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INTERSTATE COMMERCE COMMISSION

[CS&M Ref.: 1240-141]

SUBLEASE OF RAILROAD EQUIPMENT

Dated as of November 15, 1980

Between

EARLY & DANIEL INDUSTRIES, INC.,  
Sublessor,

and

TIDEWATER GRAIN COMPANY,  
Sublessee.

(Covering 50 4,750 CFC Covered Hopper Cars)

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The rights and interests of the Sublessor under this Sublease are subject to a security interest in favor of C.I.T. Financial Services, Inc. The original of this Sublease is held by C.I.T. Financial Services, Inc.

SUBLEASE OF RAILROAD EQUIPMENT dated as of November 15, 1980, between EARLY AND DANIEL INDUSTRIES, INC., an Indiana corporation (the "Sublessor"), and TIDEWATER GRAIN COMPANY, a Pennsylvania corporation (the "Sublessee").

WHEREAS the Sublessee has assigned to C.I.T. Financial Services, Inc. (the "Lessor"), pursuant to a Purchase Agreement Assignment dated as of the date hereof (the "Assignment"), certain of its interest in a purchase agreement (the "Purchase Agreement") between the Sublessee and Pullman Incorporated (Pullman Standard Division) (the "Builder");

WHEREAS the Lessor has accepted said Assignment and proposes to purchase from the Builder such units of railroad equipment described in Schedule A to the Lease (as hereinafter defined) as are delivered and accepted under the terms of the Lease (the "Units");

WHEREAS the Lessor and the Sublessor have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease"), pursuant to which the Sublessor leases from the Lessor such number of Units as are so delivered and accepted under the Lease, at the rentals and for the terms and upon the conditions therein provided;

WHEREAS the Sublessee desires to sublease such number of Units as are leased under the Lease at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS this Sublease will be assigned to the Lessor pursuant to a Sublease Assignment and Agreement dated as of the date hereof (the "Sublease Assignment"), and the Sublessee will consent to the Sublease Assignment pursuant to a Consent and Agreement dated as of the date hereof in the form attached to the Sublease Assignment (the "Consent");

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 Sublessee, the Sublessor hereby leases the Units to the Sublessee upon the

following terms and conditions:

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

§ 2. Delivery and Acceptance of Units. The Sublessor hereby appoints the Sublessee its agent for inspection and acceptance of the Units. The Sublessee will cause its agent (which may be the Sublessor or an employee or

agent of the Sublessor) or an employee of the Sublessee to inspect the same, and if such Unit is found to be acceptable, to execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such Unit has been inspected and accepted on behalf of the Sublessee hereunder and the Lessor and the Sublessor under the Lease on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been accepted by the Sublessee and shall be subject thereafter to all the terms and conditions of this Sublease and the Lease. The Sublessor will cause each Unit to be delivered to the Sublessee at the point or points specified in Schedule A to the Lease. Units shall not be delivered to or accepted by the Sublessee (i) before the documents required to be delivered pursuant to § 15 of the Lease have been delivered, or (ii) subsequent to December 31, 1980.

§ 3. Rentals. The Sublessee agrees to pay to the Sublessor, as rental for each Unit subject to this Sublease, (i) an interim installment of rent payable on January 2, 1981, and (ii) 240 consecutive monthly installments commencing February 1, 1981, with each subsequent installment payable on the first day of each month in each year, to and including January 1, 2001. The interim installment of rent for each Unit shall be in an amount equal to the product of (a) the number of calendar days elapsed from and including the date of acceptance of such Unit to but not including, January 1, 1981, times (b) .0311% of the Purchase Price (as that term is defined in the Assignment) of such Unit and the 240 consecutive monthly rental installments shall be in arrears each in an amount equal to .9325% of the Purchase Price of each Unit then subject to this Sublease.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and all other days on which banking organizations in New York, New York, are authorized or obligated to remain closed.

The Sublessor hereby instructs the Sublessee to make all the payments provided for in this Sublease directly to the Lessor at such address as shall from time to time be specified in writing by the Lessor. The Sub-

lessee agrees to make each payment provided for herein as contemplated by this paragraph in New York Clearing House funds.

§ 4. Term of Sublease. The term of this Sublease as to each Unit shall begin on the date of acceptance of such Unit hereunder and, subject to the provisions of §§ 6, 7, 9, 10, 13 and 16 hereof, shall terminate on January 1, 2001.

All rights and obligations of the Sublessee under this Sublease and in and to the Units are subject to the rights and obligations of the Lessor under the Lease. If an Event of Default should occur under § 10 of the Lease, upon notice of the Lessor to the Sublessor and the Sublessee the participation of the Sublessor under the Sublease shall, without the consent of the Sublessor or the Sublessee, and immediately and without any further action, be terminated, and the Lessor without the further consent and automatically without any further action shall become the Sublessor under this Sublease; and the Sublessor hereby agrees and acknowledges that in such event it shall no longer be a party to this Sublease and that it would no longer have any claim whatsoever to any rental payments paid to the Lessor pursuant to § 3 hereof subsequent to such event.

§ 5. Identification Marks. The Sublessee will, at its own expense, cause each Unit to be kept numbered with the identifying number set forth in Schedule A to the Lease, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Sublease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Owned by C.I.T. Financial Services, Inc." or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto designated by the Lessor as from time to time may be required by law in order to protect the Lessor's title to and property in such Unit and the rights of the Lessor under the Lease and of the Sublessor under this Sublease. The Sublessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or

destroyed. The Sublessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Lessor and filed, recorded and deposited by the Sublessee in all public offices where this Sublease or the Lease shall have been filed, recorded and deposited and (ii) the Sublessee shall have furnished Lessor an opinion of counsel to the effect set forth in subparagraph (i)C of § 15 of the Lease in respect of such statement.

Except as provided in the immediately preceding paragraph, the Sublessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names, trademarks, initials or other insignia customarily used by the Sublessee, the Sublessor, affiliates of either of them or any sublessee under a sublease authorized by § 12 hereof.

§ 6. Taxes. All payments to be made by the Sublessee hereunder will be free of withholdings of any nature whatsoever and free of expense to the Sublessor, the Lessor or any affiliate thereof for collection or other charges and will be free of expense to the Sublessor, the Lessor or any affiliate thereof with respect to the amount of any local, state, Federal or foreign taxes or withholdings (other than any United States Federal net income tax payable by the Sublessor or the Lessor in consequence of the receipt of payments provided for herein and state and local net income taxes payable by the Sublessor or the Lessor to the taxing jurisdiction in which the principal place of business of the Sublessor or the Lessor, as the case may be, is located [other than gross receipts or gross income taxes in the nature of sales or use taxes], except, but only to the extent that, any such tax which is in substitution for or relieves the Sublessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or registration, documentation and license fees, assessments, duties, charges, fines or penalties (all such expenses, taxes, withholdings, registration, documentation and license fees, assessments, duties, charges, fines and penalties being hereinafter called "impositions") hereafter levied, imposed or assessed upon or in connection with or measured by this Sublease,

the Lease or any possession, storage, purchase, sale, rental, use, payment, shipment, acceptance, rejection, delivery or transfer of title under the terms hereof, all of which impositions the Sublessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Sublessee will also pay promptly all impositions which may be levied, imposed or assessed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Sublessor, the Lessor or any affiliate thereof solely by reason of its lease, purchase or ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit (other than liens resulting from claims against the Lessor not related to its ownership or leasing of the Units); provided, however, that the Sublessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Lease. The Sublessor agrees fully to cooperate with the Sublessee in any such contest, which would be at the Sublessee's expense. If any impositions shall have been charged or levied against the Sublessor, the Lessor or any affiliate thereof directly and paid by the Sublessor, the Lessor or any affiliate thereof, the Sublessee shall reimburse the Sublessor, the Lessor or such affiliate, as the case may be, on presentation of an invoice therefor. The obligations of the Sublessee to pay all impositions shall be deemed a rental obligation.

