13221

RECORDATION NO. ..... Filed 1425

CRAVATH, SWAINE & MOORE

AUG 14 1981 -10 25 AM

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

INTERSTATE COMMERCE COMMISSION

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13221 A

RECORDATION NO. ..... Filed 1425

AUG 14 1981 -10 25 AM

INTERSTATE COMMERCE COMMISSION

13221 B

RECORDATION NO. ..... Filed 1425

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INTERSTATE COMMERCE COMMISSION

13221 C

RECORDATION NO. ..... Filed 1425

AUG 14 1981 -10 25 AM

INTERSTATE COMMERCE COMMISSION

No. ..... AUG 14 1981
Date .....
Fee $ 100.00
ICC Washington, D. C.

July 31, 1981

Badische Corporation
Lease Financing Dated as of June 1, 1981
Floating Rate Conditional Sale Indebtedness Due January 1, 2007

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 Badische Corporation for filing counterparts of the following documents:

Rec's Memoran — (1) (a) Conditional Sale Agreement dated as of June 1, 1981, between North American Car Corporation and Exchange National Bank of Chicago, as Trustee; and

— A (b) Agreement and Assignment dated as of June 1, 1981, between North American Car Corporation and La Salle National Bank, as Agent.

— B (2) (a) Lease of Railroad Equipment dated as of June 1, 1981, between Badische Corporation and Exchange National Bank of Chicago, as Trustee; and

— C (b) Assignment of Lease and Agreement dated as of June 1, 1981, between Exchange National Bank of Chicago, as Trustee and La Salle National Bank, as Agent.

Counterparts
John Austin

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

(1) Vendor-Assignee-Agent:

La Salle National Bank,
135 South La Salle Street,
Chicago, Illinois 60690.

(2) Trustee:

Exchange National Bank of Chicago,
130 South La Salle Street,
Chicago, Illinois 60603.

(3) Builder-Vendor:

North American Car Corporation,
33 West Monroe Street,
Chicago, Illinois 60603.

(4) Lessee:

Badische Corporation,
Drawer D,
Williamsburgh, Virginia 23185.

Please file and record the documents referred to in this letter and index them under the names of the Vendor-Assignee-Agent, the Trustee, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents consists of the following:

184 4750 cu. ft. aluminum covered hoppers cars with trough hatches and gravity gates, AAR Mechanical Designation LO, bearing the Lessee's identification numbers CHTT 719500-719683, both inclusive.

There is also enclosed a check for $100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document), and the Lease of Railroad Equipment and related Assignment of Lease and Agreement (together constituting one document).

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
Badische Corporation

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

Encls.

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RECORDATION NO. 13221-B Filed 1425

AUG 14 1981 - 10 25 AM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 4876-028]

LEASE OF RAILROAD EQUIPMENT

Dated as of June 1, 1981

Between

BADISCHE CORPORATION,

Lessee,

and

EXCHANGE NATIONAL BANK OF CHICAGO,
not in its individual capacity but solely as
Trustee under the Trust Agreement
dated as of the date hereof with
General Electric Credit Corporation.

[Covering 184 Aluminum Covered Hopper Cars]

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of La Salle National Bank, as agent for a certain investor. The original of this Lease is held by said Agent.

LEASE OF RAILROAD EQUIPMENT

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* This Table of Contents has been included for convenience only and does not form a part of this document.

LEASE OF RAILROAD EQUIPMENT dated as of June 1, 1981, between BADISCHE CORPORATION, a Delaware corporation ("Lessee"), and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, acting not in its individual capacity but solely as trustee ("Trustee") under the Trust Agreement ("Trust Agreement") dated as of the date hereof with GENERAL ELECTRIC CREDIT CORPORATION, a New York corporation ("Owner").

The Trustee is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with NORTH AMERICAN CAR CORPORATION ("NAC"), pursuant to which NAC has agreed to conditionally sell and deliver to the Trustee the units of railroad equipment described in Appendix A hereto ("Equipment").

NAC is assigning certain of its interests in the CSA pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") to LA SALLE NATIONAL BANK, acting as agent ("Agent") for an institutional investor (together with its successors and assigns, "Investors") under a Participation Agreement dated as of the date hereof ("Participation Agreement") among the Lessee, the Agent, the Owner, the Trustee and the Investors.

The Lessee desires to lease from the Trustee such units of Equipment as are delivered and accepted and settled for under the CSA ("Units") upon the terms and conditions hereinafter provided. The Trustee will assign this Lease for security to the Agent pursuant to an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement substantially in the form attached to the Lease Assignment ("Consent").

In consideration of the agreements hereinafter set forth, the Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. NET LEASE

This Lease is a net lease and all rentals and other

amounts hereunder shall be net to the Trustee and all costs, expenses, and obligations of every kind and nature relating to the Units shall be paid by the Lessee, except as otherwise provided herein. Each of the Lessee's obligations to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against rent or such other amounts, including but not limited to abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Trustee under this Lease or the CSA, including the Lessee's rights by subrogation thereunder to NAC, the Agent or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Trustee 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 Trustee or the Agent for any reason whatsoever; provided, however, that the foregoing shall not be deemed a waiver by the Lessee of its right to pursue any past, present or future claims directly against NAC.

§ 2. DELIVERY AND ACCEPTANCE OF UNITS

The Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Trustee under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States at which such Unit is so delivered to the Trustee. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be in accordance with the Specifications (as defined in the CSA) and otherwise acceptable, to accept delivery of such Unit on behalf of the Trustee under the CSA and on behalf of itself hereunder and execute and deliver to the Trustee a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease; provided, however, that the delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to Section 3.3 or 4.1 thereof or Section 4 of the CSA Assignment shall be ineffective to subject such unit to this Lease.

§ 3. RENTALS

3.1. Amount and Date of Payment. The Lessee agrees to pay to the Trustee, as rental for each Unit subject to this Lease, (a) two interim rental payments on January 1, 1982, and April 1, 1982, and (b) 100 consecutive quarterly payments, in advance, on January 1, April 1, July 1 and October 1 in each year, commencing on April 1, 1982, until the end of the term of this Lease. The first interim rental payment shall be an amount equal to the Floating Rate (as defined in Section 4.4 of the CSA) multiplied by the Purchase Price (as defined in Section 4.1 of the CSA) for each Unit subject to this Lease for each day elapsed from and including the Closing Date for such Unit to, but not including, January 1, 1982, and the second interim rental payment shall be an amount equal to the Floating Rate multiplied by the Purchase Price for each Unit subject to this Lease for the period from January 1, 1982, to, but not including, April 1, 1982. In respect of each Unit subject to this Lease, the first eight quarterly rental payments shall each be in an amount equal to 2.467% multiplied by the Purchase Price of each such Unit; the next 36 quarterly

rental payments shall be in an amount equal to 2.335% multiplied by the Purchase Price of each such Unit; and the final 56 quarterly rental payments shall be in an amount equal to 2.15% multiplied by the Purchase Price of each such Unit.

