivalent of the Basic Rent for such Rail Car then in effect immediately prior to such termination.

15.2. Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, 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 Rail Car to the Lessor, to demand and take possession of such Rail Car in the name and on behalf of the Lessee from whoever shall be in possession of such Rail Car at the time.

#### Section 16.

##### ASSIGNMENT, POSSESSION AND USE

16.1. Assignment; Consent; Security for the Lessor's Obligation to Holders of Loan Certificates. In order to secure the indebtedness evidenced by the Loan Certificates, the Indenture provides, among other things, for the assignment by the Lessor to the Indenture Trustee of this Lease to the extent set forth therein and for the creation of a security interest in the Indenture Estate referred to therein for the benefit of the Indenture Trustee. The Lessee hereby consents to the assignment by the Lessor of the Lessor's right, title and interest in and to this Lease to the Indenture Trustee pursuant to the terms of, and to the extent set forth in, the Indenture and agrees that, until it receives notice from the Indenture Trustee stating that the Indenture has been terminated in accordance with Section thereof, it will make all payments payable hereunder to the Lessor (other than payments constituting Excepted Payments) to the Indenture Trustee at 321 North Church Street, Winston-Salem,

North Carolina 27102, Attention: Corporate Trust Department or at such other place or to the attention of such person or department as the Indenture Trustee may specify from time to time in writing delivered to the Lessee not less than five Business Days prior to the due date of the payment to be made at the place specified in such writing. The Lessee acknowledges that such assignment and security interest provide for the exercise by the Indenture Trustee of all rights of the Lessor hereunder (other than rights with respect to Excepted Payments and as set forth in the Indenture) to give any consents, approvals, waivers, notices or the like, to make any elections, demands or the like or to take any other discretionary action hereunder and acknowledges receipt of an execution counterpart of the Indenture as in effect on the date hereof.

16.2. Lessee's Rights to Use the Rail Cars, to Permit Use Thereof by Others and to Sublease the Rail Cars. (a) So long as no Event of Default shall have occurred and be continuing hereunder, the Lessee shall be entitled to the possession and use of the Rail Cars in accordance with the terms of this Lease. The Lessee agrees to use or cause the Rail Cars to be used solely within the United States of America except that the Lessee may use or cause the Rail Cars to be used in Mexico and Canada; provided that the aggregate number of Rail Cars so used would not at any time result in the aggregate number of Excepted Cars being greater than 20% of the aggregate number of Rail Cars then

subject to this Lease. Notwithstanding anything contained in the preceding sentence to the contrary, the Lessee may use any or all of the Rail Cars in Canada, provided the Lessee shall have first (i) taken all necessary action to protect the right, title and interest of the Lessor and the Indenture Trustee in the Rail Cars to be so used and (ii) furnished the Lessor, the Owner Participant, the Reference Bank and the Indenture Trustee with appropriate evidence of the taking of such action and with an opinion of Canadian counsel satisfactory to the Lessor, the Owner Participant, the Reference Bank and the Indenture Trustee to the effect that such action is all that is necessary to protect the right, title and interest of the Lessor and Indenture Trustee in such Rail Cars. The Lessee shall not assign its leasehold interest under this Lease in the Rail Cars or any of them to any Person except that the Lessee may assign its rights and obligations under this Lease to any Affiliate of the Lessee provided that the Lessee shall remain secondarily liable as a guarantor or surety in a manner satisfactory to the Owner Trustee, the Owner Participant, the Indenture Trustee and each holder of a Loan Certificate for the performance of all of the duties, obligations, covenants and undertakings under this Lease and the other Basic Agreements of such assignee.