If any imposition is imposed upon the Sublessor, the Lessor or any affiliate thereof, such party shall promptly notify the Sublessee, but failure to provide such notice shall not affect the Sublessee's obligation to pay or reimburse such party for any such imposition, except to the extent the Sublessee is prejudiced by such failure in contesting such imposition. In the event any reports with respect to impositions are required to be made, the Sublessee will either make such reports in such manner as to show the interest of the Lessor in such Units or notify the Lessor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor; provided, however, that if the Lessee is not permitted to make such

The Sublessee's obligations under this § 6 shall be those of a primary obligor whether or not the Lessor or any affiliate thereof, as the case may be, is also indemnified with respect to the same matter by any other person; provided that, if no Event of Default (or event which after notice or lapse of time or both would become an Event of Default) has occurred and is continuing, the Sublessee's obligations under this § 6 shall be reduced by such indemnification actually and unconditionally received by the Lessor or such affiliate, as the case may be.

Any amount payable by the Sublessee pursuant to this § 6 shall be payable directly to the indemnified party entitled to indemnification, except to the extent paid to a governmental agency or taxing authority.

The representations, indemnities and agreements of the Sublessee provided for herein, including without limitation §§ 6, 9 and 16 hereof, and the Sublessee's obligations thereunder, shall survive the expiration or other termination of this Sublease, but only with respect to periods included in the term of this Sublease (including any renewals hereof) and any period during which the Sublessee is required to insure, maintain or store the Units pursuant to §§ 11 and 14 hereof, and are expressly made for the benefit of, and shall be enforceable by, the Sublessor or the Lessor.

§ 7. Maintenance; Payment for Casualty Occurrences; Termination for Economic Obsolescence; Insurance. The Sublessee agrees that, at the Sublessee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the Units which are subject to this Sublease in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for interchange service under the applicable rules of the American Association of Railroads (or any of its successors).

In the event that during the term of this Sublease or until such Unit shall have been returned pursuant to § 14 hereof, any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise under authority of law and such taking or requisition shall have exceeded 120 days or shall extend beyond the term of this Sublease (such occurrences being hereinafter called "Casualty Occurrences"), the Sublessee shall promptly and fully notify the Sublessor and the Lessor with respect thereto. On the rental payment date next succeeding such notice or within 60 days if such Unit is being returned under § 14 hereof the Sublessee shall pay to the

reports on behalf of the Lessor, it will so notify the Lessor and will furnish to the Lessor all information necessary for the Lessor to make such reports. All costs and expenses (including legal and accounting fees) of preparing such reports shall be borne by the Sublessee.

The Sublessee shall, whenever reasonably requested by the Sublessor or the Lessor, submit to the Sublessor or the Lessor copies of returns, statements, reports, billings and remittances with respect to, or furnish other evidence satisfactory to the Sublessor or the Lessor of, the Sublessee's performance of its duties under this § 6. The Sublessee shall also furnish promptly upon request such data as the Sublessor or the Lessor reasonably may require to permit the Sublessor's or the Lessor's compliance with the requirements of taxing jurisdictions, including, but not limited to, data provided on a quarterly basis as to any use of any Unit outside the United States of America.

In the event that the Sublessee shall be required to make any payment with respect to any imposition which is subject to indemnification under this § 6, the Sublessee shall pay the Lessor or any affiliate thereof, as the case may be, an amount which, after deduction of all taxes required to be paid by such person in respect of the receipt thereof under the laws of the United States or any foreign country or political subdivision of either (after giving credit for any savings in respect of any such taxes by reason of deductions, credits (other than the foreign tax credit) or allowances in respect of the payment of the amount indemnified against, and of any other such taxes), shall be equal to the amount of such payment. If the Lessor or any affiliate thereof shall be deemed to utilize a credit against its United States Federal income tax liability on account of any amount payable by the Sublessee pursuant to this § 6, the Sublessor shall promptly pay to the Sublessee the amount of such credit so utilized (but not in excess of the amount previously paid by the Lessor to the Sublessor pursuant to the corresponding provisions of the Lease). For purposes of this § 6, in determining the order in which the Lessor or any affiliate thereof utilizes withholding or other foreign taxes as a credit against its United States income taxes, the Lessor or such affiliate, as the case may be, shall be deemed to utilize (i) first, all credits (whether current, carryback or carryforward and whether foreign tax or other credits) other than those described in clause (ii) below, and (ii) then, on a pro rata basis, all credits for foreign taxes with respect to which the Lessor or any affiliate thereof, as the case may be, is entitled to obtain indemnification pursuant to an indemnification provision contained in any lease or participation agreement or other agreement relating to a lease.

Sublessor an amount equal to the accrued rental in respect of such Unit to and including the date payment is due pursuant to this sentence plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date such payment is due, if payment is due on a rental payment date, and as of the next preceding rental payment date if payment is not due on a rental payment date, in each case in accordance with the schedule set out in Schedule B to the Lease. Upon the making of such payment by the Sublessee in respect of any Unit, the rental for such Unit shall cease to accrue and the term of this Sublease as to such Unit shall terminate. The Sublessor shall, after payment by the Sublessee of a sum equal to the Casualty Value of any Unit which shall have suffered a Casualty Occurrence, and any other amounts then due hereunder, execute and deliver to the Sublessee a bill of sale (without warranties other than against the Sublessor's acts) for such Unit. In the event that any Unit is taken or requisitioned under authority of law as set forth in the first sentence of this paragraph but such taking does not exceed 120 days nor extend beyond the end of the term of this Sublease, the Sublessee shall notify the Sublessor and the Lessor of such taking or requisition and all of the Sublessee's obligations under this Sublease with respect to such Unit, including but not limited to rental with respect thereto pursuant to § 3 hereof, shall continue as if such taking or requisition had not occurred. All payments received by the Sublessor or the Sublessee in respect of such taking or requisition of the use of such Unit during the term of this Sublease shall be paid over to, or retained by, the Sublessee, provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

The Casualty Value of each Unit as of any rental payment date or such other date on which such Casualty Value is payable shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B to the Lease.

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

Notwithstanding any provision contained in this Sublease to the contrary, in the event that the Sublessee shall in its reasonable judgment determine that the Units have become obsolete or surplus to the Sublessee's requirements during the original term of this Sublease, the Sub-

lessee shall have the right at its option, on at least 60 days' prior written notice to the Sublessor and the Lessor, to terminate (subject to the provisions for the survival of certain obligations contained in the last sentence of § 6 hereof) this Sublease on the first rental payment date following the expiration of such notice period (for the purpose of this § 7 called the "termination date"); provided that (i) the termination date is later than seven years after the due date of the interim installment of rent payable pursuant to § 3 hereof, (ii) on the termination date no Event of Default (or other event which after lapse of time or notice or both would become an Event of Default under this Sublease or the Lease) shall have occurred and be continuing, (iii) on the termination date the Units shall be in the same condition as if being returned pursuant to § 14 hereof, and (iv) the Sublessee shall have delivered to the Sublessor a certificate signed by its Chairman of the Board, its President or one of its Vice Presidents to the effect that the Units are surplus or obsolete. During the period from the giving of such notice until the fifth business day preceding the termination date, the Sublessee, as agent for the Sublessor, shall use its best efforts to obtain cash bids for the purchase of the Units, and the Sublessee shall at least five business days prior to such termination date certify to the Sublessor and the Lessor the amount of each such bid and the name and address of the party (which shall not be the Sublessee, the Sublessor or a corporation or individual affiliated with the Sublessor or the Sublessee or any party from whom the Sublessor or the Sublessee or any such affiliate intends thereafter to lease the Units) submitting such bid. On the termination date the Lessor shall, subject to the Sublessee's obtaining, on behalf of the Sublessor and the Lessor, any governmental consents required, sell the Units for cash to the bidder who shall have submitted the highest bid prior to the termination date. The total sales price realized at such sale shall be paid to the Sublessor in immediately available funds and, in addition, on the termination date, the Sublessee shall pay to the Sublessor, (i) the excess, if any, of the Economic Obsolescence Value (as hereinafter defined) in respect of the Units, computed as of the termination date, over the net sales price of the Units after deducting from such sales price any and all costs and expenses whatsoever incurred by the Sublessor in connection with such sale and (ii) the rental payment due on the termination date.

Except as provided in the next paragraph of this § 7, if no sale shall occur on the date scheduled therefor as above provided, this Sublease shall continue in full force and effect. In the event of such sale and the receipt by the Sublessor of the amounts above described,

the obligation of the Sublessee to pay rent pursuant to § 3 hereof in respect of the Units on each rental payment date shall continue to and include the termination date but shall then terminate. Any sale pursuant to this § 7 shall be free and clear of all of the Sublessee's rights to the Units, but otherwise shall be made without warranties other than against Sublessor's and Lessor's acts.

