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DEC 31 1980 -9 5 AM

INTERSTATE COMMERCE COMMISSION

12695
RECORDATION NO. Filed 1425

DEC 31 1980 -9 5 AM

INTERSTATE COMMERCE COMMISSION

The Dow Chemical Company

Lease Financing Dated as of December 1, 1980

14% Secured Notes Due January 2, 1999

No. 0-366 A023
Date DEC 31 1980
Fee \$ 150.00
ICG Washington, D.C.

December 24, 1980

COUNSEL
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CARLYLE E. MAW

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DOCKET FILES
DEC 31 9 49 AM '80

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of The Dow Chemical Company for filing and recordation counterparts of the following agreements:

- (1) Trust Indenture and Security Agreement dated as of December 1, 1980, between Valley Bank Leasing, Inc., as Owner, and Mercantile-Safe Deposit and Trust Company, as Trustee.
- (2) Bill of Sale dated as of December 31, 1980, from The Dow Chemical Company, as Seller, to Valley Bank Leasing, Inc., as Buyer.
- (3) Lease of Railroad Equipment dated as of December 1, 1980, between The Dow Chemical Company, as Lessee, and Valley Bank Leasing, Inc., as Lessor.

The names and addresses of the parties to the aforementioned agreements are as follows:

Robert W. Weeks
New Number
- A
- B
W. S. [Signature]

(1) Lessee-Seller:

The Dow Chemical Company
2020 Dow Center
Midland, Michigan 48640.

(2) Trustee:

Mercantile-Safe Deposit and Trust Company
2 Hopkins Plaza
Baltimore, Maryland 21203

(3) Owner-Buyer-Lessor

Valley Bank Leasing, Inc.,
234 North Central Avenue
Phoenix, Arizona 85004.

Please file and record the documents referred to in this letter and index them under the names of the Lessee-Seller, the Trustee and the Owner-Buyer-Lessor.

The equipment covered by the aforementioned documents appear on Exhibit A attached hereto, and also bears the legend "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission".

There is also enclosed a check for \$150 payable to the Interstate Commerce Commission, representing the fee for recording the Trust Indenture and Security Agreement, Bill of Sale, and the Lease of Railroad Equipment.

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Jeffrey M Stein

Jeffrey M. Stein
As Agent for The Dow Chemical
Company

Agatha L. Mergenovich, Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.

Interstate Commerce Commission

Washington, D.C. 20423

12/31/80

OFFICE OF THE SECRETARY

**Jeffrey M. Stein
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **12/31/80** at **9:55am**, and assigned recordation number(s).

12691, 12691-A & 12691-B

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

12695, B
RECORDATION NO. Filed 1426

DEC 31 1980 -9 55 AM

INTERSTATE COMMERCE COMMISSION [CS&M Ref: 2044-082]

LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1980

Between

THE DOW CHEMICAL COMPANY,

Lessee,

and

VALLEY BANK LEASING, INC.,

Lessor.

[The rights and interests of the Lessor under this Lease are subject to a security interest in favor of Mercantile-Safe Deposit and Trust Company, as Trustee, which holds the original of this Lease.]

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LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1980, between THE DOW CHEMICAL COMPANY, a Delaware corporation (the "Lessee"), and VALLEY BANK LEASING, INC., an Arizona corporation (the "Lessor").

Pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, the Lessor and the parties named in Schedule I thereto (together with their respective successors and assigns, called the "Purchasers"), the Lessee has agreed to sell to the Lessor, and the Lessor has agreed to purchase from the Lessee, all the units of railroad equipment described in Schedule A hereto (the "Equipment").

The Purchasers have agreed, pursuant to the Participation Agreement, to provide financing for a portion of the cost of the Equipment by purchasing the Lessor's 14% Secured Notes due January 2, 1999 (the "Notes"), to be issued pursuant to a Trust Indenture and Security Agreement dated as of the date hereof (the "Security Agreement") between the Lessor and Mercantile-Safe Deposit and Trust Company, as Trustee (together with its successors and assigns and the Purchasers for whom it is acting as Trustee, called the "Trustee"). In order to secure the indebtedness evidenced by the Notes, the Lessor, pursuant to the Security Agreement, will create a security interest in the units of the Equipment purchased from the Lessee by the Lessor under the Participation Agreement (the "Units") and will assign this Lease for security purposes to the Trustee.

The Lessee desires to lease back the Units at the rentals and for the terms and upon the conditions hereinafter provided.

The Lessee will indemnify the Lessor against certain losses, liabilities and expenses pursuant to a Tax Indemnity Agreement dated as of the date hereof (the "Indemnity Agreement") substantially in the form of Exhibit D to the Participation Agreement.