(b) So long as no Event of Default shall have occurred or be continuing hereunder, the Lessee shall be entitled to the quiet and peaceful possession and use of the Rail Cars and

shall be entitled to permit the use of the Rail Cars upon railroad lines in the usual interchange of traffic or pursuant to run-through agreements and to sublease the Rail Cars, but only upon and subject to all the terms and conditions of this Lease and the Indenture and subject to Section 3(vi) of the Tax Indemnification Agreement; provided, however, that no such sublease shall affect the Lessee's obligations hereunder, which shall continue in full force and effect as the obligations of a principal and not of a surety; and provided, further, that the Lessee shall not without the Lessor's prior written consent, which shall not be unreasonably withheld, sublease any Rail Car or permit the sublease of any Rail Car for any period longer than one year and shall not without the Lessor's prior written consent, sublease any Rail Car for a period extending beyond the Term of this Lease as to such Rail Car including, in each case, any rights of renewal granted to any such sublessee, nor shall the Lessee, without the Lessor's prior written consent, sublease any Rail Car or permit the sublease of any Rail Car (i) to any Person who shall then, to the knowledge of the Lessee after reasonable inquiry, be in default with respect to the payment of money under any instrument evidencing indebtedness or with respect to any liability for borrowed money or for the deferred purchase price of property if the aggregate amount of all such indebtedness, liabilities and purchase prices under or with respect to which such Person is then in default exceeds 1% of

such Person's net worth or capital and surplus, or (ii) to any Person who shall then be engaged in any proceedings for relief under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions of indebtedness. The Lessee may receive and retain compensation for the use of any of the Rail Cars from railroads or other entities so using such Rail Cars. Each sublease permitted by this paragraph shall (1) be expressly subject and subordinate to all of the provisions of this Lease and to the rights and remedies of the Indenture Trustee under the Indenture and the Lessor under this Lease in respect of the Rail Cars covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder, (2) shall expressly require the Rail Cars subject thereto to be returned as directed by the Lessor upon notice to such sublessee that an Event of Default shall have occurred and be continuing and (3) shall expressly prohibit any further sublease of the Rail Cars subject thereto. Lessee shall, within fifteen (15) days after the execution of any such sublease extending for a period longer than one year or beyond the term of this Lease, deliver a conformed copy thereof to Lessor and the Indenture Trustee. Notwithstanding anything to the contrary contained hereinabove in this Section 16.2 (b) the Lessee and any sublessee of the Lessee shall have the right to sublease or further sublease any of the Rail Cars, for single trips, to its

respective customers or suppliers and to cause such Rail Cars so subleased or further subleased to be boarded or placarded with the names of the sublessees in accordance with the provisions of demurrage tariffs lawfully in effect.

Section 17.

RENEWAL OPTION; PURCHASE OPTION

17.1. Renewal for Successive Periods. Provided that this Lease has not been earlier terminated and that no Default or Event of Default shall have occurred and be continuing (i) the Lessee may, by written notice delivered to the Lessor not less than 180 days nor more than 360 days prior to the end of the original term of this Lease, elect to extend such term in respect of all but not less than all of the Rail Cars then covered by this Lease for a period of five years (the "first extended term") commencing on the scheduled expiration of such original term, and (ii) the Lessee, if it has elected as aforesaid, may also, by written notice delivered to the Lessor not less than 180 days prior to the end of the first extended term, elect to further extend the term of this Lease in respect of all but not less than all of the Rail Cars then covered hereby for an additional period of five years (the "second extended term") commencing on the scheduled expiration of the first extended term. The amount of rentals for each of the extended lease terms shall be at a "Fair Market Rental" payable in semiannual payments, in arrears, on

each semiannual anniversary of the original term in each year of such extended term. In the event of any such renewal, the Stipulated Loss Value payable in respect of an Event of Loss involving any Rail Car shall be determined by mutual consent of the Lessor and the Lessee, failing which, such Stipulated Loss Value shall, during each year of such extended term, be equal to the Fair Market Purchase Price as of the first day of such year, as determined in accordance with Section 17.2(b) hereof.

17.2. Determination of Fair Market Rental. (a) Fair Market Rental shall be determined for each of the extended terms of this Lease 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 on the assumption that the Rail Cars are in the condition required by Section 18 hereof, and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental.