If the Sublessee shall exercise its option to terminate this Sublease, and the Lessor elects to retain the Units pursuant to § 7 of the Lease, in which case the Sublessor shall promptly notify the Sublessee of such election and the Sublessee shall not be obligated to pay any amount determined with reference to the Economic Obsolescence Value to the Sublessor. In the event the Lessor shall so elect to retain the Units, the Sublessee shall deliver the Units to the Sublessor in accordance with the provisions of § 14 hereof.

The Economic Obsolescence Value of each Unit as of any rental payment date after the seventh year after the due date of the interim installment of rent payable pursuant to § 3 hereof of this Sublease shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule C to the Lease.

The Sublessee will procure and maintain at its sole cost and expense at all times during the continuance of this Sublease (and thereafter so long as any Unit is at the risk of the Sublessee), insurance coverage for comprehensive general liability (in limits of at least \$25,000,000 and including contractual liability with respect to the "hold harmless" or indemnification agreement between the Sublessee and the Sublessor contained in § 9 hereof and between the Sublessee and the Lessor contained in said Section and in the Consent), physical damage, theft, fire with extended coverage and any other insurance as may be reasonably required by the Sublessor for the benefit of the Sublessor and the Lessor as their interests appear, in amounts, against risks, in form and with insurance companies or underwriters as shall be satisfactory to the Sublessor and the Lessor from time to time and shall deliver to the Sublessor and the Lessor satisfactory evidence of such insurance coverage; provided, however, that Sublessee shall not be required to maintain physical damage, theft, or fire with extended coverage insurance in an amount in excess of the applicable Casualty Value of the Units; and provided further, however, that the comprehensive general liability insurance may contain a \$1,000,000 deductible provision per occurrence, the physical damage, theft, fire with extended coverage insurance may contain a \$50,000 deductible provision per occurrence. Without

limiting the foregoing, each insurance policy shall provide that it will not be invalidated as against the Sublessor or the Lessor because of any violation of a condition or warranty of the policy or application therefor by the Sublessee and that it may be altered or canceled by the insurer only after 30 days' advance written notice to, and that losses in excess of \$100,000 shall be adjusted only with the consent of, the Sublessor and the Lessor or their respective assigns. All liability policies shall name the Sublessor and the Lessor as an insured. All policies covering loss or damage to the Units shall provide that payment thereunder for any such loss or damage shall be made to the Sublessor, the Lessor and the Sublessee as their interests may appear. If the Sublessee shall fail to provide and furnish any of said insurance, the Sublessor or the Lessor may, after reasonable notice to the Sublessee and a reasonable opportunity, under the circumstances, to correct or provide such insurance procure such insurance and the Sublessee shall, upon demand, reimburse the Sublessor or Lessor for all outlays for such insurance with interest thereon computed at the rate of 18% per annum or such lesser maximum rate as is permitted by applicable law. The Sublessee may provide for any such insurance under blanket insurance policies maintained by the Sublessee with respect to other properties owned or leased by it.

Any insurance proceeds as the result of insurance carried by the Sublessee or condemnation payments received by the Sublessor or the Lessor in respect of Units suffering a Casualty Occurrence or other payments received by the Lessor or the Sublessor in respect of the value of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Sublessee to the Sublessor in respect of Casualty Occurrences pursuant to this § 7, provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing. If the Sublessor shall receive any such insurance proceeds, any such condemnation payments or such other payments after the Sublessee shall have made payments with respect to a Unit pursuant to this § 7 without deduction for such insurance proceeds, such condemnation payments or such other payments, the Sublessor shall pay all such insurance proceeds with respect to a Unit to the Sublessee and shall pay such condemnation payments or such other payments to the Sublessee up to an amount equal to the Casualty Value paid by the Sublessee with respect to a Unit, provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, and any balance of such condemnation payments or such other payments shall

be the property of the Lessor. All insurance proceeds received by the Sublessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Sublessee upon proof satisfactory to the Sublessor and the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired, provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

§ 8. Reports. On or before September 30 in each year, commencing with the calendar year 1981, the Sublessee will furnish to the Sublessor and the Lessor an accurate statement (a) setting forth as at the preceding May 31 the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding fiscal year (or since the date of this Sublease in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Sublessor or Lessor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced. The Sublessor and the Lessor shall have the right by their agents, to inspect the Units and the Sublessee's records with respect thereto at such reasonable times as the Sublessor or the Lessor may request during the continuance of this Sublease. Each such statement delivered to the Sublessor and the Lessor shall be accompanied by a certificate (dated the date of delivery), of the President or a Vice President of the Sublessee confirming that as of the date of such certificate, to their best knowledge after due inquiry, no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default), has occurred and is continuing, or if any such event has occurred and is continuing, specifying the nature and period of existence thereof and what action the Sublessee has taken or proposes to take with respect thereto.

The Sublessee will deliver to the Sublessor and the Lessor:

(i) as soon as available and to the extent available, and in any event within 90 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Sublessee, copies

of the consolidated balance sheets of the Sublessee as of the end of such accounting period and copies of the related consolidated statements of income of the Sublessee for the portion of its fiscal year ended with the last day of such quarterly accounting period, all unaudited and in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous fiscal year;

(ii) as soon as available, and in any event within 120 days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year, of the consolidated balance sheet of the Sublessee as at the end of such fiscal year, and of the consolidated statements of income and retained earnings of the Sublessee for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and as certified by the Sublessee's independent public accountants;

(iii) as soon as available, and in any event within 120 days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year, of the balance sheet of the Lessee as at the end of such fiscal year, and of the statements of income and retained earnings of the Lessee for such fiscal year, all in reasonable detail and stating in comparative form the figures as of the end of and for the previous fiscal year; and

(iv) with reasonable promptness such other information concerning the Sublessor or the Sublessee as the Sublessor or the Lessor shall reasonably request.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE SUBLESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT DELIVERED TO THE SUBLESSEE HEREUNDER, AND THE SUBLESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT, EITHER UPON DELIVERY THEREOF TO THE SUBLESSEE OR OTHERWISE, it being agreed that

all such risks, as between the Sublessor and the Sublessee, are to be borne by the Sublessee; but the Sublessor hereby irrevocably appoints and constitutes the Sublessee its agent and attorney-in-fact during the term of this Sublease to assert and enforce from time to time, in the name of and for the account of the Lessor, the Sublessor and/or the Sublessee, as their interests may appear, at the Sublessee's sole cost and expense, whatever claims and rights the Sublessor or the Lessor may have against the Builder under the provisions of the Purchase Agreement; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Sublessor may assert and enforce, at the Sublessee's sole cost and expense, such claims and rights. The Sublessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Sublessee and the Sublessor that the Units described therein are in all the foregoing respects satisfactory to the Sublessee, and the Sublessee will not assert any claim of any nature whatsoever against the Sublessor or the Lessor based on any of the foregoing matters.

The Sublessee agrees, for the benefit of the Sublessor and the Lessor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the 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 Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Sublessee will conform therewith at its own expense; provided, however, that the Sublessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Sublessor or the Lessor, adversely affect the property or rights of the Sublessor or the Lessor under this Sublease or under the Lease. The Sublessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Sublease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units).

The additions, modifications and improvements made by the Sublessee under the preceding sentence shall be owned by the Sublessee (or such other party as may have title thereto), except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units (including, but not limited to, parts in replacement of or in substitution for, and not in addition to, any parts originally incorporated in or installed as part of such Unit at time of acceptance hereunder or any part in replacement of, or substitution for, such replacement part) or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance shall immediately be vested in the Lessor.