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

following terms and conditions:

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

§ 2. Leasing of Units. Each Unit described in the Bill of Sale delivered by the Lessee to the Lessor pursuant to the Participation Agreement (the "Bill of Sale") shall become subject to this Lease immediately upon such delivery, without any further act on the part of the Lessee or the Lessor.

§ 3. Rentals. The Lessee agrees to pay to the

Lessor, as rental for each Unit subject to this Lease, 36 consecutive semiannual payments, payable on January 2 and July 2 of each year, commencing on July 2, 1981, to and including January 2, 1999. The 36 semiannual rental payments shall each be in an amount equal to the applicable Semiannual Lease Factor (as hereinafter defined) of the Purchase Price (as defined in the Participation Agreement) of each Unit then subject to this Lease. As used herein the term "Semiannual Lease Factor" shall mean, with respect to each semiannual rental payment date, the percentage set forth opposite such date in Schedule D hereto. In addition, the Lessee agrees to pay to the Lessor on demand, as additional rent, amounts equal to any deficiencies required to be paid by the Lessor pursuant to Section 3.06 of the Security Agreement.

Notwithstanding anything to the contrary set forth herein, the rentals, the Casualty Values (set forth in Schedule B hereto) and the Termination Values (set forth in Schedule C hereto) shall at all times be sufficient to satisfy the obligations of the Lessor under the Security Agreement and the Notes.

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

So long as the Security Agreement has not been terminated, the Lessee will pay all rentals, Casualty Value and Termination Value payments, liquidated damages, indemnities and other moneys provided for in this Lease (other than amounts of indemnity payable to the Lessor pursuant to § 6 or 9 hereof, which amounts shall be paid promptly when due to the parties entitled thereto) due and to become due under this Lease or otherwise in respect of the Units leased hereunder by transfer of immediately available funds directly to the Trustee, by 11:00 a.m., Baltimore time, on the date such payment is due, by bank wire transfer of immediately available funds to The Annapolis Banking and Trust Company, Main Street and Church Circle, Annapolis, Maryland, for credit to the Agent's Account No. 52076-1, with a request that The Annapolis Banking and Trust Company advise Mrs. K. M. Tollberg, Assistant Vice President, Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, that the

funds are "RE: DOW 12/1/80" (or at such other address as may be furnished in writing to the Lessee by the Trustee); provided, however, that after termination of the Security Agreement the Lessee shall pay all amounts directly to the Lessor (in immediately available funds at its address set forth in § 18 hereof, or at such other place and in such other manner as the Lessor may indicate to the Lessee in writing).

All amounts earned in respect of the Units (including, without limitation, mileage charges) during the term of this Lease shall belong to the Lessee and, if received by the Lessor, shall be promptly turned over to the Lessee so long as no default or event which, with the giving of notice or the passage of time or both, would constitute a default exists hereunder.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery of the Bill of Sale (the "Lease Commencement Date") and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Trustee under the Security Agreement. If an Indenture Event of Default should occur under the Security Agreement, the Trustee may terminate this Lease or rescind its terms, all as provided therein; provided, however, that so long as (i) no Event of Default exists hereunder and (ii) the Trustee is entitled to apply the amounts assigned to the Trustee pursuant to paragraph (2) of the Granting Clause of the Security Agreement in accordance with the Security Agreement, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment under § 12 hereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each

side of each Unit, in letters not less than one-half inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Trustee's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Trustee under the Security Agreement. Each such Unit shall be so marked before the Lessee places it in operation or before the Lessee exercises any control or dominion over it, or as soon as possible, but in no event more than nine months, thereafter, and the Lessee will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Trustee and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Agreement shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Trustee and the Lessor an opinion of counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates or any permitted sublessee; but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, Federal or foreign taxes (other than any state franchise taxes and United States Federal net income tax payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state and local taxes measured by net income based on such receipts, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Agreement (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called

"Impositions"), all of which Impositions the Lessee assumes and agrees to pay before they become delinquent in addition to the payments to be made by it provided for herein. The Lessee will also pay any fines, penalties or interest on such Impositions, other than fines, penalties or interest resulting from the negligence of the Lessor, and any increase to the Lessor in federal, state or local income taxes as a result of the inclusion in the Lessor's income of any amounts required to be paid by Lessee under this Section 6. The Lessee will also pay before they become delinquent all Impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall not be under any obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such Impositions and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Lessor or the Trustee under the Security Agreement. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof, and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any Impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessor shall have given the Lessee written notice of such Imposition and afforded the Lessee the opportunity to contest such Imposition (in the manner described above) prior to such payment.