(b) If, after 30 days from the giving of notice to the Lessor of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Rail Cars, the rental shall be determined in accordance with the criteria set forth in Section 17.2(a) hereof, and if requested by either the

Lessor or the Lessee, the Fair Market Purchase Prices as of the first day of each year of the applicable extended term shall be determined in accordance with the provisions of Section 17.4(a) hereof, by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value or values by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 25 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 25 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association in New York City, New York, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental, and, if requested, the Fair Market Purchase Price as of the first day of each year of the proposed extended term, of the Rail Cars within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental and, if

applicable, Fair Market Purchase Price as of the first day of each year of the proposed extended term by the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Rental and, if applicable, Fair Market Purchase Price as of the first day of each year of the proposed extended term. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and, if applicable, Fair Market Purchase Price as of the first day of each year of the proposed extended term and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

17.3. Purchase Option (a) Provided that this Lease has not been earlier terminated and that no Default or Event of Default has occurred and is continuing hereunder, and provided, further, that the Lessee has not notified the lessor of its intention to extend or further extend the term of this Lease as

described in the first paragraph of this Section 17, then the Lessee may, by written notice delivered to the Lessor not less than 180 days nor more than 360 days prior to the end of the original term or then current extended term hereof, elect to purchase all but not less than all of the Rail Cars then subject to this Lease at a Fair Market Purchase Price (as determined below) payable on the last day of such original or extended term.

(b) Provided that this Lease has not been earlier terminated and that no Default or Event of Default has occurred and is continuing hereunder, upon payment of the Fair Market Purchase Price of the Rail Cars pursuant to an exercise by the Lessee of its option to purchase such Rail Cars under this Section 17.3, the Lessor shall, upon request of the Lessee, execute and deliver to the Lessee, or the Lessee's assignee or nominee, a bill of sale for such Rail Cars such as will transfer to the Lessee or such assignee or nominee title to such Rail Cars, free and clear of all Lessor Liens. Notwithstanding the foregoing, if any Rail Cars so purchased are to be sold to the Lessee under a conditional sale agreement, the Lessor shall have the right to retain a security interest in such Rail Cars until such time as all payments in respect thereof have been made.

17.4. Determination of Fair Market Purchase Price. (a) Fair Market Purchase Price shall be determined for the Rail Cars on the basis of, and shall be equal in amount to, the purchase

price which would obtain in an arm's length transaction between an informed and willing purchaser (other than a dealer in used goods) and an informed and willing seller (other than a dealer) under no compulsion to purchase or sell on the assumption that the Rail Cars are in the condition required by Section 18 hereof, and, in such determination, cost of removal from the location of current use shall not be a deduction from such purchase price.

(b) If, after 30 days from the giving of notice to the Lessor of the Lessee's election to purchase the Rail Cars, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Purchase Price of the Rail Cars, the Fair Market Purchase Price shall be determined in accordance with the criteria set forth in Section 17.4(a) hereof by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such Fair Market Purchase Price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall, within 25 days after such notice is given, appoint a third independent appraiser. If no such third appraiser is appointed within 25 days after such notice is given, either party may apply, to make such appointment, to the American

Arbitration Association in New York City, New York, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Purchase Price of such Rail Cars within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Purchase Price by the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Purchase Price. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Purchase Price and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any such judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

Section 18.

RETURN OF RAIL CARS UPON EXPIRATION OF TERM

(a) Upon the expiration of the original or any extended term of this Lease or any prior termination of this Lease for any reason except pursuant to Section 5.2 or Section 14 hereof, the Lessee shall deliver the Rail Cars, at the risk of the Lessee, to such storage tracks or other facilities selected by the Lessee and shall store such Rail Cars at the expense of the Lessee for a period (the "Free-Storage Period") not to exceed 180 days with respect to each Rail Car, except that the Free-Storage Period shall be reduced for each day, if any, prior to the 180th day preceding expiration of the then current original term or extended term of this Lease on which the Lessee notifies the Lessor in writing that it shall exercise neither its purchase option or, if available, its renewal option hereunder with respect to the Rail Cars. During the Free-Storage Period with respect to each Rail Car, the Lessee will be responsible for insurance with respect to such Rail Car as provided for in Section 8.6 hereof and will permit the Lessor or any Person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Rail Car, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence, gross negligence or wilful misconduct of the Lessee or of its employees or agents, for any injury to, or the death of, any Person

exercising, either on behalf of the Lessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence during any storage period governed by this Section 18.