Neither the Sublessor nor the Lessor (which term as used herein shall include the Sublessor's or the Lessor's successors, assigns, agents and servants) shall have responsibility or liability to the Sublessee, its successors or assigns, or to any other person, with respect to any or all liabilities (as "liabilities" is hereinafter defined), and the Sublessee hereby assumes liability for, and hereby agrees, at its own cost and expense, to indemnify, protect, defend, save and keep harmless the Sublessor and the Lessor from and against, any and all liabilities, other than the Lessor's obligation to pay to the Builder, the Purchase Price for all Units delivered and accepted in accordance with the terms hereof and the Assignment. The term "liabilities" as used herein shall include any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including reasonable legal fees and expenses, of whatsoever kind and nature, imposed on, incurred by or asserted against the Sublessor or the Lessor, in any way relating to or arising out of this Sublease, the Lease, the Purchase Agreement, the Assignment, the Sublease Assignment, the Consent or the manufacture, purchase, acceptance, rejection, ownership, transporting, delivery, lease, sublease,

possession, control, use, operation, condition, testing, servicing, maintenance, repair, improvement, replacement, storage, sale, return or other disposition of the Units (including, without limitation, (a) any inadequacy or deficiency or defect therein, including latent defects, whether or not discoverable by the Sublessor, the Lessor or the Sublessee, or any claim for patent, trademark or copyright infringement, (b) any accident in connection therewith resulting in damage to property or injury or death to any person, including but not limited to, employees and agents of the Sublessor or the Sublessee, (c) any strict liability in tort or imposed by statute and (d) any interruption of service, loss of business or consequential damages resulting therefrom). The Sublessee shall not be responsible to the Sublessor or the Lessor under this § 9 with respect to any claim to the extent that such claim arises solely from such party's own default, own negligence or own law violations. The Sublessee agrees to give the Sublessor and the Lessor and the Sublessor agrees to give the Sublessee prompt written notice of any of the liabilities hereby indemnified against. The Sublessee's obligations under this paragraph shall be those of a primary obligor whether or not the Sublessor or the Lessor is also indemnified with respect to the same matter by any other person provided that, if no Event of Default (or other event which after notice or lapse of time or both would constitute an Event of Default) has occurred and is continuing, the Sublessee's obligations under this paragraph shall be reduced by any such indemnification actually and unconditionally received by the Lessor. The indemnities arising under this paragraph shall survive payment of all other obligations under this Sublease and the expiration or termination of this Sublease. Upon the unconditional payment in full of any indemnities as contained in this § 9 by the Sublessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, the Sublessee shall be subrogated to any right of the Sublessor or the Lessor in respect of the matter against which indemnity has been given. Provided that no Event of Default (or other event with which lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, any payments received by the Sublessor or the Lessor from any person (except the Sublessee) as a result of any matter with respect to which the Sublessor or the Lessor has been indemnified by the Sublessee pursuant to this § 9 shall be

paid over to the Sublessee to the extent necessary to reimburse the Sublessee for indemnification payments previously made in respect of such matter but only after the Lessor and the Sublessor have been unconditionally indemnified in full. The indemnities arising under this paragraph shall not be construed to constitute a guarantee of the residual value or useful life of any Unit.

The Sublessee agrees to cause the preparation of and delivery to the Sublessor or the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Sublessor or the Lessor) any and all reports (other than income tax, gross receipts tax, or gross income tax returns) to be filed by the Sublessor or the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing or subleasing thereof to the Sublessor or the Sublessee.

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

(a) default shall be made in payment of any amount payable under this Sublease, and such default shall continue for five days after written notice of such default from the Sublessor or the Lessor;

(b) the Sublessee shall make or permit any unauthorized assignment or transfer of this Sublease or of possession of the Units, or any thereof;

(c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Sublessee contained herein or in the Assignment or the Consent, and such default shall continue for 30 days after written notice from the Sublessor or the Lessor to the Sublessee specifying the default and demanding that the same be remedied;

(d) any representation or warranty made by the Sublessee in this Sublease or in the Consent or in any document or certificate furnished the Sublessor or the Lessor in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material

respect and such condition shall continue unremedied for a period of 30 days after written notice thereof by the Sublessor or the Lessor to the Sublessee specifying the default and demanding that the same be remedied;

(e) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Sublessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Sublessee under this Sublease shall not have been and shall not continue to be duly assumed in writing within 90 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees;

(f) any proceeding shall be commenced by or against the Sublessee for any relief which includes, or might result in, any modification of the obligations of the Sublessee under this Sublease or the Consent under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Sublessee hereunder and under the Consent) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Sublessee under this Sublease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 75 days after such proceeding shall have been commenced; or

(g) an Event of Default set forth in § 10 of the Lease shall have occurred;

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

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

(ii) by notice in writing to the Sublessee terminate this Sublease, whereupon all rights of the Sublessee to the use of the Units shall absolutely cease and terminate as though this Sublease had never been made, but the Sublessee shall remain liable as herein provided; and thereupon the Sublessor may by its agents enter upon the premises of the Sublessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Sublessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Sublessee for such action or inaction but applying any proceeds (net of expenses as determined by the Sublessor) arising therefrom against the liabilities of the Sublessee herein; but the Sublessor shall, nevertheless, have a right to recover from the Sublessee any and all amounts which under the terms of this Sublease 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 Sublessee as damages for loss of a bargain and not as a penalty, whichever of the following amounts the Sublessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would

otherwise have accrued hereunder from the date of such termination to the end of the term of this Sublease as to such Unit over the then present value of the rental which the Sublessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of an 12% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Sublease not been terminated or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Sublessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Sublessor, in lieu of collecting any amounts payable to the Sublessor by the Sublessee pursuant to the preceding clauses (x) and (y) of this subparagraph (ii) with respect to such Unit, may, if it shall so elect, demand that the Sublessee pay the Sublessor and the Sublessee shall pay to the Sublessor 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 Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Sublessee 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 legal fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Sublessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Sublease provided in favor of the Sublessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Sublessee 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 Sublessee 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 Sublessee on its behalf.

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

§ 11. Return of Units upon Default. If this Sublease shall terminate pursuant to § 10 hereof, the Sublessee shall upon notice from the Sublessor forthwith deliver possession of the Units to the Sublessor. Each Unit returned to the Sublessor pursuant to this § 11 shall (i) be in the condition required by § 7 hereof, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect, (iii) have attached or affixed thereto any additions, modifications and improvements considered an accession thereto as provided in § 7 hereof and have removed therefrom any such additions, modifications and improvements not considered an accession and (iv) meet the applicable rules of any governmental agency or other organization with jurisdiction. For the purpose of delivering possession of any Unit or Units to the Sublessor as above required, the Sublessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) transport or cause the Units to be transported to such point or points within the continental United States as the Lessor may reasonably designate and there assembled;

(b) place such Units upon such storage tracks of the Sublessor or the Sublessee within the continental United States as the Lessor reasonably may designate or, if such storage tracks are not available, upon such other storage tracks within the continental

United States as the Lessor may reasonably designate;

(c) permit the Sublessor to store such Units on such tracks at the risk of the Sublessee without charge for rent, insurance or storage until such Units have been sold, leased or otherwise disposed of but not in any event for longer than 270 days; and

(d) cause such Units to be moved to such point or points as shall be reasonably designated by the Lessor upon any sale, lease or any disposal of all or any of the Units.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Sublessee and are of the essence of this Sublease, and upon application to any court of equity having jurisdiction in the premises the Sublessor shall be entitled to a decree against the Sublessee requiring specific performance of the covenants of the Sublessee so to assemble, deliver, store, insure and transport the Units. During any storage period, the Sublessee will, at its own cost and expense, maintain and keep the Units in the condition required by § 7 hereof, maintain the insurance on the Units required by § 7 hereof and will permit the Sublessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same; provided, however, that the Sublessee shall not be liable, except in the case of negligence of the Sublessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor, the Sublessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence.

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

§ 12. Assignment; Possession and Use. This

Sublease shall be assignable in whole or in part by the Sublessor without the consent of the Sublessee, but the Sublessee shall be under no obligation to any assignee of the Sublessor except upon written notice of such assignment from the Sublessor and no greater obligations will be imposed on the Sublessee on account of any such assignment other than obligations contemplated by the Consent. All the rights of the Sublessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 16 and the rights to receive the rentals payable under this Sublease) shall inure to the benefit of the Sublessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively).

This Sublease and the Sublessee's right and interest herein, and in the option to renew this Sublease and in the rights and obligations as herein provided shall be completely prior to each and every deed of trust or mortgage or other security instrument of the Sublessor and each such instrument, whether heretofore, now or hereafter in existence shall in all respects be subject and subordinate to this Sublease and the Sublessee's right and interest herein and in such renewals, rights, obligations and options.