In the event that the Lessor shall become obligated to make any payment pursuant to Section 5.04(b) of the Security Agreement to the Trustee or otherwise pursuant to any correlative provision of the Security Agreement, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any reports with regard to Impositions are required to be made, the Lessee will, where permitted so to do under applicable rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor and the Trustee as shall be reasonably satisfactory to the Lessor and the Trustee or, where not so permitted, will notify the Lessor and the Trustee of such requirement and will prepare and deliver such reports to the Lessor and the Trustee within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Trustee.

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

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

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

§ 7. Maintenance, Casualty Occurrences, Insurance and Termination. (a) The Lessee, at its own expense, will maintain, service and repair each Unit and from time to time make or cause to be made all necessary restorations thereto as are consistent with prudent industry practice, but in any event to the same extent that Lessee would, in

the prudent management of its properties, maintain, service and repair comparable equipment if owned or leased by Lessee, to the extent necessary to maintain such Unit in good repair, working order and operating condition, ordinary wear and tear excepted. In the event the Lessee fails or is unable to perform maintenance and repairs as provided herein, the Lessor shall have the right, but not the obligation, to perform the same, and the Lessee shall forthwith reimburse the Lessor for all costs and expenses incurred by the Lessor in performing the same.

(b) In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, returned to a Builder pursuant to its patent indemnity, or taken or requisitioned by condemnation or otherwise (by an entity other than the United States Government) resulting in loss of possession by the Lessee for a period of 90 consecutive days, or taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the lesser of 270 days or the then remaining term of this Lease (any such occurrence being hereinafter called a "Casualty Occurrence"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Trustee with respect thereto. On the rental payment date next succeeding such notice (the "Casualty Date"), the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as defined in the next paragraph) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable under the circumstances on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale (after deduction of all selling costs) to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to the Builder thereof pursuant to its patent indemnity in an amount equal to any payment made by such Builder to the Lessor in respect thereof.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date.

Promptly after obtaining knowledge of any Casualty or Termination, the Lessor shall file, or cause to be filed, with the Trustee a certificate setting forth the principal of and premium, if any, on the Notes required to be prepaid pursuant to Section 3.02 of the Security Agreement in respect of such Casualty or Termination. Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and Trustee with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 25.0067% of the Purchase Price of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the first paragraph of this § 7(b), if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the term of this Lease, in which event the Lessee shall promptly and fully notify the Lessor with respect thereto and pay the Lessor on the last rental payment date an amount equal to 25.0067% of the Purchase Price of such Unit as the Casualty Value therefor (in addition to the rental in respect of such Unit accrued as of such date). Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Lessor. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as agent for the Lessor, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Lessor. In the event such Unit shall be

returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Lessor in the manner provided in § 14 hereof.

(c) In the event of the requisition of any Unit for use by an entity other than the United States government for a period of 90 days or less or by the United States Government for a period which does not exceed the lesser of 270 days or the remaining term of this Lease or for an indefinite period (except where deemed a Casualty Occurrence pursuant to the first and last paragraphs of (b) above), all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Lessor or the Lessee from the United States Government for the use of such Unit during the term of this Lease shall be paid over to or retained by the Lessee, provided 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.

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

From the time any Unit is accepted by the Lessee to the end of the term of this Lease, Lessee shall:

(i) at its option, either provide insurance coverage for, or self assume, in whole or in part, the risks of actual or constructive loss or damage to one or more of the Units up to the Casualty Value thereof; and

(ii) provide adequate public liability insurance (in limits of at least \$50,000,000) for personal injuries, death, or property damage resulting from the ownership, maintenance, use or operation of the Units;

in each such case with such deductibles, in such amounts, against such risks and with such insurance companies as is carried by corporations of established reputation engaged in the same or a similar business as the Lessee and similarly situated, but in any event with no greater deductibles

and at least comparable in amounts and against risks customarily insured against by the Lessee with respect to equipment it owns or leases similar in nature to the Units.

Each of the insurance policies providing said coverage shall:

(i) name the Lessor and the Trustee as additional insureds as their respective interests may appear,

(ii) as between the Lessee and the Lessor and the Trustee all such insurance shall be primary insurance and not excess over any other coverage which the Lessor or the Trustee, or both, may have,

(iii) provide that the policy may not be canceled or materially altered without 30 days' prior written notice to the Lessor and the Trustee,

(iv) provide that in the event of any loss payment under a policy the insurer shall waive any rights of subrogation against the insured party and shall waive any setoff or counterclaim or any other deduction whether by attachment or otherwise, and

(v) include a cross-liability endorsement providing that inasmuch as the policies are written to cover more than one insured, all terms and conditions insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

The Lessee shall provide the Lessor and the Vendor with a certificate or certificates evidencing the aforesaid coverage, or, where permitted, a letter declaring its intent to self assume the aforesaid risks, on or prior to the Closing Date (as defined in the Participation Agreement) and thereafter prior to the expiration dates of the expiring policies required pursuant to this Section 7.

