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No.

JAN 12 1981

Date

Fee \$ 100.00

Washington, D. C.

RECORDATION NO. 12762
Filed 1425

JAN 13 1981 - 12 00 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 12762
January 9, 1981
Filed 1425

JAN 13 1981 - 12 00 PM
INTERSTATE COMMERCE COMMISSION

Beker Industries Corp.

Lease Financing Dated as of October 15, 1980

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 Beker Industries Corp., for filing and recordation counterparts of the following documents:

Now Number

(1) Purchase Order Assignment dated as of October 15, 1980, among Beker Industries Corp., as Assignor, C.I.T. Corporation, as Assignee, and Trinity Industries, Inc., as Builder.

A

(2) Lease of Railroad Equipment dated as of October 15, 1980, between C.I.T. Corporation, as Lessor, and Beker Industries Corp., as Lessee.

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

(1) Assignor-Lessee:

Beker Industries Corp.,
124 West Putnam Avenue
Greenwich, Connecticut 06830.

RECEIVED
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FEE OPERATION BR.

Carver Stewart - Fred McAllister

(2) Assignee-Lessor:

C.I.T. Corporation,
650 Madison Avenue
New York, N. Y. 10022.

(3) Builder:

Trinity Industries, Inc.,
4001 Irving Blvd.
Box 10587
Dallas, Texas 75207.

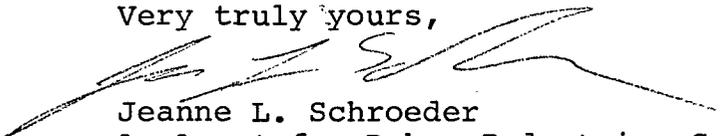
Please file and record the documents referred to in this letter and index them under the names of the Assignor-Lessee, the Assignee-Lessor and the Builder.

The equipment covered by the aforementioned documents consists of 50 13,500 Molten Sulfur Cars bearing Lessee's road numbers BICX 101-150 and also bears the legend "Owned by C.I.T. Corporation."

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Purchase Order Assignment and the Lease of Railroad Equipment.

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

Very truly yours,



Jeanne L. Schroeder
As Agent for Beker Industries Corp.

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

Encls.

Interstate Commerce Commission
Washington, D.C. 20423

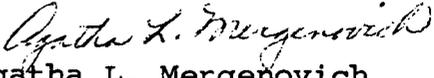
OFFICE OF THE SECRETARY

Jeanne L. Schroeder
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N. Y. 10005

Dear **Madam:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/13/81 at 12:00PM, and assigned re-
recording number(s) 12762, & 12762-A

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

JAN 13 1981 - 12 00 PM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref.:1240-136]

LEASE OF RAILROAD EQUIPMENT

Dated as of October 15, 1980

Between

C.I.T. CORPORATION,
Lessor,

and

BEKER INDUSTRIES CORP.,
Lessee.

(Covering 50 13,500-gallon Molten Sulfur Cars)

LEASE OF RAILROAD EQUIPMENT dated as of October 15, 1980, between C.I.T. CORPORATION, a New York corporation (the "Lessor"), and BEKER INDUSTRIES CORP., a Delaware corporation (the "Lessee").

WHEREAS the Lessee has assigned to the Lessor, pursuant to a Purchase Order Assignment dated as of the date hereof (the "Assignment"), certain of its interest in a purchase agreement consisting of letters dated April 18, 1980, May 7, 1980, and May 21, 1980 (the "Purchase Agreement"), between the Lessee and Trinity Industries, Inc. (the "Builder");

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

WHEREAS the Lessee desires to lease from the Lessor such number of Units as are so delivered and accepted hereunder, at the rentals and for the terms and upon the conditions hereinafter provided;

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

§ 1. Net Lease. This Lease is a net lease and, except as herein provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions, recoupments or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or the Builder or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the

Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units. The Lessee will cause its agent or an employee of the Lessee to inspect each Unit, and if such Unit is found to be acceptable, to execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance"), stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The Lessor will cause each Unit to be delivered to the Lessee at the point or points specified in Schedule A hereto. Units shall not be delivered to or accepted by the Lessee (i) before the documents required to be delivered pursuant to § 15 hereof have been delivered, or (ii) subsequent to March 15, 1981.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, (i) an interim installment of rent payable on April 1, 1981, and (ii) 171 consecutive monthly installments commencing April 1, 1981, with each subsequent installment

payable on the first day of each month in each year, to and including June 1, 1995. The interim installment of rent for each Unit shall be in an amount equal to the product of (a) the number of calendar days elapsed from and including the date of acceptance of such Unit to but not including April 1, 1981, times (b) an amount equal to .03293% of the Purchase Price (as defined in the Assignment) of each such Unit and the 171 consecutive monthly rental installments shall be in advance each in an amount equal to 1.00175% of the Purchase Price of each Unit then subject to this Lease.