So long as no Event of Default exists under this Sublease, the Sublessee or any affiliate thereof, shall be entitled to the possession and use of the Units in accordance with the terms of this Sublease and the first proviso in the next paragraph shall not apply to any use of the Units by any affiliate. The Sublessee agrees to use the Units solely within the United States of America, Canada and Mexico and solely for the transportation of bulk agricultural commodities and plastic pellets. The Sublessee shall use or cause to be used each Unit in such a manner that for any period relevant to the Investment Credit or the Depreciation Deduction (as such terms are defined in § 16 hereof) during the term of this Sublease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code (as hereinafter defined) and will not be used predominantly outside the United States within the meaning of said Section 48(a) (or any exception thereto).

The Sublessee may (a) sublease any of the Units to any sublessee or (b) permit any of the Units to be used

by any other person; provided, however, that, without the prior written consent of the Lessor, which shall not be unreasonably withheld, any such sublease or arrangement for usage shall not be for a term that aggregates more than 12 months; provided further, however, that the Sublessee shall not sublease the Units to, or permit their use by, any person in whose hands such Units would not qualify as, or would cause such Units to lose their qualification as, "section 38 property" within the meaning of the Code. The Sublessee shall promptly notify the Sublessor and the Lessor of any such sublease, such notice to be accompanied by a copy of such sublease. All costs and expenses (including reasonable fees and disbursements of counsel to the Sublessor or the Lessor) incident to such sublease or arrangement for usage shall be borne by the Sublessee. Except as set forth in the next to last paragraph of this § 12, the Sublessee may not assign this Sublease to any other person. No sublease or usage permitted by the foregoing shall relieve the Sublessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

Any sublease or arrangement for usage permitted under this Lease may provide that the sublessee or user, so long as it shall not be in default under such sublease or arrangement for usage, shall be entitled to the possession of the Units included in such sublease or arrangement for usage and the use thereof; provided, however, that every such sublease or arrangement for usage shall be subject to all the terms and conditions of this Sublease and the Lease and the rights and remedies of the Sublessor under this Sublease and the Lessor under the Lease in respect of the Units covered by such sublease or arrangement for usage upon the occurrence of an event of default thereunder or under the Lease or an Event of Default hereunder and no such sublease or arrangement for usage shall relieve the Sublessee of its obligations to the Sublessor under this Sublease and to the Lessor under this Sublease and the Consent.

Notwithstanding the foregoing, the Sublessee's right to use or sublease the Units is subject to the following conditions:

- (1) that if the Sublessee subleases, uses or permits the use of any Unit in Canada (or any province or Territory thereof) the Sublessee shall

first have (a) taken all necessary action to protect the right, title and interest of the Lessor in the Units to be so subleased or used and (b) furnished the Lessor with an opinion of Canadian counsel satisfactory to the Lessor to the effect that such action is all that is necessary to protect the right, title and interest of the Lessor in such Units and the Lease;

(2) that use of the Units in Mexico will be permitted only at such time, if any, as the Lessor is reasonably satisfied that proper protection of the right, title and interest of the Lessor in the Units is possible in Mexico, and in that event the Sublessee shall first have (a) taken all necessary action to protect the right, title and interest of the Lessor in the Units to be so subleased or used and (b) furnished the Lessor with an opinion of Mexican counsel satisfactory to the Lessor to the effect that such action is all that is necessary to protect the right, title and interest of the Lessor in such Units and the Lease;

(3) that in no event will any Unit be used in Canada or Mexico (or any combination of Mexican and Canadian use) for more than four months in any calendar year; and

(4) that any Unit at any time located in Canada or Mexico shall be marked with the markings specified in § 5 hereof.

Nothing in this § 12 shall be deemed to restrict the right of the Sublessee to assign or transfer its leasehold interest under this Sublease in all but not less than all the Units or possession of all but not less than all the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Sublessee hereunder) into or with which the Sublessee shall have become merged or consolidated or which shall have acquired the property of the Sublessee as an entirety or substantially as an entirety or, with the prior written consent of the Lessor, property of the Sublessee related to the operation of the Units or a portion thereof; provided, however, that (i) such assignee or transferee will not, upon the effectiveness of such merger, consoli-

dation or acquisition, be in default under any provision of this Lease and (ii) in the case of any such acquisition of less than all or substantially all the property of the Sublessee, such acquisition shall not alter in any way the Sublessee's obligation to the Sublessor hereunder or to the Lessor hereunder or under the Consent, which shall be and remain those of a principal and not a surety.

The Sublessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance resulting from claims against the Lessor not related to the ownership or leasing of the Units) which may during the term hereof or any renewal hereof or during any period which the Sublessee is required to insure, maintain or store the Units at its expense and risk pursuant to §§ 11 and 14 hereof, be imposed on or with respect to any Unit, including any accession thereto, or the interest of the Sublessor, the Lessor or the Lessee therein; except that this covenant will not be breached by reason of levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent; and, furthermore, the Sublessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinion of the Sublessor and the Lessor, adversely affect the title, property or rights of the Sublessor hereunder and of the Lessor under the Lease.

§ 13. Renewal. Provided that this Sublease has not been earlier terminated and no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) exists hereunder, the Sublessee may by written notice delivered to the Sublessor and the Lessor not less than 6 months nor more than 12 months prior to the end of the original term of this Sublease elect to extend the term of this Sublease in respect of all but not fewer than all of the Units then covered by this Sublease, for an additional five-year period commencing on the scheduled expiration of the original term of this Sublease; provided, however, that such renewal shall have no effect unless the Sublessor exercises its renewal option pursuant to § 12 of the Lease.

The rental payable shall be the Fair Market Rental Value of such Units as of the end of the original term of this Sublease. Rentals under the extended term shall be payable, in arrears, in monthly payments on the days of the month on which such rentals were payable for the Units in each year of the original term.

"Fair Market Rental Value" for the purposes of this § 13 shall be equal in amount to the Fair Market Rental Value, determined pursuant to § 13 of the Lease.

§ 14. Return of Units upon Expiration of Term.  
As soon as practicable on or after the expiration of the original or extended term of this Sublease, the Sublessee will, at its own cost and expense, at the request of the Sublessor, deliver possession of such Unit to the Sublessor upon such storage tracks of the Sublessor or the Sublessee or, if such storage tracks are not available, upon such other storage tracks as the Lessor may reasonably designate within 15 days after receipt of written notice from the Sublessee that such storage tracks are not available, or in the absence of such designation, as the Sublessee may select, and permit the Sublessor to store such Unit on such tracks for a period not exceeding 180 days following notification to the Sublessor and the Lessor by the Sublessee that all the Units have been assembled and delivered for storage and transport the same, at any time within such 180 day period, to any reasonable place on lines of railroad, or to any connecting carrier for shipment, all as directed by the Sublessor, the movement and storage of such Units to be at the expense and risk (including insurance) of the Sublessee; provided, however, that for any period after 90 days, to and including the 180th day, following such notification storage shall be at the expense and risk of the Sublessor (and the Sublessee agrees that its charge to Sublessor for storage shall be reasonable in amount and will include the cost of insurance provided by Sublessee). During any such storage period the Sublessee will maintain and keep each Unit in good operating order, repair and condition, maintain the insurance required by § 7 hereof and permit the Sublessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Unit, to inspect the same; provided, however, that the Sublessee shall not be liable, except in the case of negligence of the Sublessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on

behalf of the Sublessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence; provided further, however, that reasonable costs of maintenance and insurance for any period after 90 days following such notification shall be borne by the Sublessor. The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided are of the essence of this Sublease, and upon application to any court of equity having jurisdiction in the premises, the Sublessor shall be entitled to a decree against the Sublessee requiring specific performance of the covenants of the Sublessee so to assemble, deliver, store, insure and transport the Units. Each Unit returned to the Sublessor pursuant to this § 14 shall (i) be in the condition required by § 7 hereof, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect, (iii) have attached or affixed thereto any additions, modifications and improvements considered an accession thereto as provided in § 7 hereof and have removed therefrom any such additions, modifications and improvements not considered an accession and (iv) meet applicable rules of any governmental agency or other organization with jurisdiction. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after the expiration or termination of the original or extended term of this Sublease, the Sublessee shall pay to the Sublessor an amount equal to 1/30 of the next preceding rental payment applicable to such Unit for each day until such Unit is assembled, delivered and stored; such payment shall not affect the obligation of the Sublessee to redeliver the Units pursuant to this § 14.