The foregoing quarterly rental payments have been calculated on the assumptions that (i) all the Units will be delivered and accepted not later than December 31, 1981, whereas Appendix A hereto indicates that some Units may be delivered and accepted hereunder as late as March 31, 1982, and (ii) that interest payable on the CSA Indebtedness will be equal to 14% per annum, whereas the CSA Indebtedness will bear interest at the Floating Rate. With respect to any Unit delivered and accepted on or after January 1, 1982, the foregoing quarterly rental payments and the related Casualty Values and Termination Values set forth in Appendix B hereto shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Owner, cause the Owner's after-tax economic and accounting yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Owner in originally evaluating this transaction) to equal the aftertax economic and accounting yields and cash flows ("Net Economic Return") that would have been realized by the Owner if such Unit had been delivered and accepted on or before December 31, 1981. With respect to any rental payment date, the rental payment payable by Lessee shall be increased (or decreased) by the amount that the interest due on the CSA indebtedness on such date exceeds (or is less than) the interest that would have been due if the CSA indebtedness bore interest at the rate of 14% per annum. The foregoing quarterly rental payments and the related Casualty Values and Termination Values set forth in Appendix B hereto shall also be increased by such amount as shall equal the amount paid by the Trustee pursuant to the next to the last sentence of Section 2.5 of the Participation Agreement. At least five days prior to each quarterly rental payment date, the Lessor will advise the Lessee of the amount of the rental due on such rental payment date and the calculations showing how the amount was arrived at, such calculations to be conclusive as to the rental payment due absent manifest error.

In addition to the foregoing rentals, the Lessee hereby agrees to pay to the Trustee as rent amounts equal to the amounts required by the Trustee to make the payments provided for in the last sentence of Section 9.1, in Section 9.2 of the Participation Agreement and in Section 4.4(d) of the CSA on the dates required for such payments (without regard to the limitation of the obligation of the Trustee set forth therein) and the Trustee agrees to apply such rentals for such purposes.

Notwithstanding the foregoing, the rentals payable will never be less than those amounts required to enable the Trustee to satisfy its obligations to pay the CSA Indebtedness and the interest thereon when due regardless of any limitation of liability set forth in the CSA.

3.2. Payment on Nonbusiness Day. If any of the rental payment dates referred to in § 3.1 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 any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized or obligated to remain closed.

3.3. Instructions To Pay Agent and Trustee. Upon execution and delivery of the Lease Assignment and until the Agent shall have advised the Lessee in writing that all sums due from the Trustee under the CSA have been fully satisfied and discharged, the Trustee irrevocably instructs the Lessee to make all the payments provided for in this Lease to the Agent at La Salle National Bank, 135 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Division (or at such other address as may be furnished in writing to the Lessee by the Agent), with a notation that payment is for credit to Badische Corporation Lease Financing Trust Account No. 61-5620-50-7 on behalf of Badische Corporation. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Agent in writing that all sums due from the Trustee under the CSA have been fully discharged and satisfied, payments thereafter due shall be made to the Trustee in immediately available funds in the manner provided in § 3.4 hereof.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 hereof in immediately available Federal funds at or prior to 11:00 a.m. at the place where such payment is to be made.

§ 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance thereof pursuant to § 2 hereof and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate three months after the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of the Lessee hereunder shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. All rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights and obligations of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Agent is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 hereof.

§ 5. IDENTIFICATION MARKS

The Lessee will cause each Unit to be kept numbered with the identification number set forth in Appendix A hereto or, in the case of any Unit not there listed, such identification number as shall be set forth in any supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED 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 Trustee's and the Agent's title to and property in such Unit. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on each side thereof and will replace promptly any such words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification 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 Agent and the Trustee and filed by the Lessee in all public offices where this Lease and the CSA shall have been filed and (ii) the Lessee shall have furnished the Agent and the Trustee an opinion of counsel in form and substance satisfactory to the Agent and the Trustee to the effect that such statement has been so filed, such filing will protect the Agent's and the Trustee's interests in such Units and no filing with or giving of notice to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Agent and the Trustee in such Units.

The Units may be lettered with the names or ini-

tials or other insignia customarily used by the Lessee or its permitted sublessees, 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. GENERAL TAX INDEMNIFICATION

The Lessee assumes responsibility for and agrees to pay, protect, save, keep harmless and indemnify the Trustee, the Owner and the Agent and their successors and assigns ("Indemnified Persons") against all taxes, assessments, fees, withholdings and other governmental charges of any nature whatsoever, including without limitation penalties and interest (all such taxes, assessments, fees, withholdings, governmental charges, penalties and interest called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or any Unit in whole or in part on account of or with respect to this Lease or the CSA or in any way relating to or arising or alleged to arise out of this Lease, the CSA, the Participation Agreement, the Lease Assignment, the CSA Assignment or the Units or the manufacture, purchase, acceptance or rejection of the Units or any portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, transfer of title, operation, maintenance, repair, condition, sale, return or other disposition of the Units or any portion thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder (i) for any taxes imposed on or measured by any fees or compensation received by the Trustee or the Agent or for any taxes payable solely as a result of any actions taken or omissions to take any actions by such Indemnified Person in breach of any covenant set forth in this Lease or in any other document contemplated by the Participation Agreement, (ii) for any Federal, state and local taxes measured by net income based upon the Trustee's receipt of payments provided for herein (other than payments due the Trustee under this § 6 for which the Trustee is entitled to a corresponding deduction in the calculation of its net income) and franchise and value added taxes which are in lieu of such net income taxes and (iii) for any penalties, fines or interest where such levy or tax is not paid, if the Trustee or the Owner was aware, and the Lessee was not aware, of the tax and its due date and the Trustee or

the Owner failed seasonably to notify Lessee thereof. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within 10 days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that if any Taxes are being contested in accordance with the sixth paragraph of this § 6, any payment shall be made at the time therein provided.

In the event that the Trustee shall become obligated to make any payment to NAC or the Agent or otherwise pursuant to any corresponding provision of the CSA not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Trustee as will enable the Trustee to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made by the Lessee, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Trustee and the Agent in such Units, as shall be satisfactory to the Trustee and the Agent; provided, however, that the Trustee shall, with respect to any state of the United States or political subdivision thereof, file such returns, statements and reports relating to sales or use taxes and taxes, fees and charges on or measured by the Trustee's gross receipts arising from the Units or the value added by the Trustee thereto as the Lessee shall determine are required to be filed and as shall be prepared by the Lessee, and the Trustee shall remit the amount thereof upon payment by the Lessee to the Trustee (such payment to be made promptly upon demand by the Trustee therefor) of such taxes, fees and charges except as provided above; and provided further, that the Lessee shall have no obligation to prepare or file the Trustee's fiduciary income tax return or the Agent's income tax return. To the extent that the Trustee has information necessary to the preparation of any returns, statements and reports which the Lessee must prepare or file, it will furnish such information to the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required

by this § 6, the Trustee hereby authorizes the Lessee to act in the name of the Trustee and on its behalf; provided, however, that the Lessee shall indemnify and hold the Trustee 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 Trustee, submit to the Trustee copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Trustee of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Trustee reasonably may require to permit its compliance with the requirements of taxing jurisdictions.