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

The Lessor hereby instructs the Lessee to make all the payments provided for in this Lease directly to it at such address as shall from time to time be specified in writing by the Lessor. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in New York Clearing House funds.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of acceptance of such Unit hereunder and, subject to the provisions of §§ 6, 7, 9, 10, 13 and 17 hereof, shall terminate on June 30, 1995.

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

until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished Lessor an opinion of counsel to the effect set forth in subparagraphs (i)C and (iii)A of § 15 hereof in respect of such statement.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee, its affiliates, or its sublessees.

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

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

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interest of the Lessor in such Units or notify the Lessor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor; provided, however, that if the Lessee is not permitted to make such reports on behalf of the Lessor, it will so notify the Lessor and will furnish to the Lessor all information necessary for the Lessor to make such reports. All costs and expenses (including legal and accounting fees) of preparing such reports shall be borne by the Lessee.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances with respect to, or furnish other evidence satisfactory to the Lessor of, the Lessee's performance of its duties under this § 6. The

Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions, including, but not limited to, data, provided no more frequently than on a quarterly basis, as to any use of any Unit outside the United States of America.

Notwithstanding the first paragraph of this § 6, the Lessee shall not be required to pay, and the Lessor shall be responsible for, any Canadian income taxes which the affiliated group of which the Lessor is a member shall be able, pursuant to the provisions of this paragraph, to utilize currently as a credit against its United States Federal income tax liability for the year in which such Canadian income taxes are incurred. Not less than 60 days prior to the due date for payment of any Canadian income taxes that may be the responsibility of the Lessor pursuant to the preceding sentence, the Lessee shall notify the Lessor of such possibility. If (a) within 30 days of the giving of such notice the Lessee shall furnish the Lessor with an opinion of independent tax counsel reasonably acceptable to the Lessor to the effect that the Canadian income taxes in question are eligible to be credited against the United States Federal income tax liability of the affiliated group of which the Lessor is a member, (b) such opinion shall be reasonable in the opinion of independent tax counsel (reasonably acceptable to the Lessee) for the Lessor and (c) the Lessor shall make a good faith determination that the affiliated group of which it is a member has the capacity to utilize such Canadian income taxes as a credit against its United States Federal income tax liability for the current year after utilizing all other credits (whether current, carryback or carryforward and whether foreign tax or other credits) the Lessor anticipates will be available to such group for such year and after taking into consideration any limitations the Lessor anticipates may be applicable to such group or any member thereof, then the Lessee shall not be required to pay, and the Lessor shall be responsible for, such Canadian income taxes; provided, however, that if the Lessor subsequently determines that the affiliated group of which it is a member is unable to utilize any such Canadian income taxes as a credit against its United States Federal income tax liability for the year in which such Canadian income taxes were incurred for any reason, including, without limitation, the fact that such taxes shall not be creditable or that such group shall not have the capacity to

utilize such taxes as a credit after utilizing all other credits (whether current, carryback or carryforward and whether foreign tax or other credits) available to it and after taking into consideration any limitations applicable to such group or any member thereof, then the Lessee shall pay to the Lessor an amount equal to such Canadian income taxes. If the Lessor shall receive a communication directly from any Canadian taxing authority concerning a tax which may be the responsibility of the Lessor pursuant to this paragraph, the Lessor shall promptly notify the Lessee of such communication.

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

The representations, indemnities and agreements of the Lessee provided for herein, including without limitation §§ 6, 9 and 17 hereof, and the Lessee's obligation thereunder, shall survive the expiration or other termination of this Lease and are expressly made for the benefit of, and shall be enforceable by, the Lessor.