In the event of failure on the part of the Lessee to provide and furnish any of the aforesaid insurance, the Lessor or the Trustee, upon notice to the Lessee, may, but shall not be obligated to, procure such insurance and the

Lessee shall, upon demand, reimburse the Lessor and the Trustee for all expenditures made by the Lessor or the Trustee for such insurance, together with interest thereon computed at the maximum rate of interest permitted by law, but no more than 15% per annum, from the date of the Lessor's or the Trustee's payment until reimbursed by the Lessee. Nothing in this Section 7 shall be construed to prohibit the Lessor or the Trustee from insuring at its own expense any Unit or its interest therein, and any insurance so maintained shall not provide for or result in a reduction of the coverage or the amounts payable under any of the insurance required to be maintained by the Lessee under this Section 7.

(e) If the Lessor shall receive any insurance proceeds from casualty insurance maintained by the Lessee pursuant hereto or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value paid by the Lessee, and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All casualty insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon Lessee's notification to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

(f) In the event that the Lessee shall, in its reasonable judgment, determine that any Group (as herein-after defined) of Units has become surplus to its need or obsolete in the Lessee's business, the Lessee shall have the right, at its option and on at least 90 days' prior written notice to the Lessor, to terminate (a "Termination") this Lease as to such Group as of any succeeding rent payment date specified in such notice (the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than January 2, 1991, (ii) no Event of Default or other event which after the lapse of time or notice or both would become an Event of Default shall have occurred and be continuing, (iii) on the Termination Date each Unit in such Group shall be in the same condition as if being redelivered pursuant to § 14 hereof, (iv) on the Termination Date the Lessee shall deliver to the Lessor a certificate signed by the management official of the Lessee having responsibility for such

matters, stating with regard to the Group then subject to termination (a) that such Group is obsolete in the Lessee's business, or (b) that the Lessee has not within the preceding 12 months purchased, leased or otherwise obtained the use of equipment having similar specifications or employed for similar functions ("Similar Equipment") to replace such Group, that the Lessee has not entered into any contract or commitment to purchase, lease or otherwise obtain the use of Similar Equipment to replace such Group during the next 12 months, and that the Lessee has no present intention to purchase, lease or otherwise obtain the use of Similar Equipment to replace such Group during the next 12 months, and (v) on the Termination Date the Lessee shall deliver to the Lessor a certificate signed by the management official having responsibility for such matters stating with regard to the Group then subject to termination that the Lessee has, to the extent permitted thereunder, terminated the leases of all Similar Equipment which was placed in service prior to the date the Units in such Group were placed in service. For this purpose, the term "Group of Units" shall mean all Units with the same Group Number (as set forth in Schedule A hereto) subject to this Lease at the Termination Date.

During the period from the 30th day after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of all Units in such Group, and the Lessee shall at least five business days prior to such Termination Date certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be a corporation or individual affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date the Lessor shall sell all Units in such Group for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at each such sale shall be applied to the prepayment of the Notes in accordance with Section 3.02 of the Security Agreement and any balance shall be retained by the Lessor.

On such Termination Date, the Lessee shall pay to the Lessor (i) the excess, if any, of the Termination Value for each such Unit computed as of such date over the sale price of such Unit after the deduction of all expenses incurred by the Lessor in connection with such sale, (ii) the rental payment due on such Termination Date and (iii) if the Termination is due to the Unit being

surplus to the Lessee's need, an amount equal to the prepayment premium, if any, payable pursuant to Section 3.02 of the Security Agreement on such date in respect of the Notes to be prepaid by the Lessor on such date. The Termination Value of each such Unit as of the payment date on which payment is to be made shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule C hereto opposite such date. In no event shall the aggregate amount retained by the Lessor and received by the Lessor as aforesaid be less than the principal of and the premium, if any, and interest on the Notes required to be prepaid in respect of such Termination pursuant to Section 3.02 of the Security Agreement.

If no sale shall occur on the date scheduled therefor as provided above, this Lease shall continue in full force and effect without change unless and until the Lessee pays to the Lessor the Termination Value of each Unit subject to the Termination and returns each such Unit to the Lessor pursuant to § 14 hereof; provided, however, that this Lease shall not terminate as to any such Unit unless the prepayment of Notes required under Section 3.02 of the Security Agreement in respect of such Termination shall be made on the Termination Date.

In the event of any such sale of any Unit and the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Unit on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all the Lessor's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Lessor's acts.