If any taxing authority shall assert liability for any Taxes or propose an increase in the liability of any Indemnified Person for any such Taxes (such assertion or proposed increase called a "Claim"), indemnification for which would be required under this § 6, the Indemnified Person will notify the Lessee in writing within a reasonable time of such Claim. If the Lessee delivers to such indemnified Person written notice of its desire to contest such Claim within 30 days after receipt of notice from such Indemnified Person, such Claim will be contested in accordance with this paragraph, except to the extent such Claim represents amounts payable to the Agent under Article 6 of the CSA. If reasonably requested by the Lessee in writing and upon receipt of an indemnification reasonably satisfactory to the Indemnified Person, the Trustee will permit the Lessee to contest such claims under Article 6 of the CSA in accordance with the rights of the Trustee thereunder; provided, however, that such contest shall not materially and adversely affect the right, title and interest of the Trustee in the Units and the Lease. Such Indemnified Person will cooperate with any reasonable request made by the Lessee in connection therewith; provided, however, that such Indemnified Person may, after consultation with the Lessee and, after consideration of Lessee's desires as to choice of forum, in its sole discretion determine in what court or other forum such contest will be conducted and whether such contest will proceed by payment of the Taxes in contemplation of a suit for refund, and such Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified

Person in a manner satisfactory to such Indemnified Person for any liability or loss which such Indemnified Person may incur as a result of contesting the validity of any Claim and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may incur in connection with contesting such Claim (including fees and disbursements of counsel). If in any such contest the decision is made to pay the Taxes and sue for a refund, the Lessee will advance to such Indemnified Person on an interest-free basis sufficient funds to pay the Taxes which are to be contested. Upon receipt by any Indemnified Person of a refund of any Taxes paid by the Lessee pursuant to this paragraph, the amount of such refund and any interest paid to such Indemnified Person with respect thereto shall be paid to the Lessee forthwith upon receipt by such Indemnified Person.

The Lessee covenants and agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof and, to the extent possible, after taking into account any deductions permitted by reason of such indemnification, shall be equal to the amount of payment otherwise required hereunder.

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

§ 7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE; ECONOMIC OBSOLESCENCE

7.1. Definition of Casualty Occurrence; Payments. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the reasonable opinion of the Lessee, irreparably damaged from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to § 14 or 17 hereof, or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government

or any other governmental entity (including a foreign governmental entity) for a stated period which shall exceed the then remaining term of this Lease or resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease or during any renewal term hereof (each such occurrence called a "Casualty Occurrence"), the Lessee shall promptly and fully notify the Trustee and the Agent with respect thereto. On the next succeeding rental payment date or the date of termination of this Lease in the case of the last rental period (each such date called a "Casualty Payment Date"), the Lessee shall pay to the Trustee a sum equal to the Casualty Value (as defined in § 7.4 hereof) of any such Unit as of such Casualty Payment Date. 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 the Trustee shall be entitled to recover possession of such Unit whether or not such Unit is in the possession of the Lessee; provided, however, that the Lessee shall have no liability to return a Unit which has been lost, stolen or completely destroyed if the Trustee is unable to recover such a Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, 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 Trustee with respect thereto and pay the Trustee at the end of the term of this Lease an amount equal to the Casualty Value as of the end of the term of this Lease. Following such payment and provided that no Event of Default shall have occurred and be continuing, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value previously paid by the Lessee plus the Lessee's reasonable and documented costs in such proceeding and any balance of such payments shall be the property of the Trustee and shall be paid to the Trustee forthwith. 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 Trustee, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments there-

tofore received by the Lessee shall equal such Casualty Value previously paid by the Lessee plus the Lessee's reasonable and documented costs in such proceeding and the balance of such proceeds shall be paid to the Trustee forthwith. 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 for such use in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Trustee in the manner provided in § 17 hereof.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or extended term hereof and before such Unit shall have been returned in the manner provided in § 17 hereof, the Lessee shall promptly and fully notify the Trustee with respect thereto and pay to the Trustee (in addition to any amounts due pursuant to § 17 hereof) an amount equal to the Casualty Value as of the end of the term of this Lease. Upon the making of any such payment by the Lessee in respect of any Unit the Trustee shall be entitled to recover possession of such Unit whether or not such Unit is in the possession of the Lessee; provided, however, that the Lessee shall have no liability to return a Unit which has been lost, stolen or completely destroyed if the Trustee is unable to recover such a Unit.

7.2. Requisition by United States Government. In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the term of this Lease or for an indefinite period (except where deemed a Casualty Occurrence pursuant to the penultimate paragraph of § 7.1 hereof), 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 Trustee 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.

7.3. Lessee Agent for Disposal. The Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of the Lease at the best price obtainable on an "as is, where is" basis. If

the Lessee has previously paid the Casualty Value to the Trustee, the Lessee shall be entitled to the proceeds of such sale or condemnation to the extent they do not exceed the Casualty Value of such Unit and shall pay forthwith any excess to the Trustee.

7.4. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix B hereto opposite the numbered Casualty Payment Date next succeeding the actual date of such Casualty Occurrence or, if there is no such numbered Casualty Payment Date, the last rental payment date; but in no event shall such amount be less than the "Casualty Value" (as defined in Section 7.3 of the CSA) as of such Casualty Payment Date. In view of the fact that rentals are payable in advance, no rental shall be paid on the Casualty Payment Date in respect of any Unit in respect of which the Casualty Value is paid.

7.5. No Release. Except as provided in this § 7, the Lessee shall not be released from its obligations hereunder in the event of any Casualty Occurrence, and shall bear the risk of any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.6. Insurance To Be Maintained. (1) The Lessee shall at its own expense provide and maintain insurance, with financially sound insurers of recognized responsibility, on or with respect to the Units and the operation thereof at all times prior to their return to the Trustee as follows:

(i) insurance against loss or damage to the Units or any part thereof, which insurance shall be in amounts aggregating at all times not less than 110% of the then Casualty Value of the Units; provided that the Lessee may self-insure against such risks by deductible provisions of up to $50,000 for each event of loss or damage;

(ii) insurance against loss or damage to the person or property of others, which insurance shall be against such risks, in such form and in such amounts as would be carried by a prudent user of railroad cars similar to the Units; provided that in no event will such insurance be less than that which the Lessee carries on equipment owned or leased by it similar to the Units.

The policies of insurance required by this Section shall name the Lessor, the Owner and the Agent as additional named insureds as their interests may appear.

The Lessee will, at its expense, furnish or cause to be furnished to the Lessor, the Owner and the Agent on the First Delivery Date, and within 30 days prior to each anniversary date of the First Delivery Date during the Lease term, a certificate of insurance issued by a firm of independent insurance brokers of recognized standing, appointed by the Lessee and satisfactory to the Lessor, the Owner and the Agent, setting forth the amounts and types of insurance carried and maintained with respect to the Units, the names of the insurers providing such insurance, the expiration dates of all insurance policies covering the Units and such other relevant insurance matters as the Lessor, the Owner or the Agent may reasonably request. During the Lease term, the Lessee will promptly notify the Lessor, the Owner and the Agent in writing of any and all changes in, or cancelations or suspensions of, the insurance coverage for the Units.