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

In the event that during the term of this Lease or until such Unit shall have been returned pursuant to § 14 hereof, any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise under authority of law and such taking or requisition shall have exceeded 120 days or shall extend beyond the term of this Lease (such occurrences being hereinafter called "Casualty Occurrences"), the Lessee shall promptly and fully notify the Lessor with respect thereto. On the rental payment date next succeeding such notice or within 60 days if such Unit is being returned under § 14 hereof the Lessee shall pay to the Lessor an amount equal to the accrued rental in respect of such Unit to and including the date payment is due pursuant to this sentence plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date such payment is due, if payment is due on a rental payment date, and as of the next preceding rental payment date if payment is not due on a rental payment date, in each case in accordance with the schedule set out in Schedule B hereto. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue and the term of this Lease as to such Unit shall terminate. The Lessor shall, after payment by the Lessee of a sum equal to the Casualty Value of any Unit which shall have suffered a Casualty Occurrence, and any other amounts then due hereunder, execute and deliver to the Lessee a bill of sale (without warranties other than against the Lessor's acts, including liens and encumbrances resulting from Lessor's acts) for such Unit. In the event that any Unit

is taken or requisitioned under authority of law as set forth in the first sentence of this paragraph but such taking does not exceed 120 days nor extend beyond the end of the term of this Lease, the Lessee shall notify the Lessor of such taking or requisition and all of the Lessee's obligations under this Lease with respect to such Unit, including but not limited to rental with respect thereto pursuant to § 3 hereof, shall continue as if such taking or requisition had not occurred. All payments received by the Lessor or the Lessee in respect of such taking or requisition for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee, provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

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

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

The Lessee will procure and maintain at its sole cost and expense at all times during the continuance of this Lease (and thereafter so long as any Unit is at the risk of the Lessee), insurance coverage for comprehensive general liability (in limits of at least \$10,000,000 and including contractual liability with respect to the "hold harmless" or indemnification agreement between the Lessee and the Lessor contained in § 9 hereof), physical damage, theft, fire with extended coverage for the benefit of the Lessor as its interests appear, in amounts, against risks, in form and with insurance companies or underwriters as shall be satisfactory to the Lessor from time to time and shall deliver to the Lessor satisfactory evidence of such insurance coverage; provided, however, that Lessee shall not be required to maintain physical damage, theft, or fire with extended coverage insurance in an amount in excess of the applicable Casualty Value of the Units; and provided further, however, that the physical damage, theft, or fire with extended coverage insurance may contain a \$50,000 deductible provision per occurrence and any flood,

earthquake or similar insurance may contain a \$250,000 deductible provision per occurrence. Without limiting the foregoing, each insurance policy shall provide that it will not be invalidated as against the Lessor because of any violation of a condition or warranty of the policy or application therefor by the Lessee and that it may be altered or canceled by the insurer only after 30 days' advance written notice to the Lessor or its assigns. All liability policies shall name the Lessor as an insured. All policies covering loss or damage to the Units shall provide that payment thereunder for any such loss or damage shall be made to the Lessor and the Lessee as their interests may appear and that losses in excess of \$100,000 shall be adjusted only with the consent of the Lessor or its assigns. If the Lessee shall fail to provide and furnish any of said insurance, the Lessor may, after reasonable notice to Lessee and a reasonable opportunity, under the circumstances, to correct or provide such insurance, procure such insurance and the Lessee shall, upon demand, reimburse the Lessor for all outlays for such insurance with interest thereon computed at the rate of 18% per annum or such lesser maximum rate as is permitted by applicable law. The Lessee may provide for any such insurance under blanket insurance policies maintained by the Lessee with respect to other properties owned or leased by it.

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

payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired, provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing. Any amounts not deducted or paid as permitted by this paragraph because an 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 shall be deducted (or refunded) or paid when such Event of Default or other event is no longer continuing, except to the extent such amounts otherwise have been properly paid or applied as a result of such Event of Default or other event.

§ 8. Reports. On or before March 31 in each year, commencing with the calendar year 1982, the Lessee will furnish to the Lessor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) or are then undergoing repairs (other than running repairs) or are then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced. The Lessor shall have the right, by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease. Each such statement delivered to the Lessor shall be accompanied by a certificate (dated the date of delivery) of the President or a Vice President of the Lessee confirming that, as of the date of such certificate, no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) has occurred and is continuing, or if any such event has occurred and is continuing, specifying the nature and period of existence thereof and what action the Lessee has taken or proposes to

take with respect thereto.