If the Lessee shall exercise its option to terminate as to any Unit, the Lessor may, notwithstanding such election by the Lessee, by written notice to the Lessee given 90 days after the termination notice is given to the Lessor, elect to retain such Unit, in which case the Lessee shall not be obligated to pay the Termination Value to the

Lessor; provided, however, that this Lease shall not terminate as to any such Unit unless the prepayment of Notes required under Section 3.02 of the Security Agreement in respect of such Termination shall be made on the Termination Date. In the event the Lessor shall so elect to retain such Unit, the Lessee shall deliver such Unit to the Lessor in accordance with the provisions of § 14 hereof.

§ 8. Reports. On or before April 30 in each year, commencing with the calendar year 1982, the Lessee will furnish to the Lessor and the Trustee an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Agreement, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Trustee may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Agreement have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect to the condition and operation of such Units at such reasonable times as the Lessor may request during the continuance of this Lease, subject, however, to the Lessee's secrecy, security and safety regulations for the property and records involved.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert

and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against any Builder under the Bill of Sale and any proceeds received by the Lessor in respect thereof shall be immediately paid over to the Lessee; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may upon written notice to the Lessee assert and enforce, at the Lessee's sole cost and expense, such claims and rights and receive the benefits of any such proceeds. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of the Bill of Sale for the Units shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which 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 and 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 (all such laws and rules to such extent being hereinafter called "Applicable Laws"); provided, however, that the Lessee may at its own expense upon written notice thereof to the Lessor, in good faith, contest the validity or application of any such Applicable Law in any reasonable manner which does not, in the opinion of the Lessor or the Trustee, adversely affect the property or rights of the Lessor or the Trustee under this Lease or under the Security Agreement. The Lessee

shall notify Lessor of, and shall, at the Lessee's sole cost and expense, make or provide all improvements, alterations, modifications, additions, attachments, or other equipment, or changes (hereinafter collectively called "Improvements") to the Units or any of them deemed necessary or desirable by any Federal, state or local governmental body or agency or the interchange rules of the Association of American Railroads (hereinafter called "legally required Improvements"). Any legally required Improvement and any other Improvements which are not readily removable without causing material damage to a Unit (hereinafter called "nonseverable Improvements") shall be and immediately become the property of Lessor and subject to the terms of the Lease. So long as Lessee is not in default hereunder, Lessee may, upon notice to Lessor, at Lessee's sole cost and expense, make other nonseverable Improvements to a Unit, which are not legally required Improvements; provided that the value or general usefulness of the Unit is not reduced thereby and that such Improvements constitute "Improvements" which the Lessee may finance pursuant to the provisions of Rev. Proc. 79-48 or any successor law, ruling or regulation. So long as Lessee is not in default hereunder, Lessee may, upon notice to Lessor, at Lessee's sole cost and expense, make other readily removable Improvements to a Unit provided that such Improvements do not cause material damage to the Unit or reduce its value or general usefulness. Any such readily removable Improvements shall remain the property of Lessee and be removed by Lessee, at its expense, upon or prior to return of any Unit to the Lessor pursuant to § 11 or § 14 hereof, and if not so removed by Lessee may be removed by Lessor without liability to Lessee therefor. Any and all costs of removal and repair shall be for Lessee's account. Lessor is hereby granted a security interest in and to any such readily removable Improvements to secure all of Lessee's obligations hereunder. Nothing herein shall be deemed to preclude Lessor and Lessee from negotiating the lease financing hereunder for any proposed Improvements.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Trustee from and against the following (hereinafter called, subject to the next succeeding paragraph, the "Indemnified Matters"): all losses, damages, injuries, liabilities, (including, without limitation, claims for negligence or strict liability in tort) claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not

limited to, counsel fees and expenses, patent or trademark liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of, or the occurrence of a default, an event of default or an Event of Default under, the Security Agreement, the Participation Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit, including without limitation those caused by latent or other defects, whether or not discoverable, resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease or the transfer of title to the Units by the Trustee pursuant to any provision of the Security Agreement. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all other obligations under this Lease or the expiration or termination of the term of this Lease. To the extent the Lessee is required to provide protection or indemnification hereunder, the Lessee may select counsel (which will be reasonably acceptable to the Lessor) and direct counsel's actions in respect thereof.

The Indemnified Matters shall not include any loss, damage, injury, liability, claim, demand, cost, charge or expense incurred by any indemnified party (a) caused by the wilful misconduct or gross negligence of such indemnified party, (b) resulting from acts or events with respect to any Unit which commence after such Unit has been returned to the Lessor in accordance with § 14 hereof, (c) caused by the violation by such indemnified party of any banking, investment, insurance or securities law, rule or regulation applicable to it (unless such violation shall be the result of any misrepresentation, violation or act of the Lessee), (d) arising from the breach of an express duty, obligation, representation or warranty of such indemnified party made herein or in any of the documents related to the transactions contemplated hereby, or (e) which is related to the lien, charge, security interest or other encumbrance which the Lessee is not required by § 12 hereof to discharge or in any of the other documents related to the transactions contemplated hereby to be borne by such indemnified party.