All policies or certificates evidencing insurance required to be carried and maintained by this Section shall provide for at least 30 days' prior written notice by the underwriter, insurance company or fund, as the case may be, to the Lessor, the Owner and the Agent in the event of cancelation, expiration or modification of the coverage of any insurance or of nonpayment of any premium.

The Lessee will permit representatives of the Lessor, the Owner and the Agent to inspect all cover notes, policies, binders and certificates of entry in protection and indemnity associations and all endorsements and riders amendatory thereof providing the insurance coverage required by this Section.

The Lessee will, at its own expense, make or cause to be made all proofs of loss and take, or cause to be taken, all other action necessary or appropriate to make collections from the underwriters of insurance required to be carried and maintained by this Section. To that end, the Lessor and the Owner, at the Lessee's expense, will execute such claim papers and other documents, take such action and furnish such information as the Lessee may reasonably request.

The Lessee will not do or omit any act, or voluntarily suffer or permit any act to be done or omitted, whereby any insurance required to be carried or maintained hereunder

shall or may be suspended, impaired or defeated, and will not suffer or permit the Units to be used in any manner, not permitted under the policies of insurance in effect.

All insurance carried by the Lessee under this Section shall provide that in respect of the respective interests of the Lessor, the Owner and the Agent in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person and shall insure the Lessor, the Owner and the Agent regardless of any breach or violation of any warranty, declarations or conditions contained in such policies by the Lessee or any other person.

All insurance carried by the Lessee hereunder shall be primary without right of contribution from any insurance carried by the Lessor, the Owner or the Agent.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Trustee may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand, reimburse the Trustee for the cost thereof together with interest on the amount of such cost at the rate per annum specified in § 19 hereof.

(3) Notwithstanding the above, the Trustee may, at its option and expense, provide casualty insurance in amounts which are in excess of the Casualty Value and which policies may name the Trustee as the loss payee. If the Trustee exercises said option, then the Lessee will cooperate with the reasonable requests of the Trustee so as to effect this insurance coverage; it being understood that any insured coverage under this subparagraph (3) is expressly within the Trustee's option and in no way relieves the Lessee from any of its responsibilities under this § 7.6.

7.7. Insurance Proceeds and Condemnation Payments. If the Trustee shall receive (directly or from the Agent) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Trustee shall pay the same to the Lessee up to an amount equal to the Casualty Value with respect to any Unit theretofore paid by the Lessee and any balance shall remain the property of the Trustee; provided, however, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value and

the rentals payable in respect of such Units to the Trustee. All insurance proceeds received by the Trustee (directly or from the Agent) in respect of any damage to any Unit not constituting a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Trustee that the damage to such Unit in respect of which such proceeds were paid has been fully repaired, provided that no Event of Default shall have occurred and be continuing.

7.8. Economic Obsolescence. In the event that the Lessee shall, in its reasonable judgment, determine that the Units remaining under this Lease have become economically obsolete in the Lessee's business and an officer of the Lessee shall have provided a certificate to such effect to the Trustee and the Agent, the Lessee shall have the right, at its option and on at least 120 days' prior written notice to the Trustee, to terminate (which act shall hereinafter be called the "Termination") this Lease as to not less than all such Units as of any succeeding rental payment date specified in such notice (such termination date so specified being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than April 1, 1997, (ii) no Event of Default or other event which after the lapse of time or the giving of notice or both would become an Event of Default shall have occurred and be continuing on such date, and (iii) on the Termination Date all Units shall be in the condition required for redelivery pursuant to § 14.1 hereof.

During the period after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of each such Unit, and the Lessee shall at least five business days prior to such Termination Date certify to the Trustee the amount of each such bid and the name and address of the party (which shall not be a corporation, other entity or individual affiliated with the Lessee or any party for whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date the Trustee shall sell each such Unit 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 retained by the Trustee.

On such Termination Date, the Lessee shall pay to the Trustee with respect to each such Unit an amount equal to the excess, if any, of the Termination Value (as herein-

after defined) for each such Unit computed as of such date over the sale price of any such Unit so sold after the deduction of all expenses incurred by the Trustee in connection with such sale. The Termination Value of each such Unit as of the Termination Date on which payment is to be made shall be that percentage of the Purchase Price of such Unit as is set forth in Appendix B hereto opposite such date. In no event shall the aggregate amount of sale proceeds retained by the Trustee and payments of rental and Termination Value received by the Trustee as aforesaid be less than the Termination Value (as defined in Section 7.4 of the CSA) with respect to such Units as of such Termination Date.

If no sale of the Units shall occur on the Termination Date with respect thereto as provided above, this Lease shall continue in full force and effect without change.

Subject to the receipt by the Trustee on the Termination Date 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 include the rental payment date immediately preceding the Termination Date but shall then terminate. The Trustee 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 of the Trustee's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Trustee as above provided. Any such sale shall be free and clear of all of the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Trustee's acts.

If the Lessee shall exercise its option to effect a Termination, the Trustee may, notwithstanding such election by the Lessee, by written notice to the Lessee, the Agent and the Investor given within 60 days after the termination notice is given to the Trustee and upon satisfaction and discharge of the Trustee's obligations under the CSA with respect to any such Unit, elect to retain such Unit. In the event the Trustee shall so elect to retain such Unit and delivers to the Lessee evidence of the satisfaction and discharge of the Trustee's obligations under the CSA with respect to such Unit, the Lessee shall not be obligated to pay the Termination Value to the Trustee and the Lessee shall deliver such Unit to the Trustee in accordance with the provisions of § 17 hereof.

§ 8. REPORTS

On or before March 31 in each year, commencing with the calendar year 1982, the Lessee will furnish to the Trustee and the Agent an accurate statement stating (a) as at the preceding December 31 the total number, description and identification numbers of all Units then leased hereunder and covered by the CSA and 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 repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Trustee or the Agent may reasonably request, (b) in the case of all Units repainted or repaired during the period covered by such statement, that the numbers and markings required by § 5 hereof have been preserved or replaced and (c) that the Lessee is in compliance under this Lease and has performed or has caused to be performed the required maintenance of the Units and that no event has occurred which with notice or the lapse of time or both would constitute an Event of Default. The Trustee and the Agent shall each have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as they may request during the continuance of this Lease.

§ 9. DISCLAIMER OF WARRANTIES

THE TRUSTEE DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE TRUSTEE DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR 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 Trustee and the Lessee, are to be borne by the Lessee; but the Trustee 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 Trustee or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Trustee may

have against NAC under the provisions of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Trustee may assert and enforce such claims and rights at the Lessee's sole cost and expense. The Trustee shall have no direct responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Trustee 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 Trustee or the Agent based on any of the foregoing matters.