(b) The Lessee shall notify the Lessor in writing promptly after each Rail Car has been so delivered for storage, such notice to identify such Rail Car and the location thereof.

(c) At the completion of the Free-Storage Period for each Rail Car, such Rail Car shall be moved at the expense of the Lessee onto such storage tracks or other facilities within the continental United States as the Lessor shall specify at the rate of 45 Rail Cars (or such lesser number equal to the number of Rail Cars which have not theretofore been subject to an Event of Loss or not theretofore so moved) during each 30-day period following expiration of the Free-Storage Period applicable to such Rail Car, provided, that if the Lessor shall, prior to such expiration, give the Lessee notice of a date (after such expiration) as to which a greater number of Rail Cars are to be so moved in order that the Lessor may deliver such Rail Cars to a purchaser or lessee, then the Lessee shall move such number of Rail Cars as are specified in such notice onto such tracks or facilities by the date specified in such notice. If such notice specifies delivery of Rail Cars at a rate greater than 45 during each such 30-day period, such notice shall be given at least 90 days prior to the expiration of the Free-Storage Period.

(d) During any such free-storage period the Lessee shall maintain the Rail Cars in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances, but in any event in no less manner than is set forth in Section 12.1 hereof. Each Rail Car moved onto storage tracks or facilities pursuant to paragraph (c) of this Section 18 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and fit for its intended purpose, the standard for ordinary wear and tear to be that wear and tear which would have been suffered by rail cars of the same type which had carried at all times, and over the same period of time, commodities of the kind ordinarily carried in rail cars of such type by common carriers and shall meet all operating standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction, provided that the Lessee shall not be required to make any additions, modifications and improvements which would not be required of the Lessee if the Lessee continued to operate the Rail Cars (but without regard to any limitation contained in this Lease on the Lessee's duty to comply with applicable laws and rules) (ii) have attached or affixed thereto any special device considered an accession thereto as provided in Section 12 hereof and, if requested by the Lessor, have removed therefrom any such device not so considered as accession.

(e) The Lessee shall pay to the Lessor rent for each Rail Car at a rate per Rail Car equal to the daily equivalent per Rail Car of the Basic Rent payable on the Rent Payment Date immediately preceding expiration of the original or extended term of this Lease, as the case may be, for each day following expiration of original or extended term of this Lease during which the Lessee (or any sublessee of the Lessee) uses such Rail Car and for each day following the Free-Storage Period for such Rail Car that such Rail Car is not moved when required pursuant to paragraph (c) of this Section 18.

(f) The assembling, moving, delivery, storage and transporting of the Rail Cars as provided for in this Section 18 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 Rail Cars.

#### Section 19.

#### RECORDING

The Lessee, at its own expense, will cause this Lease, the Trust Agreement, the Indenture, the Lease Supplement and all supplements to the Indenture to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303. The Lessee, at

its own expense, will further cause this Lease and/or appropriate financing statements or continuation statements to be filed and recorded and, from time to time when required, refiled and re-recorded, in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the State of Connecticut (and, if the Lessee changes its chief executive office, in any other state where the Lessee's chief executive office is located) in the same manner as if the Lessor's interest in this Lease represented a security interest and in any other state of the United States of America or the District of Columbia where filing is necessary or reasonably requested by the Lessor, the Owner Participant, the Indenture Trustee or the holder of any Loan Certificate for the purpose of proper protection, to the satisfaction of counsel of the Lessor, the Owner Participant, the Indenture Trustee and the holder of any Loan Certificate, of their interests and rights under this Lease and the Indenture for the purpose of carrying out the intention of this Lease and the Indenture. The Lessee in addition 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 required by law or reasonably requested by the Lessor, the Owner Participant, the Indenture Trustee or the holder of any Loan Certificate for the purpose of proper protection, to their satisfaction, of the Indenture Trustee's,

the Owner Participant's, the Lessor's and any Loan Certificate holder's respective interests in the Rail Cars, or for the purpose of carrying out the intention of this Lease and the Indenture (including without limitation any such filing, registry, depositing or recording required or deemed necessary by the Lessor or Indenture Trustee in connection with the Lessee's compliance with Section 12.2); and the Lessee will promptly furnish to the Indenture Trustee, the Lessor, the Owner Participant and each holder of a Loan Certificate which shall have required the same evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto reasonably satisfactory to the Indenture Trustee, the Owner Participant, the Lessor and each such holder of a Loan Certificate. This Lease and the Indenture shall be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 prior to the delivery and acceptance hereunder of any Rail Car.