The Lessee will deliver to the Lessor:

(i) as soon as available and to the extent available, and in any event within 60 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Lessee, copies of the consolidated balance sheet of the Lessee as of the end of such accounting period and copies of the related consolidated statements of income of the Lessee for the portion of its fiscal year ended with the last day of such quarterly accounting period, all unaudited and in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous fiscal year;

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

(iii) as soon as available, a copy of each report or other document furnished by the Lessee to its shareholders and copies of Form 10-K's, 10-Q's or 8-K's filed with the Securities and Exchange Commission; and

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

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE

TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of the Purchase Agreement; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

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

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

The Lessor (which term as used herein shall include the Lessor's successors, assigns, agents and servants) shall have no responsibility or liability to the Lessee, its successors or assigns, or to any other person, with respect to any or all liabilities (as "liabilities" is hereinafter defined), and the Lessee hereby assumes liability for, and hereby agrees, at its own cost and expense, to indemnify, protect, defend, save and keep harmless the Lessor from and against, any and all liabilities, other than the Lessor's obligation to pay to the Builder the Purchase Price for all Units delivered and accepted in accordance with the terms hereof and the Assignment, the obligation of Lessor to pay amounts received in accordance with § 7 hereof, or any other obligation of Lessor specifically provided in this Lease for which Lessee is not liable. The term "liabilities" as used herein shall include any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including reasonable legal fees and expenses, of whatsoever kind and nature, imposed on, incurred by or asserted against the Lessor, in any way

relating to or arising out of this Lease, the Purchase Agreement, the Assignment or the manufacture, purchase, acceptance, rejection, ownership, transporting, delivery, lease, possession, control, use, operation, condition, testing, servicing, maintenance, repair, improvement, replacement, storage, sale, return or other disposition of the Units (including, without limitation, (a) any inadequacy or deficiency or defect therein, including latent defects, whether or not discoverable by the Lessor or the Lessee, or any claim for patent, trademark or copyright infringement, (b) any accident in connection therewith resulting in damage to property or injury or death to any person, including but not limited to, employees and agents of the Lessee, (c) any strict liability in tort or imposed by statute and (d) any interruption of service, loss of business or consequential damages resulting therefrom). The Lessee agrees to give the Lessor and the Lessor agrees to give the Lessee prompt written notice of any of the liabilities hereby indemnified against. The Lessee's obligations under this paragraph shall be those of a primary obligor whether or not the Lessor is also indemnified with respect to the same matter by any other person, provided that Lessee's said obligations shall be reduced by the amount of any such other indemnification actually received by the Lessor. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease and the expiration or termination of this Lease. The indemnities arising under this paragraph shall not be construed to constitute a guarantee of the residual value or useful life of any Unit.

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

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

(a) default shall be made in payment of any

amount payable under this Lease, and such default shall continue for 10 days;

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

(c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Assignment, and such default shall continue for 30 days after the earlier of written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied or the date on which such default shall first become known to any officer of the Lessee;

(d) any representation or warranty made by the Lessee in this Lease or in any document or certificate furnished the Lessor in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material respect and such condition shall continue unremedied for a period of 30 days after written notice thereof by the Lessor to the Lessee specifying the default and demanding that the same be remedied;

(e) an event of default under any mortgage, indenture of trust or other agreement evidencing indebtedness of the Lessee for borrowed money or for the deferred purchase price of real or personal property shall have occurred and be continuing, which event of default shall have caused any acceleration of the payment of any such indebtedness of the Lessee (which payment is determined to be material in the reasonable opinion of the Lessor) and such acceleration (i) has not been waived by the obligee under such agreement or cured pursuant to the terms thereof within 60 days after the declaration of such acceleration and (ii) is not being contested in good faith by the Lessee in the reasonable opinion of the Lessor;

(f) 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 shall not have been duly assumed in writing within 60 days after such petition shall have been filed and shall not thereafter continue to be so assumed, 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; or

(g) any 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 under this Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced and shall not thereafter continue to be so assumed;

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

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

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction but applying any proceeds (net of reasonable expenses as incurred by the Lessor) arising therefrom against the liabilities of the Lessee herein; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all 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 Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of an 8% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to this clause (x) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such

sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor pursuant to this clause (y) with respect to such Unit, shall recover from the Lessee on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

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

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and its agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner and not arising from wilful or grossly negligent acts or omissions of Lessor or its agent.

or agents.

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

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

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

(b) place such Units upon such storage tracks within the continental United States as the Lessor reasonably may designate;

(c) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for

rent, insurance or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(d) cause the Units to be moved from such storage to such point or points within the continental United States as the Lessor may reasonably designate upon any such sale, lease or disposal of all or any of the Units.