§ 15. Recording. The Sublessee, at its own expense, will cause this Sublease, the Assignment, the Lease and the Sublease Assignment to be filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303. The Sublessee 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 Sublessor or the Lessor for the purpose of proper protection, to their satisfaction, of the Sublessor's or the Lessor's interest in the Units, or for the purpose of carrying out the intention of this

Sublease and the Assignment, the Lease, the Sublease Assignment and the Consent; it being specifically understood that no filing under the Uniform Commercial Code of any state will be made unless the Lessor or the Sublessor is advised by counsel that such filing is required for the proper protection of the Lessor's or the Sublessor's interest in the Units, or for the purpose of carrying out the intention of this Sublease, the Assignment, the Lease, the Sublease Assignment and the Consent; and the Sublessee will promptly furnish to the Sublessor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Sublessee with respect thereto satisfactory to the Sublessor and the Lessor. This Lease, the Assignment, the Lease and the Sublease Assignment shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Federal Income Taxes. The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), to an owner of property, including, without limitation, (A) the depreciation deduction with respect to the Units pursuant to Section 167 of the Code as in effect on the date hereof with respect to each Unit (a) commencing in the taxable year of the Lessor during which the date of delivery (the "Delivery Date") with respect to such Unit occurs and calculated on the assumption that each Unit is placed in service on the Delivery Date with respect to such Unit, (b) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 77-10 for property in Asset Guideline Class No. 00.25, in accordance with the Class Life Asset Depreciation Range System under Section 167(m) of the Code as in effect on the date hereof, (c) employing initially the double declining balance method of depreciation and switching, without the consent of the Commissioner of Internal Revenue, to the sum of the years-digits method of depreciation when most beneficial to the Lessor, (d) utilizing the modified half-year convention or the half-year convention as selected by the Lessor in any taxable year pursuant to Treas. Regs. § 1.167(a)-11(c)(2)(ii) and (iii), (e) including in the basis of each Unit 100% of the Purchase Price thereof and any additional amounts properly includible under Section 1012 of the Code as in effect on the date hereof and (f) taking into account, for each Unit, an estimated gross salvage value of

10% of the Purchase Price thereof, which will be reduced by 10% of the Purchase Price thereof pursuant to Section 167(f) of the Code as in effect on the date hereof (the "Depreciation Deduction"), and (B) the investment credit pursuant to Section 38 and related sections of the Code as in effect on the date hereof, which, for each Unit, shall be equal to 10% of the sum of (a) 100% of the Purchase Price with respect to such Unit and (b) 100% of any additional amounts properly includible in the basis of such Unit under Section 1012 of the Code as in effect on the date hereof and shall be available based on the assumption that such Unit is placed in service by the Lessor on the Delivery Date with respect to such Unit (the "Investment Credit").

Sublessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directl or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing paragraph and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof unless (i) the filing of such returns, taking of such actions or execution of such documents is precluded by acts, omissions or misrepresentations of Lessor or any other third party or (ii) the filing of such returns, or taking of such actions or execution of such documents is precluded by a final, unappealable judgment or decree or other action of a court or administrative agency or by a change in the Code or regulations thereunder such that, in the case of clause (i) and clause (ii), in the opinion of nationally recognized tax counsel reasonably acceptable to Lessor the filing of such returns, taking of such actions or execution of such documents would subject Sublessee to a penalty for fraud or negligence. The Lessor intends that any Federal income tax returns filed by the affiliated group of which it is a member will be consistent with the provisions set forth in the preceding paragraph, unless such consistency is precluded by law or regulation or by acts, omissions or misrepresentations of Sublessor, Sublessee or any other third party.

Notwithstanding anything to the contrary contained in § 12 hereof, the Sublessee represents and warrants that (i) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under Section 38 and related Sections of the Code; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the

meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; and (iii) each Unit will be placed in service for purposes of Sections 46, 48 and 167 of the Code on such Unit's Delivery Date.

Sublessee covenants and agrees to maintain such records as shall be reasonably necessary and sufficient to verify the factual basis for the matters referred to in this § 16 and will within 30 days of written request therefor make copies of such records available for inspection by the Lessor or any authorized agent of the Lessor.

If the Lessor, in computing its Federal income tax liability, shall lose the benefit of, lose the right to claim or suffer recapture with respect to, or there shall be disallowed, all or any portion of the Investment Credit with respect to any Unit by reason of any act or failure to act (including, without limitation, any act or failure to act in connection with the income tax returns of the Sublessee or the Sublessor or the income tax returns of the affiliated group, within the meaning of Section 1504 of the Code, of which the Sublessee or the Sublessor is a member), regardless of whether any such act or failure to act is permitted or required by the Lease or this Sublease or any transactions contemplated by the Lease or this Sublease, any inaccuracy of any representation or warranty or any breach of any agreement, covenant or warranty contained in this Sublease, the Assignment, the Lease, the Sublease Assignment or the Consent, on the part of the Sublessee or the Sublessor, any affiliate of either, any sublessee or other user of any Unit or the manufacturer, supplier or builder of any Unit or any sale or disposition of any Unit or any interest therein after an Event of Default shall have occurred or any action of the Sublessor or the Lessor pursuant to § 10 hereof or of the Lease (except as provided below in this § 16), or if the Lessor would otherwise lose, or have recaptured or disallowed, any such portion as a result of any such cause except for its failure also to have sufficient liability for tax against which to credit such portion, Sublessee shall pay to the Lessor an amount which shall be equal to the portion of the Investment Credit so lost, recaptured or disallowed (or which would have been so lost, recaptured or disallowed except for any such failure to have sufficient liability for tax) and the amount of any interest, penalties or additions to tax (including any interest, penalties or additions to tax because of underpayment of estimated tax) which may be payable to the United States of America by the Lessor in

connection with such loss, recapture or disallowance, which amounts shall be payable at such time as the tax and interest, penalties or additions to tax attributable to such loss, recapture or disallowance are payable (or would have been payable), but not sooner than 30 days after receipt by Sublessee of written notice from the Lessor; provided, however, that Sublessee shall not be liable for the payment of any such amount if and to the extent that such loss, recapture or disallowance would not have resulted but for the occurrence of a Casualty Occurrence whereby Sublessee is required pursuant to § 7 hereof to pay, and shall pay in full, the Casualty Value for such Unit and all other amounts required to be paid under said Section.

Anything herein to the contrary notwithstanding, (i) if the Casualty Value has been paid with respect to any Unit pursuant to this Sublease, the indemnity otherwise payable under this § 16 with respect to the Investment Credit on such Unit shall be reduced by any amount included in such Casualty Value as of the date of computation on account of the loss of such Investment Credit, and (ii) if Sublessee pays an indemnity under this § 16 with respect to the Investment Credit on any Unit, appropriate adjustment shall be made to the Casualty Value percentages with respect to such Unit to reflect such payment.

If the Lessor, in computing its Federal, state or local taxable income for any taxable year (or portion thereof), shall lose the benefit of, lose the right to claim or suffer recapture with respect to, or there shall be disallowed, all or any portion of the Depreciation Deduction with respect to any Unit by reason of any act or failure to act (including, without limitation, any act or failure to act in connection with the income tax returns of the Sublessee or the Sublessor or the income tax returns of the affiliated group, within the meaning of Section 1504 of the Code, of which the Sublessee or the Sublessor is a member), regardless of whether any such act or failure to act is permitted or required by the Lease or this Sublease or any transactions contemplated by the Lease or this Sublease, any inaccuracy of any representation or warranty or any breach of any agreement, covenant or warranty contained in this Sublease, the Assignment, the Lease, the Sublease Assignment or the Consent, on the part of the Sublessee or the Sublessor, any affiliate of either, any sublessee or other user of any Unit or the manufacturer, supplier or builder of any Unit or any sale or disposition of any Unit or any interest therein after an Event of Default shall have occurred or any action of the Sublessor or the Lessor pursuant to § 10 hereof or of the Lease (except as provided below in this § 16), or if the Lessor

would otherwise lose, or have recaptured or disallowed, any such portion as a result of any such cause except for its failure also to have sufficient taxable income against which to deduct such Depreciation Deduction, the Sublessee shall pay to the Lessor, in respect of such loss, recapture or disallowance, an amount which shall be equal to the sum of (A) any additional income taxes required to be paid (or which would have been payable except for any such failure to have sufficient taxable income) to the United States of America or to any state or local taxing jurisdiction by the Lessor with respect to such year by reason of such loss, recapture or disallowance of such Depreciation Deduction and (B) the amount of any interest, penalties or additions to tax (including any interest, penalties or additions to tax because of underpayment of estimated tax) which may be payable to the United States of America or to any state or local taxing jurisdiction by the Lessor in connection with such loss, recapture or disallowance, which amount shall be payable at such time as the tax and interest, penalties or additions to tax attributable to such loss, recapture or disallowance are payable (or would have been payable), but not sooner than 30 days after receipt by Sublessee of written notice from the Lessor; provided, however, that Sublessee shall not be liable for payment of any such amount if and to the extent that such loss, recapture or disallowance would not have resulted but for the occurrence of any of the following events:

(i) a Casualty Occurrence shall occur whereby Sublessee is required pursuant to § 7 hereof to pay, and shall pay in full, the Casualty Value for such Unit and all other amounts required to be paid under said Section; or

(ii) a termination of this Sublease pursuant to Section 7 hereof shall occur with respect to such Unit whereby Sublessee is required to pay, and shall pay in full, amounts determined by reference to the Economic Obsolescence Value for the Units and all of the amounts required to be paid under said Section.