#### Section 20.

##### LESSOR'S RIGHT TO PERFORM FOR LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee perform or comply with such agreement, and the amount of the reasonable costs and expenses of the Lessor incurred in connection with such performance or compliance, together with

interest on such amount at the Past Due Rate in effect from time to time shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder.

#### Section 21.

##### 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, addressed as follows:

(a) if to the Lessor to it at 777 Main Street, Hartford, Connecticut 06115, Attention: Bond and Trustee Administration; or

(b) if to the Lessee, at High Ridge Park, Stamford, Connecticut 06904; Attention: Treasurer; or

(c) if to the Owner Participant, the Loan Participant or the Indenture Trustee, at the address therefor shown on Schedule I to, or in Section 13.01 of, the Participant Agreement;

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

Section 22.

SEVERABILITY

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.

Section 23.

EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement and the Tax Indemnification Agreement referred to herein, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Equipment 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.

Section 24.

THIRD-PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Indenture Trustee, the Owner Participant, the Reference Bank and each holder of a Loan Certificate and the permitted successors and assigns of any such person and any party hereto) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

Section 25.

EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument. To the extent, if any, that this Lease or the Lease Supplement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease or such Lease Supplement may be created through the transfer or possession of any counterpart of this Lease or such Lease Supplement other than the original counterpart which shall be identified as the counterpart containing the receipt therefor executed by the

Indenture Trustee on or immediately following the signature page hereof or 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.

Section 26.

LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303.

Section 27.

IMMUNITIES; NO RECOURSE

No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any partner (general or limited), incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any 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 partners,

incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease. The Connecticut National Bank is entering into this Lease solely as trustee for the Owner Participant under the Trust Agreement and not in its individual capacity, and in no case whatsoever shall The Connecticut National Bank (or any entity acting as successor trustee, co-trustee or separate trustee under the Trust Agreement) or the Owner Participant be personally liable on, or for any loss in respect of, any of the statements, representations, warranties, agreements or obligations of the Lessor hereunder, as to all of which the Lessee agrees to look solely to the Trust Estate, except, only in the case of The Connecticut National Bank (or any entity acting as successor trustee, co-trustee or separate trustee under the Trust Agreement), for any loss caused by its own willful misconduct or gross negligence.

#### Section 28.

##### AGREEMENTS FOR BENEFIT OF LESSOR'S ASSIGNS

All rights of the Lessor hereunder (including, but not limited to, its rights under Sections 7, 8, 10, 13, 14, 15, 16 and 18 hereof and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the Indenture Trustee).

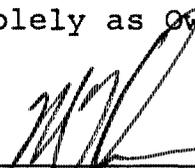
Section 29.

TERM LESSOR

Whenever the term "Lessor" is used in this Lease it shall apply and refer to the Lessor and any assignee of the Lessor (including, so long as any indebtedness evidenced by the Loan Certificates or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Indenture Trustee).

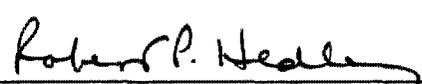
IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

THE CONNECTICUT NATIONAL BANK,  
not in its individual capacity  
but solely as Owner Trustee

By:   
Trust Officer

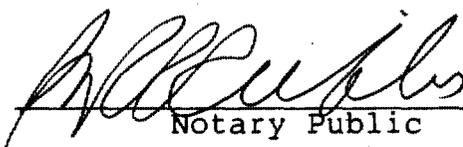
[Seal]

TEXASGULF INC.