The assembling, delivery, storage, insurance and transporting of the Units as in this § 11 provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance the covenants of the Lessee so to assemble, deliver, store, insure and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Units in the condition required by § 7 hereof, maintain the insurance on the Units required by § 7 hereof and permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same at all reasonable times; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence.

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

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 16 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively).

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

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease. The Lessee agrees to use the Units solely within the United States of America except that the Lessee may use the Units in the Provinces of Alberta, Saskatchewan, Manitoba and British Columbia, Canada, if, but only if, the use of such Units in such provinces will not cause such Units to lose their qualification as "section 38 property" as defined in the Code (as hereinafter defined). Notwithstanding the foregoing, the Lessee may use the Units or sublease the Units for use (as hereinafter provided in this § 12) elsewhere in Canada or in Mexico subject to the following conditions if and only if such use of such Units will not cause such Units to lose their qualification as "section 38 property" as defined in the Code (as hereinafter defined):

(1) that if the Lessee uses any Unit elsewhere in Canada (or any province or Territory thereof), the Lessee shall first have (a) taken all necessary action to protect the right, title and interest of the Lessor in the Units to be so subleased or used and (b) furnished the Lessor with an opinion of Canadian counsel satisfactory to the Lessor to the effect that such action is all that is necessary to protect the right, title and interest of the Lessor in such Units and the Lease;

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

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

The Lessee may not, except with the Lessor's prior written approval of the proposed sublessee or user, which shall not be unreasonably withheld, (a) sublease any of the Units to any sublessee or (b) permit any of the Units to be used by any other person; any such sublease or usage to be subject to all the terms and conditions of this Lease; provided, however, that any such sublessee or user shall be incorporated in the United States of America (or any state thereof or the District of Columbia); provided further, however, that the Lessee shall not sublease the Units to, or permit their use by, any person in whose hands such Units would not qualify as, or would cause such Units to lose their qualification as, "section 38 property" within the meaning of the Code (as hereinafter defined). All costs and expenses (including reasonable fees and disbursements of counsel to the Lessor) incident to such sublease or arrangement for usage shall be borne by the Lessee. Except as set forth in the next to last paragraph of this § 12, the Lessee may not assign this Lease to any other person. No sublease or usage permitted by the foregoing shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

Any such sublease or arrangement for usage may provide that the sublessee or user, so long as it shall not be in default under such sublease or arrangement for usage, shall be entitled to the possession of the Units included in such sublease or arrangement for usage and the use thereof; provided, however, that every such sublease or

arrangement for usage shall be subject to the rights and remedies of the Lessor under this Lease in respect of the Units covered by such sublease or arrangement for usage upon the occurrence of an event of default thereunder or an Event of Default hereunder and no such sublease or arrangement for usage shall relieve the Lessee of its obligations to the Lessor under this Lease.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in all but not less than all the Units or possession of all but not less than all the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) which is a wholly owned subsidiary and which remains a wholly owned subsidiary during the term hereof or into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety or, with the prior written consent of the Lessor, which shall not be unreasonably withheld, property of the Lessee related to the operation of the Units or a portion thereof; provided, however, that (i) in the case of any such merger, consolidation or acquisition the assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and will have a consolidated net worth determined in accordance with generally accepted accounting principles not less than that of the Lessee immediately prior to such transaction and (ii) in the case of any such assignment to a subsidiary or to a corporation acquiring less than all or substantially all the property of the Lessee, such assignment shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a surety.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance resulting from claims against the Lessor not related to the ownership or leasing of the Units) which may at any time be imposed on or with respect to any Unit, including any accession thereto, or the interest of the Lessor or the Lessee therein; except that this covenant will not be breached by reason of levies, in each case not due and delinquent, or

undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent; and, furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal or administrative proceedings and the failure to discharge the same does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder.

§ 13. Renewal and Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months nor more than 12 months prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all, but not fewer than all, of the Units then covered by this Lease, for an additional three, four or five-year period commencing on the scheduled expiration of the original term of this Lease. However, the Lessee may so extend the term of this Lease in respect of fewer than all such Units with the written consent of the Lessor. The rental payable shall be the Fair Market Rental Value of such Units as of the end of the original term of this Lease. Rentals under the extended term shall be payable, in advance, in monthly payments on the days of the month in which such rentals were payable for the Units in each year of the original term.