Upon request by the Lessor, the Lessee will prepare and deliver to the Lessor within a reasonable time

prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns except as required by the provisions of § 6 hereof) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing thereof to the Lessee.

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

A. default shall be made in payment of any amount provided for in § 3, 7 or 13 hereof, and such default shall continue for 10 days;

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

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Trustee to the Lessee specifying the default and demanding that the same be remedied;

D. any representation or warranty made by the Lessee herein or in the Participation Agreement or in any certificate or statement furnished to the Lessor pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

E. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease or the Participation Agreement, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder) and, unless such proceedings shall

have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Participation Agreement shall not have been or 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 60 days after such proceedings shall have been commenced; or

F. an Indenture Event of Default (as defined in Section 4.01 of the Security Agreement) shall have occurred as a result of any default by the Lessee in performing any of its obligations hereunder;

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

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee (specifically identifying the Event of Default) terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction but applying any proceeds (net of expenses as determined by the Lessor) arising therefrom against the liabilities of the Lessee herein; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental

for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty, whichever of the following amounts the Lessor, 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 rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 5% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease 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 Lessor 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 Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this subparagraph (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the 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 Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

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

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

The Lessee agrees to furnish the Lessor and the Trustee, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this paragraph, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and meet the standards then in effect of the Interchange Rules of the Association of American Railroads and/or 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 Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee or any of its affiliates or, at the expense of the Lessee, on any other storage tracks, as the Lessor reasonably may designate;

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

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

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Units in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same. In the event that any of the Units are sold, leased, or otherwise disposed of the Lessee shall pay to the Lessor the per diem interchange for each such Unit which shall not have been assembled, delivered, stored, insured and transported as hereinbefore provided, by the date of such disposition for each day from the date of such disposition to the date of delivery to the purchaser or lessee thereof. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the

agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor, including without limitation, to the Trustee as contemplated by Section 17 hereof, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. The Lessee hereby acknowledges receipt of such notice of assignment to the Trustee pursuant to the Security Agreement. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns including the Trustee, except as may be limited in any assignment thereof.

So long as the Lessee shall not be in default under this Lease the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Trustee, neither of which shall be unreasonably withheld, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except, and then only so long as the Lessee shall not then be in default under this Lease (and subject to this Lease and to the rights of the Lessor hereunder, and without releasing the Lessee from its obligations hereunder), to an Affiliate, or under a written sublease to a railroad classified by the Interstate Commerce Commission as a Class I railroad or to a responsible company, as determined by the Lessee, subject in each case to the written consent of the Lessor and the Trustee, neither of which shall be unreasonably withheld; and the Lessee shall not, without such written consent, except as provided in this § 12, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Units. For the purpose of this § 12, "Affiliate" shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, the Lessee. For the purposes of this definition, "control" (including "controlled by" and "under common control with"), as used with respect to any corpo-

ration, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise. Every such sublease shall expressly subject the rights of the sublessee under such sublease to the rights of the Lessor in respect of the Units covered by such sublease in the event of the happening of an Event of Default, and the Lessee shall remain primarily liable for all obligations to be fulfilled by it hereunder. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Trustee or resulting from claims against the Lessor or the Trustee not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Trustee or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any Affiliate upon lines of railroad owned or operated by it or any such Affiliate or upon lines over which the Lessee or any such Affiliate has or obtains trackage or other operating rights or over which railroad equipment of the Lessee or any such Affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Partici-

pation Agreement) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Renewal Option and Right of First Refusal.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term elect to extend the term of this Lease in respect of all (but not fewer than all) the Units in any Group of Units (as defined in § 7 hereof) then covered by this Lease, for the lesser of 5 years or the Maximum Extended Term (as hereinafter defined) at a semiannual rental of 3.254825% of the Purchase Price of each Unit then subject to this Lease, payable in semiannual payments on each semiannual anniversary of the commencement of the original term. The "Maximum Extended Term" for any Group of Units shall be the period (A) which equals (x) 80% of the total Appraised Useful Life (as hereinafter defined) of the Units in such Group from the date such Units were originally placed in service less (y) the basic lease term of 18 years plus the period from the date such Units were originally placed in service to the Lease Commencement Date and (B) during which the Appraised Fair Market Value (as hereinafter defined) of the Units in such Group at the end of the proposed renewal shall equal or exceed 20% of the aggregate Purchase Price of such Units. "Appraised Useful Life" shall mean the useful life of the Units in such Group from the date such Units were originally placed in service, determined by an independent appraiser as of the end of the basic lease term of 18 years appointed by the Lessee with the approval of the Lessor. "Appraised Fair Market Value" shall mean the estimated fair market value of the Units in such Group at the end of the proposed renewal, determined as of the commencement of such renewal by an independent appraiser appointed by the Lessee with the approval of the Lessor, such determination to be made without any adjustment for inflation or deflation, as the case may be, from the commencement of this Lease. If an independent appraiser shall not have been so appointed and approved within 60 days after the written notice of extension of this Lease by the Lessee, each party shall