§ 10. LAWS AND RULES

10.1. Compliance. The Lessee agrees, for the benefit of the Trustee and the Agent, to comply in all respects (including without limitation the use, maintenance and operation of each Unit) with all 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, 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 by the Lessee or any sublessee (all such laws and rules to such extent called "Applicable Laws"), and in the event that the Applicable Laws require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Trustee or the Agent, materially and adversely affect the property or rights of the Trustee or the Agent under this Lease or under the CSA.

10.2. Reports for Trustee and Agent. The Lessee agrees to prepare and deliver to the Trustee and the Agent within a reasonable time prior to the required date of filing (or, to the extent permissible, file on their behalf) any and all reports (other than income tax returns) to be filed by the Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Trustee or the Agent of the Units or the leasing thereof to the Lessee.

§ 11. MAINTENANCE

11.1. Units in Good Operating Order. The Lessee, at its own cost and expense, will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the Applicable Laws and in the same condition as other similar Equipment owned or leased by the Lessee.

11.2. Additions and Accessions. (1) Except as set forth in §§ 10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units) which shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with § 11.2(2) hereof.

(2) 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, whether or not installed or added to such Unit in contravention of § 11.2(1) hereof, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit in railroad interchange by the Applicable Laws, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Trustee and the Agent as their respective interests may appear in the Unit.

§ 12. INDEMNIFICATION

12.1. Indemnified Persons. The Lessee shall pay and shall protect, indemnify and hold harmless the Trustee (in both its individual and fiduciary capacities), the Owner, the Agent and their respective successors, assigns, agents and servants ("Indemnified Persons") from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all documented liabilities, obligations, damages, costs, disbursements or expenses relating thereto, including without limitation, the reasonable attorneys' fees and expenses of any Indemnified Person) in any way relating to or arising or alleged to arise out of this Lease, the CSA or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent and other defects whether or not discoverable by the Indemnified Person or the Lessee; (iii) any claim for patent or trademark infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner arising or alleged to arise out of the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Indemnified Person, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation or alleged violation of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except to the extent any such violation arises from the gross negligence or wilful misconduct of the Indemnified Person; or (vii) any claim arising out of any of the Trustee's obligations under the Lease Assignment or the Agent's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement except to the extent such claim arises from the gross negligence or wilful misconduct of the Indemnified Person (all such matters called "Indemnified Matters"). The Lessee shall be obligated under this § 12.1, whether or not any Indemnified Person shall also be indemnified with respect to any Indemnified Matter under any other agreement by any other person, and the Indemnified Person may proceed directly

against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense defend such action, suit or proceeding, or cause the same to be defended by counsel selected by the Lessee and approved by such Indemnified Person, which approval shall not be unreasonably withheld, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any indemnification under this § 12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against and of any other such taxes as determined in the sole discretion of the Indemnified Person, such discretion to be reasonably applied), shall be equal to the amount of such payment. The Lessee and the Trustee each agrees to give the other promptly upon obtaining knowledge thereof written notice of any claim hereby indemnified against; and, as a condition of the Lessee's obligation to indemnify any Indemnified Person other than the Trustee, such other Indemnified Person shall be required to give written notice to the Lessee of any claim hereby indemnified against in respect of such Indemnified Person promptly upon obtaining knowledge thereof. Upon the payment in full by the Lessee of any indemnities as contained in this § 12, (i) the Lessee shall receive any right of such Indemnified Person to proceed against others (except where the Lessee is also indemnifying a person against whom the Indemnified Person has rights) in respect of such Indemnified Matter and (ii) any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified Matter shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for its indemnification payments previously made. Nothing in this § 12.1 shall constitute a guarantee by the Lessee of the CSA Indebtedness (as defined in the CSA) or a guarantee of the residual value of any Unit.

12.2. Indemnification of NAC. The Lessee further agrees to indemnify, protect and hold harmless NAC as a

third-party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against NAC because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by NAC or of any design, process or combination specified by the Lessee and not developed by NAC which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to NAC of any claim known to the Lessee from which liability may be charged against NAC hereunder.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

§ 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event an "Event of Default") shall occur:

(A) (1) default shall be made in payment of any amount provided for hereunder, and such default shall continue for five business 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 any Units;

(C) default shall be made in the observance or performance of any other covenant, condition or agreement on the part of the Lessee contained herein, in the Participation Agreement or the Indemnity agreement or the Consent (both as defined in the Participation

Agreement) and such default shall continue for 30 days after the written notice from the Trustee or the Agent to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee herein, in the Participation Agreement or the Indemnity Agreement or in any certificate or written statement furnished to the Trustee pursuant to or in connection with any such agreement proves untrue, misleading or incorrect in any materially adverse respect as of the date of making thereof;

(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 Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Consent and the Indemnity Agreement shall not have been and shall not continue to be duly assumed in writing within 60 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 other proceeding 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 hereunder or under the Consent or the Indemnity 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 such obligations), 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 such obligations shall not have been and

shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any 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 or receiver or receivers; or

(G) the Lessee shall suspend or terminate the operations of its business;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the 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 Trustee may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized so to permit, where any of such Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and possess the same free from any right of the Lessee or its successors or assigns to use the Units for any purposes whatever; but the Trustee 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 liquidated damages for loss of a bargain and not as a penalty whichever of the

following amounts that the Trustee in its sole discretion shall specify, (i) the sum, with respect to each Unit, which represents (x) 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 Lease as to such Unit over the then present value of the rental which the Trustee reasonably estimates to be obtainable for each Unit during such period (such present value to be computed in each case on the basis of a 6.9% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated) or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, which the Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Trustee reasonably estimates to be the sales value of such Unit at such time. In the event the Trustee shall have sold any Unit, the Lessee shall, if the Trustee shall so elect, pay to the Trustee 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 Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale in lieu of collecting any amounts payable by the Lessee pursuant to clause (ii) of the preceding sentence with respect to such Unit. 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 Trustee's remedies with respect thereto, including all costs and expenses incurred in connection with the return or sale of any Unit.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Trustee shall not be deemed exclusive, but shall be cumulative and may

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

Except as otherwise provided in this Lease and the CSA, the Lessee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, any other requirements with respect to the enforcement of the Trustee's rights under this Lease and the CSA and any and all rights of redemption.

13.3. Failure To Exercise Rights Is Not Waiver. The failure of the Trustee 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.

13.4. Notice of Event of Default. The Lessee agrees to furnish written notice to the Trustee and the Agent, promptly upon any responsible officer's 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, specifying such condition and the nature and status thereof. 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.

§ 14. RETURN OF UNITS UPON DEFAULT

14.1. Return of Units. If this Lease shall terminate pursuant to § 4.2 or § 13 hereof, the Lessee shall forthwith deliver possession of the Units to the Trustee. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the

Lessee, ordinary wear and tear excepted, shall meet all standards of all Applicable Laws then in effect, and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11 hereof, is owned by the Lessee or if the Lessee elects not to remove the same and the Trustee consents thereto, the same will remain affixed to such Unit and title thereto will immediately vest in the Trustee. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including without 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) place such Units upon such storage tracks as the Trustee reasonably may designate;

(b) cause such Units to be stored on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Trustee; and

(c) cause the same to be transported to any reasonable place as directed by the Trustee.