If the Lessor, as the result of such loss, recapture or disallowance of the Depreciation Deduction with respect to any year, as the result of any inclusion in gross income of any Additional Expenditures (as hereinafter defined) or as the result of any early payment by Sublessee referred to in the thirteenth paragraph of this § 16, in each case, under circumstances which require

Sublessee to indemnify the Lessor with respect to such loss, recapture, disallowance, Additional Expenditure or early payment, shall actually realize Federal income tax savings which it would not have realized but for such loss, recapture, disallowance, Additional Expenditure or early payment with respect to any subsequent year, the Sublessor shall pay Sublessee when received from the Lessor an amount equal to the sum of such Federal income tax savings actually realized by the Lessor plus any tax savings actually realized under the laws of any Federal, state or local government or taxing authority, as the result of any payment made pursuant to the corresponding provision of the Lease, if, and to the extent such Federal income or other tax savings are actually realized, within 30 days after returns are filed, or a refund is received as the case may be, reflecting such actual realization; provided, however, that (i) such sum shall not exceed the excess of the amounts previously paid by Sublessee to the Lessor pursuant to this § 16 with respect to such loss, recapture, disallowance, Additional Expenditure or early payment over the amounts previously paid by the Lessor to Sublessor pursuant to § 17 of the Lease, (ii) such sum shall not be payable before such time as Sublessee shall have made all payments or indemnities then due pursuant to this § 16, (iii) no Event of Default (or other event which with notice or lapse of time or both would constitute an Event of Default) shall have occurred and be continuing, (iv) in computing any tax savings actually realized by the Lessor for purposes of this paragraph, the Lessor shall be deemed first to have utilized all deductions and credits available to it otherwise than by reason of any such loss, recapture, disallowance, Additional Expenditure or early payment or payment to the Sublessee or the Sublessor, (v) any loss, recapture or disallowance of any such tax savings shall be treated as a loss subject to the provisions of this § 16 and (vi) the calculation of any amounts payable pursuant to this paragraph shall be based on the same assumptions as to tax rates set forth in the second sentence of the fourteenth paragraph of this § 16.

If for any reason whatsoever (other than any use or arrangement for use permitted by the Lease or this Sublease) the Lessor shall not be entitled to treat each item of income, deduction and credit with respect to the transactions contemplated by this Sublease as having a United States source for any taxable year, Sublessee shall pay to the Lessor an amount which shall be equal to the sum of (A) the excess of the foreign tax credit which would

have been allowed to the Lessor with respect to the taxable year and all prior taxable years if the Lessor had not participated in the transactions contemplated by the Lease or this Sublease over the foreign tax credit actually allowed to the Lessor and (B) the amount of any interest, penalties or additions to tax (including any interest, penalties or additions to tax because of underpayment of estimated tax) payable by the Lessor as a result of such loss of foreign tax credit, which amount shall be payable at such time as the tax and interest, penalties or additions to tax attributable to such loss of foreign tax credit are payable, but not sooner than 30 days after receipt by the Sublessee of written notice from the Lessor.

In the event a claim shall be made by the Internal Revenue Service which, if successful, would result in a Disallowance (which term, for the purposes of the remainder of this § 16, means a loss of all or any portion of the Investment Credit or the Depreciation Deduction with respect to any Unit) under circumstances which would require Sublessee to indemnify the Lessor for such Disallowance, the Lessor shall take such action in connection with contesting such claim as Sublessor shall reasonably request in writing from time to time, provided that (i) within 30 days after notice by the Lessor to Sublessee of such claim, Sublessor shall request that such claim be contested, (ii) the Lessor shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund or contest the claim in any permissible forum considering, however, in good faith such request as Sublessor shall make concerning the most appropriate forum in which to proceed, (iii) prior to taking such action, Sublessor shall have furnished the Lessor with an opinion of independent tax counsel agreed upon by Sublessor and the Lessor to the effect that a meritorious defense exists to such claim, (iv) Sublessor or Sublessee shall have indemnified the Lessor in a manner satisfactory to it for any liability or loss which the Lessor may incur as the result of contesting such claim and shall have agreed to pay the Lessor on demand all costs and expenses which the Lessor may incur in connection with contesting such claim, including, without limitation, (A) reasonable attorneys', accountants' and investigatory fees and disbursements, and

(B) the amount of any interest, penalty or fine which may ultimately be payable as the result of contesting such claim (to the extent not otherwise indemnified under this § 16), and (v) if the Lessor shall determine to pay the tax claimed and sue for a refund, Sublessee shall have paid to the Lessor the amounts payable pursuant to this § 16 hereof with respect to the Investment Credit or the Depreciation Deduction. In the case of any such claim referred to above, the Lessor shall promptly notify Sublessee in writing of such claim, agrees not to make payment of such claim for at least 30 days after the giving of such notice and shall give to Sublessee any relevant information relating to such claim which may be particularly within the knowledge of the Lessor, and otherwise cooperate with Sublessee in good faith in order to contest effectively any such claim and, if and to the extent agreeable to the Lessor, to permit Sublessor to participate in the proceedings relating to such claim. Nothing contained in this § 16 shall require the Lessor to contest a claim which it would otherwise be required to contest pursuant to this § 16 if the Lessor waives the payment by Sublessee of any amount that might otherwise be payable by Sublessee under this § 16 with respect to the Investment Credit the Depreciation Deduction by way of indemnity in respect of such claim.

If, after actual receipt by the Lessor of an amount paid by Sublessee and attributable to a Disallowance, the extent of such Disallowance shall be established by the final judgment or decree of a court or administrative agency having jurisdiction thereof or a settlement with the consent of Sublessee, the Sublessor shall, within 30 days, pay to Sublessee all or the portion of any refund received by the Lessor and paid to the Sublessor with respect to such Disallowance (together with any interest paid thereon by the taxing authority) plus simple interest at the rate which is applicable under Section 6621 of the Code from time to time from the date of actual collection by the Lessor of such refund (and any such interest thereon) to the date of payment by the Sublessor to Sublessee hereunder. Notwithstanding the foregoing, the Sublessor shall not be required to make any payment hereunder (i) to the extent such payment (minus any such interest attributable thereto not previously reimbursed by Sublessee) would exceed the amount previously paid by Sublessee to the Lessor with respect to the Disallowance giving rise to such refund, (ii) before such time as Sublessee shall have made all pay-

ments or indemnities then due pursuant to this § 16 and (iii) so long as an Event of Default (or other event which with notice or lapse of time or both would constitute an Event of Default) shall have occurred and be continuing.

If for any reason whatsoever any amount in respect of any replacement, alteration, modification, substitution, improvement and/or addition to any Unit or any expenditure by Sublessor, Sublessee or any affiliate of either, or by any sublessee of any thereof or by any other person which any of the foregoing shall have permitted to use any Unit, in respect of any Unit, the Lease or this Sublease or any agreement contemplated hereby or thereby (hereinafter called "Additional Expenditures") made by any of the foregoing under and pursuant to the terms of the Lease, this Sublease or otherwise is required to be included in the gross income of the Lessor for Federal, state or local income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, Sublessee shall pay to the Lessor in respect of such inclusion an amount which shall be equal to any additional taxes required to be paid by the Lessor and the amount of any interest, penalties or additions to tax which may be payable by the Lessor in connection with such inclusion, which amounts shall be payable at such time as the tax and interest, penalties or additions to tax are payable, but not sooner than 30 days after receipt by Sublessee of written notice from the Lessor; provided, however, that in case of any Additional Expenditures (which the Sublessor or the Sublessee was required to make pursuant to the terms of the Lease or this Sublease) required to be included in the gross income of the Lessor not earlier than the last day of the term (including any renewals thereof) of this Sublease, the indemnification set forth in this paragraph shall extend only to the excess of the amount so included over the additional then fair market value of the applicable Unit attributable to such Additional Expenditure compared to the fair market value such Unit would have had had such Additional Expenditure not been made.