appoint an independent appraiser within 65 business days after such notice is given, and the two appraisers so appointed shall within 75 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 75 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Appraised Useful Life and Appraised Fair Market Value of the Units subject to the proposed renewal term within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of the Appraised Useful Life and Appraised Fair Market Value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser or engineer which differs most from the other two shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Appraised Useful Life and Appraised Fair Market Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

Provided that this Lease has not been earlier terminated and that no Event of Default under this Lease (or other event which after lapse of time or notice or both would become an Event of Default under this Lease) shall have occurred or be continuing, in the event the Lessor elects to sell any Units to third parties at any time prior to 180 days after the expiration of the original or the extended term of this Lease, the Lessee shall be given written notice of such intention (and written notice of the Lessor's estimate of the Fair Market Value of the Units) at least 60 days prior to the date proposed for such sale. The Lessee shall have the sole right and option to purchase any such Unit at its Fair Market Value. The

Lessee may exercise such purchase right by delivery to the Lessor of a written notice within 30 days of receipt of notice from the Lessor, indicating whether it accepts the Lessor's estimate of the Fair Market Value of the Units or that such Fair Market Value shall be determined in accordance with the appraisal procedure set forth in the first paragraph of this Section 13. The date of purchase shall not be later than the latest of (i) 60 days after the date of delivery of such notice by the Lessee to the Lessor, (ii) 90 days after the expiration of such term of this Lease or (iii) 10 business days after completion of the appraisal procedure, if applicable. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Lessor until the date of such purchase. If the Lessee does not deliver such notice to the Lessor, all obligations of the Lessor under this paragraph shall terminate.

§ 14. Return of Units upon Expiration of Term.

As soon as practicable but not longer than 60 days after the expiration of the original or extended term of this Lease, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of each Unit to the Lessor upon such storage tracks of the Lessee (at not more than three locations) as the Lessee may designate and permit the Lessor to store such Unit on such tracks for a period not exceeding 90 days and transport the same, at any time within such 90-day period, to the nearest railroad interconnection, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will, at its own cost and expense, insure, maintain and keep each Unit in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered

to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards in effect upon the expiration of this Lease under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If any of the Units suffers a Casualty Occurrence during any storage period provided for in this Section 14, the Lessee shall pay to the Lessor the Casualty Value of such Unit as determined in accordance with Section 7 hereof. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

In the event any Unit is not assembled, delivered and stored as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter the per diem interchange for such Unit until the date on which such Unit has been so assembled, delivered and stored.

§ 15. Recording. Prior to the delivery of the Bill of Sale, the Lessee, at its own expense, will cause this Lease and the Security Agreement to be filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will from time to time perform such acts and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Trustee for the purpose of proper protection, to their satisfaction, of the Trustee's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease and the Security Agreement; and the Lessee will promptly furnish to the Trustee and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Trustee and the Lessor.

§ 16. 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 Lessee promptly to pay, to the extent legally enforceable, an amount equal to 15% per annum on 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.

§ 17. Security for Lessor's Obligations to Holders of Notes. In order to secure the indebtedness evidenced by the Notes, the Lessor has created, through the Security Agreement, a security interest in the Units and in this Lease and all amounts (except those specifically excluded by the Security Agreement) payable hereunder. The Lessee acknowledges receipt of a copy of the Security Agreement and consents to all the terms and conditions thereof and agrees that the Trustee shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under this Lease as though the Trustee were named herein as the Lessor.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be in writing and effective upon delivery, addressed as follows:

(a) if to the Lessor, at 234 North Central Avenue, Suite 522, Phoenix, Arizona 85004, Attention of Vice President and Manager;

(b) if to the Lessee, at 2020 Dow Center, Midland, Michigan 48640, Attention of Treasurer-Dow Chemical, U.S.A.;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Trustee and each Purchaser in the manner provided in Section 6.4 of the Participation Agreement.

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

Except for the Participation Agreement and the Indemnity Agreement, this Lease exclusively and completely states the rights and obligations of the Lessor and the Lessee with respect to the leasing of the Units and supercedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee and consented to in writing by the Trustee.

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

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

§ 22. No Guarantee of Notes or Residual Value. Nothing in this Agreement is intended or shall be construed to constitute a guarantee by the Lessee of the Notes or of the residual value of any Unit.