"Fair Market Rental Value" for the purposes of this § 13 shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee-user (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, the cost of removal from the location of current use shall not be a deduction from such value.

If, after 30 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree on a determination of the Fair Market Rental Value, for the purposes of this § 13 such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean

such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee and each party hereto consents and agrees not to assert any judicial or other procedures. The expenses and fees of Appraiser shall be borne equally by the Lessee and the Lessor.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, and, in the case of the original term of this Lease, provided that the Lessee has not elected to extend the term of this Lease as provided in this § 13, in the event the Lessor elects to sell any Units to third parties at the expiration of the original or extended term of this Lease, the Lessee shall be given 90 days' prior written notice of such intention prior to the expiration of such term. In the event that prior to the expiration of such term the Lessor shall receive a bona fide offer from another party unrelated to the Lessee to purchase the Units and the Lessor elects to sell the Units pursuant to such offer, the Lessor shall give prompt written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party to the Lessor. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which the Units are proposed to be sold or under the other terms and conditions of payment offered by the other party. The Lessee may exercise such purchase right by delivery to the Lessor of a written notice within 15 days of receipt of notice of the proposed sale from the Lessor, such notice by Lessee specifying a date of purchase, which date shall not be later than 20 days after the date of delivery of such notice by the Lessee to the Lessor.

§ 14. Return of Units upon Expiration of Term.
The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not

purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding six months following notification to the Lessor by the Lessee that all the Units have been assembled and delivered for storage and transport the same, at any time within such six-month period, to any reasonable place on lines of railroad, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk (including insurance) of the Lessee. During any such storage period the Lessee will maintain and keep each Unit in good operating order, repair and condition, maintain the insurance required by § 7 hereof and permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Unit, to inspect the same at all reasonable times; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence. The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store, insure and transport the Units. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear and modifications, if any, permitted by this Lease excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect, (iii) have attached or affixed thereto any additions, modifications and improvements considered an accession thereto as provided in § 7 hereof and have removed therefrom any such additions, modifications and improvements not considered an accession and (iv) meet applicable rules of any governmental agency or other organization with jurisdiction. In the event any

Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after the expiration or termination of the original or extended term of this Lease, the Lessee shall pay to the Lessor an amount equal to 1/30 of the next preceding rental payment applicable to such Unit for each day until such Unit is assembled, delivered and stored; such payment shall not affect the obligation of the Lessee to redeliver the Units pursuant to this § 14.

§ 15. Opinions of Counsel. On or prior to the first date for delivery of any Units pursuant to the Purchase Agreement (the "First Delivery Date"), there shall be delivered to the Lessor, two counterparts of the following documents, dated not more than 10 days prior to the First Delivery Date:

(i) the written opinion of Messrs. Cahill, Gordon & Reindel, special counsel for the Lessee, addressed to the Lessor, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

(A) the Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, with corporate power to own its properties and to carry on its business as now conducted, and to enter into the Assignment and this Lease;

(B) the Assignment and this Lease have been duly authorized, executed and delivered by the Lessee and constitute legal, valid and binding agreements of the Lessee, enforceable in accordance with their respective terms;

(C) this Lease has been duly filed, as such counsel has been advised by Messrs. Cravath, Swaine & Moore, with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and is notice to, and enforceable against, all persons. A document filed pursuant to such section does not have to be filed, deposited, registered or recorded under another law of the United States, a state (or its political subdivisions), or territory or possession of the United States, related to filing, deposit, registration or recordation of those documents;

(D) no approval is required from any governmental or public body or authority of the United States of America or any state or local govern-

ment with respect to the entering into or performance of this Lease or the Assignment by the Lessee;

(ii) the written opinion of the General Counsel for the Lessee, addressed to the Lessor, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

(A) the Lessee is a corporation, validly existing and in good standing under the laws of the State of Delaware, with corporate power to own its properties and to carry on its business as now conducted, and to enter into the Assignment and this Lease and is duly qualified to do business and is in good standing in such other jurisdictions in which the failure so to qualify or be in good standing could affect its ability to perform its obligations under this Lease and the Assignment;

(B) the entering into and performance of this Lease and the Assignment by the Lessee will not conflict with, result in any breach of, or constitute a default under the charter or by-laws of the Lessee or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee or any of its subsidiaries is a party or by which they may be bound;