By:   
Vice President and Treasurer

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

On the 21<sup>P</sup> day of March, 1985, before me personally came Robert Paul Hedley, known to me to be the Vice President and Treasurer of Texasgulf Inc., that one of the seals affixed to the foregoing instrument is the seal of said Company; that said instrument was signed and sealed on behalf of said Company 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 Company.

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

My commission expires: **BERNICE C. CUMMINGS-UBBLES**  
**Notary Public, State of New York**  
**No. 31-4781983**  
**Qualified in New York County**  
**Certificate filed in New York County**  
**Commission Expires March 30, 1985**

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

On this 21 day of March, 1985, before me personally appeared MICHAEL M. HOPKINS to me personally known, who, being by me duly sworn, says that he is a Trust Officer of The Connecticut National Bank; that one of the seals affixed to the foregoing instrument is the seal of said national banking association; that said instrument was signed and sealed on behalf of said national banking association 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 banking association.

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

My commission expires:

**BERNICE C. CUMMINGS-UBILES**  
Notary Public, State of New York  
No. 31-4781983  
Qualified in New York County  
Certificate filed in New York County  
Commission Expires March 30, 1985

APPENDIX A TO LEASE  
DESCRIPTION OF RAIL CARS AND LESSORS COST

134 New Railroad Tank Cars consisting of:

- 40 - ACF Industries
- 40 - Richmond Tank Car Company
- 54 - Union Tank Car Company

General Specifications:

Type

DOT classification 111A100W1 100-ton, non-coiled,  
6" polyurethane foam, 3/16" soft chlorobutyl  
rubber lining

Shell Capacity

14,500 gallons

Jacket

All welding 11 gauge carbon steel, 2-piece shell  
with 3-piece head

Manufacturing	\$5,962,000
Lining	1,280,000
Freight	202,000
Inspection	33,200
	<hr/>
Total Cost	\$7,477,200
Divided by Number of Cars	<hr/> 134
Lessors Cost	<hr/> \$ 55,800

Car Numbers TGAX 131400 through 131533

APPENDIX B TO LEASE  
STIPULATED LOSS VALUES

<u>Semiannual Rental</u> <u>Payment Dates</u>	<u>Percentage of</u> <u>Lessor's Cost*</u>
From Delivery to	
10/1/85	99.46872
4/1/86	99.23725
10/1/86	98.97943
4/1/87	98.69776
10/1/87	98.38487
4/1/88	98.04377
10/1/88	97.66709
4/1/89	98.10164
10/1/89	98.98237
4/1/90	99.03609
10/1/90	99.57132
4/1/91	99.25594
10/1/91	99.48245
4/1/92	96.76116
10/1/92	96.65070
4/1/93	97.50010
10/1/93	97.02073
4/1/94	95.41596
10/1/94	94.53847
4/1/95	92.72586
10/1/95	90.71198
4/1/96	87.78412
10/1/96	85.57394
4/1/97	82.49626
10/1/97	80.07812
4/1/98	76.84059
10/1/98	74.20025
4/1/99	70.79208
10/1/99	67.91437
4/1/00	64.32404
10/1/00	61.19273
4/1/01	57.40792
10/1/01	54.00568
4/1/02	50.01326
10/1/02	46.32159
4/1/03	41.94024
10/1/03	37.92560
4/1/04	33.72722
10/1/04	29.22563
4/1/05	24.00000

\*If a Casualty Occurrence occurs with respect to any Unit prior to the anniversary date indicated below (based on the actual date of occurrence of the Casualty Occurrence rather than any deemed date of such occurrence with respect to such Unit), the following percentage of Lessor's Cost, which is not included in the above percentages, shall be added to the above table values:

<u>Anniversary of Delivery</u> <u>Date of Unit</u>	<u>ITC</u> <u>Recapture Percentage</u>
First	16.0
Second	12.8
Third	9.6
Fourth	6.4
Fifth	3.2