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

THE DOW CHEMICAL COMPANY,

by

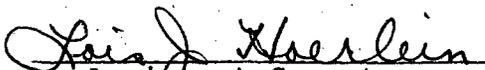


~~Vice President~~ *MB*

Authorized Signer

[Corporate Seal]

Attest:


Assistant Secretary

VALLEY BANK LEASING, INC.,

by

[Seal]

Attest:

Except for the Participation Agreement and the Indemnity Agreement, this Lease exclusively and completely states the rights and obligations of the Lessor and the Lessee with respect to the leasing of the Units and supercedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee and consented to in writing by the Trustee.

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

THE DOW CHEMICAL COMPANY,

by

[Corporate Seal]

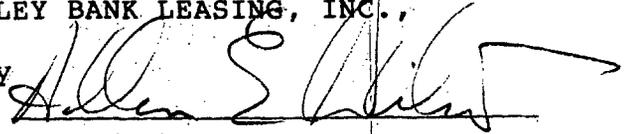
Vice President

Attest:

Assistant Secretary

VALLEY BANK LEASING, INC.,

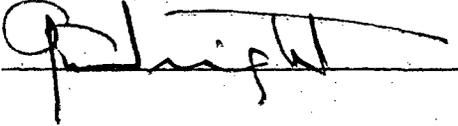
by



Vice President And
General Manager

[Seal]

Attest:



AUTHORIZED SIGNER

STATE OF MICHIGAN,)
) ss.:
COUNTY OF MIDLAND,)

On this 30th day of December 1980 before me personally appeared Thomas G. Brennan, to me personally known, who, being by me duly sworn, says that he is a ~~Vice President~~ of THE DOW CHEMICAL 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.

Rita A. Bartos

Notary Public

[Notarial Seal]

My Commission expires RITA A. BARTOS
Notary Public, Midland County, Michigan
My Commission Expires March 21, 1983

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

On this _____ day of December 1980 before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is an authorized officer of VALLEY BANK LEASING, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE A TO LEASE

Specifications of the Equipment

<u>Builder</u>	<u>AAR Mechanical Designation</u>	<u>Group Number</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Unit Purchase Price</u>	<u>Aggregate Purchase Price</u>
ACF Indus- tries, Incorporated	5.2 HO-1	1	146	DOWX 5309-5454	\$45,000	\$ 6,570,000
Pullman Incorporated	5.8 HO-1	2	51	DOWX 3112-3162	46,500	2,371,500
ACF Indus- tries, Incorporated	5.2 HO-1	2	9	DOWX 5507-5515	45,000	405,000
ACF Indus- tries, Incorporated	5.2 HO-1	2	26	DOWX 5517-5542	45,000	1,170,000
ACF Indus- tries, Incorporated	5.2 HO-1	2	12	DOWX 5545-5556	45,000	540,000
ACF Indus- tries, Incorporated	5.2 HO-1	2	3	DOWX 5558-5560	45,000	135,000
TOTAL			<u>247</u>	TOTAL		<u>\$11,191,500</u>

SCHEDULE B TO LEASE

Casualty Values

<u>Payment Date</u>	<u>Percentage</u>
7/2/81	106.9037%
1/2/82	108.8936
7/2/82	111.5210
1/2/83	111.3311
7/2/83	113.5513
1/2/84	112.7220
7/2/84	114.9915
1/2/85	113.5520
7/2/85	115.8043
1/2/86	113.7865
7/2/86	116.0072
1/2/87	113.4079
7/2/87	115.5743
1/2/88	112.3535
7/2/88	114.4342
1/2/89	110.5589
7/2/89	112.5325
1/2/90	107.9737
7/2/90	109.8808
1/2/91	102.1130
7/2/91	104.0223
1/2/92	95.2605
7/2/92	97.1665
1/2/93	87.4234
7/2/93	89.3254
1/2/94	78.6477
7/2/94	80.6270
1/2/95	69.3461
7/2/95	71.1920
1/2/96	59.4076
7/2/96	61.0356
1/2/97	48.7344
7/2/97	50.1590
1/2/98	37.2876
7/2/98	38.4875
1/2/99	25.0067

SCHEDULE C TO LEASE

Termination Values

<u>Payment Date</u>	<u>Percentage*</u>
1/2/91	102.11308
7/2/91	104.0223
1/2/92	95.2605
7/2/92	97.1665
1/2/93	87.4234
7/2/93	89.3254
1/2/94	78.6477
7/2/94	80.6270
1/2/95	69.3461
7/2/95	71.1920
1/2/96	59.4076
7/2/96	61.0356
1/2/97	48.7344
7/2/97	50.1590
1/2/98	37.2876
7/2/98	38.4875
1/2/99	25.0067

* Subject to increase by the amount of any premium on the Notes, as provided in the third paragraph of § 7(f) of the Lease.