In the event that Sublessor or Sublessee shall pay all or any portion of any installment of rent prior to the date upon which such payment is required to be made hereunder or under the Lease, Sublessee shall pay to the Lessor an amount which shall be equal to the excess of (A) the taxes and other charges payable by the Lessor in the taxable year of the receipt of such installment of rent over (B) the taxes and other charges that would have been payable by the Lessor in such year had such installment of rent been paid by Sublessor or Sublessee on the date

upon which such payment is required to be made hereunder or under the Lease.

Notwithstanding any other provision of this § 16, to the extent Sublessee is required to make any payment under this § 16, Sublessee agrees that its payment or indemnity obligation shall also include any amount necessary to hold the Lessor harmless on an after-tax basis from all taxes required to be paid by Lessor with respect to such payment or indemnity under the laws of any Federal, state or local government or taxing authority, or under the laws of any foreign government or taxing authority. Whenever any payment is to be made by Sublessee under this § 16 and it is necessary in calculating the amount of such payment to compute the amount of any liability for Federal, state or local tax imposed on or measured by the net income of the Lessor, such computation shall be based on the assumption that such taxes are payable at the highest marginal statutory rates applicable to taxpayers having the same taxpayer status as Lessor for the taxable year to which such taxes relate.

All amounts due to the Lessor under this § 16 shall bear interest at the rate of 18% per annum from the date of payment by the Lessor of any tax and interest to the date the Sublessee shall reimburse the Lessor for such amounts in accordance with the provisions of this § 16.

The indemnity contained in this § 16 shall survive the expiration or other termination of the Lease or this Sublease. This remedy shall be in addition to all other remedies in favor of the Lessor existing in this Sublease under the Lease, the Sublease Assignment, the Consent or at law or in equity. Sublessee's obligations under this § 16 shall be those of a primary obligor whether or not the Lessor is also indemnified with respect to the same matter by any other person; provided that, if no Event of Default (or event which after notice or lapse of time or both would become an Event of Default) has occurred and is continuing, Sublessee's obligations under this § 16 shall be reduced by such indemnification actually and unconditionally received by Lessor.

For purposes of this § 16, the term "Lessor" shall include (i) C.I.T. Financial Services, Inc., and (ii) any successor to C.I.T. Financial Services, Inc., and the affiliated group which files a consolidated Federal or state income tax return which includes the Lessor shall be deemed to be the Lessor where the income tax liability of the Lessor or the realization of an item of income, gain, deduction or credit in connection with the determination thereof is an issue.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Sublessee promptly to pay, to the extent legally enforceable, an amount equal to 18% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable. Interest hereunder shall be determined on the basis of a 360-day year of 12 30-day months.

§ 18. Representations and Warranties. For the purposes of this § 18 this Sublease, the Assignment, the Lease, the Sublease Assignment and the Consent are collectively called the "Documents" and any Document to which any party or parties hereto or to the Assignment is called "its Documents".

The Sublessee represents and warrants to the Sublessor and the Lessor as follows:

(a) it is a corporation duly incorporated, validly existing and in good standing under the laws of the jurisdiction of its incorporation with corporate power to own its properties and to carry on its business as now conducted, and to enter into its Documents and is duly qualified to do business and is in good standing in such other jurisdictions in which the nature of its business requires such qualification;

(b) its Documents have been duly authorized, executed and delivered by it and constitute legal, valid and binding agreements, enforceable in accordance with their respective terms;

(c) no approval is required from any governmental or public body or authority with respect to the entering into or performance of its obligations under its Documents;

(d) the entering into and performance of its obligations under its Documents will not conflict with, result in any breach of, or constitute a default under its Articles of Incorporation or by-laws or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which it or any of its subsidiaries is a party or by which they may be bound;

(e) no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any of its property or interests therein or of any of its subsidiaries, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; provided, however, that such liens may attach to the leasehold interest of the Sublessor under the Lease and of the Sublessee hereunder in and to the Units;

(f) neither the execution and delivery by it of its Documents nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach or violation of, any of the terms, conditions or provisions of any law, regulation, rule, order, award, injunction or decree of any court or governmental instrumentality or arbitrator;

(g) there is no proceeding pending or threatened against or affecting it in any court or before any governmental authority or arbitration board or tribunal which involves the possibility of materially and adversely affecting its properties, business, prospects, profits or condition (financial or other) or its ability to perform its obligations under its Documents, it is not in default with respect to any order, judgment or award of any court, governmental authority or arbitration board or tribunal;

(h) it is not in default in the payment of principal of or interest on any indebtedness for borrowed money or for the deferred purchase price of real or personal property and no event has occurred and is continuing which, with or without notice and/or passage of time, would permit the holders of (or a trustee for the holders of) any such indebtedness of the Sublessee to accelerate the stated maturity thereof;

(i) it has filed all foreign, Federal, state and local tax returns which (to its knowledge) are required to be filed, and has paid or made adequate provisions for the payment of all taxes which have or

may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith or which in the aggregate do not involve a material amount;

(j) it has furnished to the Lessor its consolidated balance sheet as of May 31, 1980, and the related consolidated statements of income and retained earnings for the year then ended and its unaudited consolidated balance sheet as at the end of, and its unaudited consolidated income statement for, the quarter ended August 31, 1980; such consolidated financial statements are in accordance with its books and records and have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the periods covered thereby and on a basis consistent with prior periods; such consolidated financial statements present fairly its financial condition at such dates and the consolidated results of its operations for such periods; and, except as set forth in a letter from the President of the Sublessor to the Lessor dated December , 1980, there has not been any material adverse change in its assets, liabilities, business or condition (financial or otherwise) since May 31, 1980;

(k) it is not entering into its Documents, or any other document or transaction contemplated hereby or thereby, directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it or, to the best of its knowledge, the Builder, the Lessor or the Sublessor is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA");

(l) no filing, recording or deposit (or giving of notice) with any Federal, state or local government or agency thereof, other than the filing of the Lease, this Sublease, the Assignment and the Sublease Assignment with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, is necessary in order to protect the rights of the Lessor under this Sublease in and to the Units in any state of the United States of America or the District of Columbia; and

(m) each Unit is intended for a use related to interstate commerce within the meaning of 49 U.S.C. § 11303.

§ 19. Notices. Any notice required or permitted to be given by a party to any other shall be deemed to have been given when mailed, first class certified, addressed as follows:

(a) if to the Lessor, at 650 Madison Avenue, New York, N. Y., Attention of the President,

(b) if to the Sublessee, at 346 Public Ledger Building, Independence Square, Philadelphia, Pennsylvania, Attention of the President, and

(c) if to the Sublessor, at 902 West Washington Avenue, Indianapolis, Indiana, Attention of the Chief Executive Officer,

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

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

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

§ 21. Execution. This Sublease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract.

but the counterpart delivered to the Lessor pursuant to the Sublease Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. It shall not be necessary that any counterpart be signed by all the parties so long as each party hereto shall have executed and delivered one counterpart hereof. Although this Sublease is dated for convenience as of the date specified in the introductory paragraph of this Sublease, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. Law Governing. The terms of this Sublease 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.

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

TIDEWATER GRAIN COMPANY,

by

  
Chairman

[Corporate Seal]

Attest:

  
Assistant Secretary

EARLY & DANIEL INDUSTRIES, INC.,

by

  
President

[Corporate Seal]

Attest:

  
Assistant Secretary

STATE OF *Indiana* , )  
 ) SS.:  
COUNTY OF *Nelson* , )

On this *24*th day of December 1980, before me personally appeared *SAMUEL M. HARRELL*, to me personally known, who, being by me duly sworn, says that he is the Chairman of TIDEWATER GRAIN COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

*Eunice J. Carries*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

*I reside in Nelson County, Indiana  
& My Commission expires June 8, 1981.*