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 competent jurisdiction the Trustee shall be entitled to a decree against the Lessee requiring specific performance thereof. 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 Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All net earnings earned in respect of the Units after the date of termination of this Lease shall belong to the Trustee and, if received by the Lessee, shall be

promptly turned over to the Trustee. In the event any Unit is not assembled, delivered and stored as hereinabove provided within 30 days after such termination, the Lessee shall in addition pay to the Trustee for each day thereafter an amount equal to the amount, if any, by which the percentage of the Purchase Price of such Unit for each such day (obtained by dividing the basic lease rate as set forth in § 3.1 hereof for each quarterly payment for such Unit by 90) exceeds the actual earnings received by the Trustee on such Unit for each such day. Such payment shall not offset the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this section. For purposes of this § 14, net earnings for each Unit shall be determined by aggregating all income including rentals and mileage per diem charges which the Lessee may have received or be entitled to receive in respect of such Unit and subtracting therefrom the Lessee's operating expenses including freight, interchange, running repairs and other similar charges in respect of such Unit. In no event shall net earnings include any sums that may be earned by the Lessee on the commodity, if any, being transported in such Unit.

14.2. Trustee Appointed Agent of Lessee. The Lessee hereby irrevocably appoints the Trustee 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 Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit.

§ 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Trustee without the consent of the Lessee, however, the Trustee agrees to promptly notify the Lessee of any such assignment. The Lessee hereby acknowledges the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use the Units. (1) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA, subject

to the provisions of § 4.2 of this Lease. The Lessee shall not permit more than de minimis use of any Unit outside of the continental United States of America. The Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Trustee and the Agent, except as provided in paragraph (2) of this § 15.2; and the Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units without the prior written consent of the Trustee and the Agent, except as provided in said paragraph (2). 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 Trustee or the Agent or resulting from claims against the Trustee or the Agent not related to the ownership of the Units or any encumbrance on the leasehold estate of the Lessee which is subordinate to the interests of the Trustee and the Agent) upon or with respect to any Unit, including any accession thereto or the interest of the Trustee, the Agent or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises; provided that the Lessee may contest any such lien, claim, security interest or other encumbrance if the Lessee provides indemnity which shall protect the interests of the Agent and the Trustee.

(2) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units by it or any sublessee upon lines of any railroad or other trackage over which railroad equipment is regularly operated and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through or triplease agreements and to sublease the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease or use or permit the assignment, sublease or use of any Unit involving the operation or maintenance thereof except as otherwise provided in this Lease, nor shall the Lessee assign or sublease any Unit to, or permit the assignment, sublease or use of any Unit by, any person other than (i) Missouri Pacific Railroad Company or one of its subsidiaries, (ii) a Class I railroad or (iii) a corporation whose unsecured debt is rated A or better by a nationally recognized rating service provided, however, that in the case of subleases pursuant to clauses (ii) and (iii) of this paragraph (x) the Trustee shall be given notice of such sublease 15 days prior to the commencement thereof, it being understood that no triplease agreement entered into in the ordinary course of the Lessee's business shall constitute a sublease under this section, (y) the term of such sublease shall end

on the earlier of one year from the commencement of such sublease or the end of the Lease period and no consecutive renewals of such sublease shall be permitted without the consent of the Trustee which shall not be unreasonably withheld; and (z) in the case of a sublease having a fixed term of nine months or more, the Lessee shall provide, on request of the Trustee and solely as further security for the obligations of the Lessee hereunder, an assignment of sublease in form and substance satisfactory to the Trustee, provided, however, that until (a) an Event of Default occurs hereunder and (b) the Trustee notifies the Lessee and sublessee that it demands payment of the rents and moneys payable in respect of such sublease, all rents and moneys under such sublease shall be paid to the Lessee and the Trustee shall not interfere with such sublease. The Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee assign or sublease to or permit the sublease or use of the Units by any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. The Lessee may receive and retain compensation for the use of any of the Units from railroads or other entities so using such Units. Any sublease permitted by this paragraph shall be expressly subordinate to the rights and remedies of the Agent under the CSA and the Trustee under this Lease in respect of the Units covered by such sublease and no such sublease shall relieve the Lessee of any of its obligations hereunder which, notwithstanding any such sublease, shall remain in full force and effect.

(3) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Agent is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee may quietly have, hold and enjoy the Units free and clear from repossession or disturbance by the Lessor or its officers, agents, employees or servants or by anyone (including the Agent and the Investors) claiming by, through or under the Lessor.

15.3. Merger, Acquisition or Consolidation. The Lessee covenants not to merge with, or transfer all or substantially all its assets (including, but not limited to, the declaration and payment of liquidating dividends) to, any other business entity, but nothing in this § 15 shall be deemed to restrict the right of the Lessee to assign its leasehold interest under this Lease or possession of the Units

to any corporation incorporated under the laws of any state of the United States or the District of Columbia into or with which the Lessee shall have become merged or consolidated or which now owns all the capital stock of the Lessee or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety and which shall have duly assumed the obligations of the Lessee hereunder, provided that such assignee will not, upon the effectiveness thereof, be in default under any provision of this Lease; and provided further that the assuming corporation has a net worth which is not less than the net worth of Lessee immediately prior to the merger. In each case, net worth shall be determined in accordance with generally accepted accounting principles.

§ 16. RENEWAL OPTIONS

16.1. Renewal for Successive Period. The parties hereto contemplate that at the end of the original term of this Lease, the Trustee will hold the Units for re-lease. 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 Trustee not less than 120 days nor more than 270 days prior to the end of the original term of this Lease elect to extend such original term of this Lease in respect of not less than all the Units then covered by this Lease for a period of three years commencing on the scheduled expiration of such original term of this Lease, at a "Fair Market Rental" payable, in advance, in quarterly payments on the day such rentals were payable for the Units in each year of such extended term. In the event of any such renewal, the Casualty Values and the Termination Values in respect of any Unit shall be as agreed upon by the Trustee and the Lessee.

16.2. Determination of Fair Market Rental. (1) The Fair Market Rental for each extended term of this Lease shall be equal to the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and costs of removal from the location of current use shall not be a deduction from such rental.