APPENDIX C TO LEASE

SCHEDULE OF FIXED COMPONENT OF BASIC RENT

<u>Semiannual Rental Payment Dates</u>	<u>Fixed Component of Lessor's Cost</u>
10/1/85	.004068
4/1/86	.004343
10/1/86	.004636
4/1/87	.004949
10/1/87	.005283
4/1/88	.005639
10/1/88	.006020
4/1/89	.006426
10/1/89	.006860
4/1/90	.007323
10/1/90	.007817
4/1/91	.008345
10/1/91	.008908
4/1/92	.009509
10/1/92	.010151
4/1/93	.010836
10/1/93	.011567
4/1/94	.012348
10/1/94	.013182
4/1/95	.013905
10/1/95	.024606
4/1/96	.025428
10/1/96	.026392
4/1/97	.027200
10/1/97	.028229
4/1/98	.029092
10/1/98	.030191
4/1/99	.031112
10/1/99	.032286
4/1/00	.033270
10/1/00	.034524
4/1/01	.035575
10/1/01	.036915
4/1/02	.038036
10/1/02	.039467
4/1/03	.040665
10/1/03	.043034
4/1/04	.045938
10/1/04	.049039
4/1/05	.292349

EXHIBIT A TO LEASE  
OF RAILROAD EQUIPMENT

LEASE SUPPLEMENT NO.

Closing Date:

THIS LEASE SUPPLEMENT is executed and delivered to THE CONNECTICUT NATIONAL BANK, as trustee (the "Lessor"), by TEXASGULF INC. (the "Lessee") pursuant to and in accordance with the Lease of Railroad Equipment dated as of February 1, 1985 between Lessor and Lessee (the "Lease", the defined terms therein being used herein with their defined meanings).

1. The Rail Cars covered by this Supplement consist of those described in the Schedule attached hereto (including identification numbers).

2. The Lessee confirms that the Rail Cars covered hereby have been delivered to it in good working order and condition, and have been inspected and accepted by the Lessee as of the Closing Date set forth above. Notwithstanding the foregoing, nothing contained in this Lease Supplement shall affect any rights the Lessor or Lessee may have against the manufacturer of the Rail Cars or any components thereof.

3. The Lessor's Cost of each of the Rail Cars covered hereby is set forth in the Schedule attached hereto and the aggregate Lessor's Cost for such Rail Cars is \$\_\_\_\_\_.

4. The Lessee hereby: (a) confirms that the Rail Cars covered hereby are of the size, design, capacity and manufacture selected by it and meet the provisions of the applicable purchase agreement with the manufacturer with respect thereto, (b) confirms that the Rail Cars have been marked in accordance with all of the provisions of Section 6.1 of the Lease, (c) confirms that the Rail Cars appear to conform to the modifications, requirements and standards applicable thereto as provided in the Lease and (d) irrevocably accepts said Rail Cars "as-is, where-is" for all purposes of the Lease as of the Closing Date as set forth above.

5. By the execution and delivery of this Supplement by the Lessee, and the acceptance thereof by the Lessor, the Lessee and the Lessor reaffirm all of the terms, provisions and conditions of the Lease.

6. This Lease Supplement may be executed in several counterparts, such counterparts together constituting but one and the same instrument. To the extent, if any, that this Lease Supplement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease Supplement may be created through the transfer or possession of any counterpart of this Lease Supplement other than the original counterpart which shall be identified as the counterpart containing the



(See Section 6 for provisions relating to the security interest of any assignee.)

Uniform Commercial Code Chattel Paper Receipt\*

\*Receipt of this original counterpart of the foregoing Lease Supplement is hereby acknowledged on this \_\_\_ day of March 1985.

WACHOVIA BANK AND TRUST  
COMPANY, N.A.

By: \_\_\_\_\_  
Assistant Vice President

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\* Receipt contained in original counterpart only.

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

On the \_\_\_\_ day of March, 1985, before me personally came Robert <sup>R.</sup>~~Paul~~ Hedley, known to me to be the Vice President and Treasurer of Texasgulf Inc., that one of the seals affixed to the foregoing instrument is the seal of said Company; that said instrument was signed and sealed on behalf of said Company 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 Company.

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

My commission expires: \_\_\_\_\_