(2) If, after 45 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, either party to such determination may give written notice

to the other requesting determination of such Fair Market Rental by an appraisal procedure. The parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 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 Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

16.3. Duty of First Offer. Not less than 300 days prior to the end of the term of this Lease (either the original or the extended term, as the case may be) and provided that no Event of Default shall be in existence, the Trustee shall notify the Lessee in writing as to whether the Trustee will attempt to sell any Units at the end of the term hereof, and shall accompany such notice with an irrevocable offer to sell such Units to the Lessee, at the end of the term hereof, upon the terms and conditions set forth herein; provided, however, that the Trustee's right to sell such Units at the end of the original term hereof shall be subject to the Lessee's right to extend such term pursuant to § 16.1. If the Lessee shall be interested in purchasing such Units,

the Lessee shall give written notice to the Trustee, not less than 270 days prior to the end of the term hereof, of such interest. If (i) during the original term hereof, the Lessee fails to give such notice and has failed to give written notice that it elects to extend the term hereof as provided in § 16.1, or (ii) during the extended term hereof, the Lessee fails to give such notice of its interest to purchase, the Lessee shall have no further right to purchase such Units. If the Lessee shall give such notice, the Trustee and the Lessee shall promptly cause the Fair Market Purchase Price of such Units to be determined in a manner comparable to that provided in § 16.2, which determination shall be made not less than 200 days prior to the end of the term hereof; and the Trustee, at its election and in a commercially reasonable manner, may solicit offers to buy such Units on the same terms and conditions as would apply to a sale of such Units to the Lessee. True copies of any bona fide offers received by the Trustee from a party not related to the Trustee, the Lessee or the Owner shall be submitted to the Lessee not less than 200 days prior to the end of the term hereof. After determination of the Fair Market Purchase Price and not less than 180 days prior to the end of the term hereof, the Lessee may give written notice to the Trustee of its acceptance of the Trustee's offer at a price equal to the greater of (i) the Fair Market Purchase Price and (ii) the highest such bona fide offer so received by the Trustee and transmitted to the Lessee. If the Lessee shall fail to give such notice, the Lessee shall have no further right to purchase such Units. If the Lessee shall give such notice, the Lessee shall purchase such Units on the last business day of the term hereof, at such price and upon the other terms and conditions set forth herein. The costs of appraisal, if any, incurred in connection with the determination of Fair Market Purchase Price pursuant to this § 16.3 shall be shared equally by the Trustee and the Lessee if the Lessee shall elect to purchase such Units pursuant to this § 16.3, and shall be paid entirely by the Lessee if the Lessee shall fail to elect to so purchase such Units.

Upon payment of the Fair Market Purchase Price for any Unit (or such other purchase price as is provided for herein) pursuant to an exercise by the Lessee of its right of first refusal with respect to such Unit, the Trustee shall execute and deliver to the Lessee, or upon request of the Lessee to the Lessee's assignee or nominee, (i) a bill of sale (without warranties, except as hereinafter provided in this clause (i)) for such Unit which will transfer title to such Unit to the Lessee, or to such assignee or nominee, as the case may be, free and clear of all claims,

liens, security interest and other encumbrances created by or arising through the Trustee or the Owner, other than claims, liens, security interests and encumbrances which the Lessee is obligated to pay or discharge under or pursuant to this Lease, and (ii) an opinion of counsel (who may be in-house counsel of the Owner), to such effect. Notwithstanding the foregoing, if any Unit so purchased is to be sold to the Lessee under a conditional sale agreement, the Trustee shall have the right to retain a security interest in such Unit until such time as all payments in respect thereof shall have been made.

§ 17. RETURN OF UNITS UPON EXPIRATION OF LEASE TERM OR TERMINATION

As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit or on or after a termination of this Lease pursuant to Section 4.2 or 7.8 hereof, and in any event not later than 90 days thereafter, the Lessee will, at its own cost, expense and risk, without charge to the Trustee for insurance pursuant to the requirements of this Lease, at the option of the Trustee, either (i) deliver possession of such Unit to the Trustee at a location which is within the continental United States and is reasonably accessible to prospective purchasers and lessees upon such storage tracks as the Lessee may select, and permit the Trustee to store such Unit on such tracks for a period not exceeding three months from the date of delivery of the last such Unit and transport the same to any point within 750 miles of the point of the Lessee's last use of such Unit upon disposition of the Units, at any time within such three-month period, to any reasonable place or to any connecting carrier for shipment, all as directed by the Trustee, or (ii) deliver possession of such Unit to the Trustee upon such storage tracks within 750 miles of the point of the Lessee's last use of such Unit as the Trustee may reasonably select and which are available to the Lessee and permit the Trustee to store such Unit on such tracks for a period not exceeding three months from the date of delivery of the last such Unit. Upon the last delivery referred to in the preceding sentence, the Lessee shall be absolved of any further responsibility for such Units. During any such storage period the Lessee will permit the Trustee 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 the rights of inspection granted under this sentence. Each Unit returned to the Trustee pursuant to this § 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet all standards of the Applicable Laws then in effect with respect to the usage of the Units by the Lessee and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession; provided, however, that if the Lessee elects not to remove the same and the Trustee consents thereto, the same will remain affixed to such Unit and title thereto will immediately vest in the Trustee. 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 competent jurisdiction, the Trustee shall be entitled to a decree against the Lessee requiring specific performance of such covenants of the Lessee. For each day from and including the expiration date of the Lease to but not including the date each Unit is returned pursuant to this § 17, the Lessee shall, in addition to any other amounts which may be due hereunder, pay to the Trustee in respect of each such Unit any net earnings achieved by the Lessee as a result of its use of such Unit during such period. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 90 days after such expiration date, the Lessee shall, in addition, pay to the Trustee an amount equal to the amount, if any, by which .023889% of the Purchase Price of such Unit for each such day exceeds the net earnings received by the Trustee on such Unit for each such day. For purposes of this § 17, net earnings for each Unit shall be determined by aggregating all income including rentals and mileage per diem charges which the Lessee may have received or is entitled to receive in respect of such Unit and subtracting therefrom the Lessee's operating expenses including freight, interchange, running repairs and other similar charges in respect of such Unit. In no event shall net earnings include any sums that may be earned by the Lessee on the commodity, if any, being transported in such Unit.

§ 18. FILING

The Lessee, at its own expense, will cause this

Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery and acceptance of any Unit hereunder, and will undertake the filing required of the Trustee under the CSA. The Lessee will from time to time perform any other act and will execute, acknowledge, deliver and file (and will refile whenever required) any and all further instruments required by law or reasonably requested by the Trustee or the Agent for the purpose of proper protection, to their satisfaction, of their respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Agent and the Trustee evidence of all such filings and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Agent and the Trustee.

§ 19. INTEREST ON OVERDUE RENTALS

The Lessee shall promptly pay, to the extent legally enforceable, an amount equal to interest at the rate of 1% per annum above the Floating Rate on any overdue rentals and other obligations due hereunder for the period of time during which they are overdue, computed on the basis of a 360-day year of twelve 30-day months.

§ 20. TRUSTEE'S RIGHT TO PERFORM FOR LESSEE

If the Lessee fails to perform any of its agreements contained herein, the Trustee may upon notice to the Lessee perform such agreement, and the amount of the reasonable cost and expenses of the Trustee incurred in connection with such performance, together with interest on such amount at the rate of 1% per annum above the Floating Rate shall be payable by the Lessee upon demand, except as otherwise provided in this Lease. No such performance or compliance by the Trustee shall be deemed a waiver of the rights and remedies of the Trustee or any assignee of the Trustee against the Lessee hereunder, including, without limitation, the right of the Agent to terminate this Lease pursuant to Article 16 of the CSA and the Lease Assignment, and no such performance or compliance by the Trustee shall be deemed to cure an Event of Default hereunder for purposes of Article 16 of the CSA except as otherwise provided in Section 16.1(e) of the CSA.

§ 21. NOTICES

Any notice required or permitted to be given to

any party hereto shall be deemed to have been given when delivered or mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessee, at Drawer D, Williamsburg, Virginia 23185, attention of Corporate Distribution Department;

(b) if to the Trustee, at 130 South LaSalle Street, Chicago, Illinois 60603, attention of Corporate Trust Department, with a copy to the Owner at its address set forth in the Participation Agreement;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Copies of each such notice shall be given to the Agent at 135 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Division and to Tiger Financial Services, Inc., at 33 West Monroe Street, Chicago, Illinois 60603, attention of Vice President.

§ 22. SEVERABILITY

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

§ 23. EFFECT AND MODIFICATION OF LEASE

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

§ 24. EXECUTION

This Lease may be executed in any number of coun-

terparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent pursuant to the Lease Assignment shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

§ 25. GOVERNING LAW

This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or deposit hereof, if any, and out of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited or in which any Unit shall be located, and any rights arising out of the marking of the Units.

§ 26. IMMUNITIES; NO RECOURSE

Each and all of the representations, warranties, covenants and agreements herein made on the part of the financial institution acting as Trustee hereunder are made and intended not as personal representations, warranties, covenants and agreements by said institution or for the purpose or with the intention of binding said institution personally but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution or the Owner on account of any representation, warranty, covenant or agreement herein of the Trustee (except in the case of gross negligence or wilful misconduct of the Trustee), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through or under the Lessee making claim hereunder may look to said Trust Estate for satisfaction of the same.

§ 27. AGREEMENTS FOR BENEFIT OF TRUSTEE'S ASSIGNS

All rights of the Trustee hereunder shall inure to the benefit of the Trustee, the Owner and any of the Trustee's assigns (including the Agent).

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

BADISCHE CORPORATION,

by

Vice President Finance

[Corporate Seal]

Attest:

Secretary

EXCHANGE NATIONAL BANK OF CHICAGO, not in its individual capacity but solely as Trustee under the aforesaid Trust Agreement,

by

Vice President

[Seal]

Attest:

Assistant Trust Officer

COMMONWEALTH OF VIRGINIA,)
) ss.:
COUNTY OF JAMES CITY,)

On this 13TH day of AUGUST, 1981, before me personally appeared K. H. MESSINGER, to me personally known, who, being by me duly sworn, says that he is VICE President FINANCE of BADISCHE CORPORATION, a Delaware corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

N. Woodrow Pusey
Notary Public

[Notarial Seal]

My Commission expires My Commission Expires April 28, 1982

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

On this 3 day of AUGUST 1981, before me personally appeared SANFORD KOVITZ, to me personally known, who, being by me duly sworn, says that he is a Vice President of EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Norma Schuppenhauer
Notary Public

[Notarial Seal]

My Commission expires May 27, 1983

APPENDIX A TO LEASE

Units of Railroad Equipment

Type	AAR Mechanical Designation	NAC's Specifications	Plant	Quantity	Lessee's Identification Numbers (Both Inclusive)	Estimated Unit Base Price*	Estimated Total Base Price*	Estimated Time and Place of Delivery
4,750 cu. ft. aluminum covered hopper cars with trough hatches and gravity gates	LO	Specifications prepared by NAC dated May 1, 1981, for 4,750 cu. ft. aluminum covered hopper cars with trough hatches and gravity gates	Texarkana, Arkansas	184	CHIT 719500-719683	$79,136.69	$14,561,151	July 1981-March 1982 at Freeport, Texas

* Including freight charges which are to be prepaid by NAC and included in NAC's invoices.

APPENDIX B TO LEASE

Casualty and Termination Values*

Payment Dates	Percentage of Purchase Price	Payment Dates	Percentage of Purchase Price
January 1, 1982, or before	111.26	January 1, 1989	101.80
April 1, 1982	111.29	April 1, 1989	95.43
July 1, 1982	108.73	July 1, 1989	95.02
October 1, 1982	109.60	October 1, 1989	94.57
January 1, 1983	110.41	January 1, 1990	94.08
April 1, 1983	111.14	April 1, 1990	93.55
July 1, 1983	111.82	July 1, 1990	92.99
October 1, 1983	112.44	October 1, 1990	92.40
January 1, 1984	113.00	January 1, 1991	91.78
April 1, 1984	113.49	April 1, 1991	91.13
July 1, 1984	114.06	July 1, 1991	90.45
October 1, 1984	115.00	October 1, 1991	89.74
January 1, 1985	115.53	January 1, 1992	89.01
April 1, 1985	108.93	April 1, 1992	88.25
July 1, 1985	109.28	July 1, 1992	87.48
October 1, 1985	109.57	October 1, 1992	86.68
January 1, 1986	109.81	January 1, 1993	85.85
April 1, 1986	109.99	April 1, 1993	85.01
July 1, 1986	110.13	July 1, 1993	84.33
October 1, 1986	110.36	October 1, 1993	83.64
January 1, 1987	110.74	January 1, 1994	82.93
April 1, 1987	103.72	April 1, 1994	72.21
July 1, 1987	103.66	July 1, 1994	81.48
October 1, 1987	103.55	October 1, 1994	80.74
January 1, 1988	103.39	January 1, 1995	79.99
April 1, 1988	103.18	April 1, 1995	79.22
July 1, 1988	102.94	July 1, 1995	78.44
October 1, 1988	102.30	October 1, 1995	77.64

* These Values assume a rate of interest on the CSA Indebtedness of 14% per annum. Accordingly, to the extent that interest actually accrued on the CSA Indebtedness for the quarter ended on any Payment Date is at a rate higher or lower than 14%, the corresponding Value will be appropriately adjusted to reflect the actual interest accrued.

Payment Dates	Percentage of Purchase Price
January 1, 1996	76.83
April 1, 1996	76.01
July 1, 1996	75.17
October 1, 1996	74.32
January 1, 1997	73.45
April 1, 1997	72.57
July 1, 1997	71.67
October 1, 1997	70.76
January 1, 1998	69.82
April 1, 1998	68.86
July 1, 1998	67.89
October 1, 1998	66.90
January 1, 1999	65.88
April 1, 1999	64.85
July 1, 1999	63.79
October 1, 1999	62.72
January 1, 2000	61.63
April 1, 2000	60.51
July 1, 2000	59.37
October 1, 2000	58.21
January 1, 2001	57.03
April 1, 2001	55.83
July 1, 2001	54.61
October 1, 2001	53.36
January 1, 2002	52.09
April 1, 2002	50.80
July 1, 2002	49.48
October 1, 2002	48.15
January 1, 2003	46.78
April 1, 2003	45.40
July 1, 2003	43.99
October 1, 2003	42.56
January 1, 2004	41.10
April 1, 2004	39.62
July 1, 2004	38.12
October 1, 2004	36.59
January 1, 2005	35.04
April 1, 2005	33.47
July 1, 2005	31.87
October 1, 2005	30.24
January 1, 2006	28.59
April 1, 2006	26.92
July 1, 2006	25.23
October 1, 2006	23.51
January 1, 2007 and thereafter	21.77