(C) no mortgage, deed of trust, or other lien of any nature whatsoever (other than such as may attach to the leasehold interest of the Lessee hereunder in and to the Units) which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee or any of its subsidiaries now attaches or, under the laws of the United States and the State of New York as now in effect, will attach to the Units or to the Lessor's right, title or interest therein;

(D) neither the execution and delivery by the Lessee of this Lease or the Assignment nor the consummation of the transactions therein contemplated nor the fulfillment of, or compli-

ance with, the terms and provisions thereof will, to the knowledge of said counsel after due inquiry, conflict with, or result in a breach or violation of, any of the terms, conditions or provisions of any law, regulation, rule, order, award, injunction or decree of any court or governmental instrumentality or arbitrator; and

(E) to the knowledge of such counsel after due inquiry, except as set forth in a letter to the Lessor from the Lessee's General Counsel dated the First Delivery Date, (x) there is no proceeding pending or threatened against or affecting the Lessee in any court or before any governmental authority or arbitration board or tribunal which involves the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or other) of the Lessee or the ability of the Lessee to perform its obligations under this Lease or the Assignment, and (y) the Lessee is not in default with respect to any order, judgment or award of any court, governmental authority or arbitration board or tribunal;

(iii) the written opinion of Messrs. McCarthy & McCarthy, special Canadian counsel for the Lessee, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

(A) the Lease and the Assignment have been deposited or filed in the appropriate registries pursuant to the Conditional Sales Acts of each of the Provinces of Alberta, British Columbia and Saskatchewan, within 20 days after the execution thereof has been completed, the appropriate notices of this Lease and the Assignment have been deposited or filed in the appropriate registry pursuant to the Personal Property Securities Act of the Province of Manitoba and no further act, filing, recording, deposit, refiling or redeposit (or giving of notice) with any other Federal, provincial or local government is required in order fully to protect the rights of the Lessor in and to the Units under the Lease in said Provinces;

(B) no approval is required from any governmental ministry or agency or public regulatory body in Canada with respect to the entering into or performance of this Lease and the Assignment or if any such approval is required, such approval has been duly obtained; and

(C) all taxes and registration, filing and recording fees payable in Canada or any province thereof in connection with the execution, delivery, registration, depositing, filing and recording of this Lease and the Assignment have been paid;

(iv) the written opinion of counsel for the Builder, addressed to the Lessor, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

(A) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and to execute, deliver and perform its obligations under the Purchase Agreement and the Assignment; and

(B) the Purchase Agreement and the Assignment have been duly authorized, executed and delivered by the Builder and are legal and valid instruments binding upon the Builder and enforceable against the Builder in accordance with their terms;

(v) the written opinion of counsel for the Lessor, addressed to the Lessee, to the effect that:

(A) the Lessor is a corporation duly incorporated and validly existing and in good standing under the laws of the jurisdiction of its incorporation, with corporate power to enter into this Lease and the Assignment;

(B) this Lease and the Assignment have been duly authorized, executed and delivered by the Lessor and constitute the legal, valid and binding agreements of the Lessor, enforceable in

accordance with their respective terms;

(C) no approval is required from any governmental or public body or authority of the United States of America or any state or local government with respect to the entering into or performance of this Lease or the Assignment by the Lessor; and

(D) the entering into and performance of this Lease and the Assignment by the Lessor will not conflict with, result in any breach of, or constitute a default under the charter or by-laws of the Lessor or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessor or any of its subsidiaries is a party or by which they may be bound.

In giving the opinions specified in subparagraphs (i)B, (iv)B and (v)B of this § 15, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and to limitations as to enforceability imposed by equitable principles;

(vi) a certification of insurance coverage from the Lessee's independent broker or brokers or insurance carrier evidencing maintenance of the insurance required by § 7 hereof;

(vii) a certificate of an officer of the Lessee, to the effect that (A) no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) or default under the Assignment has occurred and is continuing, (B) the representations and warranties of the Lessee contained in § 19 hereof are true and correct as of the date of such certificate with the same effect as if made on such date, (C) there has not been any material adverse change in the assets, liabilities, business or condition (financial or otherwise) of the Lessee since the date of the last audited financial statements furnished to the Lessor pursuant to § 19(a)J

hereof, and (D) none of the Units has been or will be placed in service prior to delivery and acceptance of such Unit under this Lease and that the original use of such Unit will commence with the Lessee pursuant to this Lease;

(viii) an opinion of an expert (the cost of which shall be borne by the Lessor) satisfactory to the Lessor as to the estimated useful life and residual value of the Units;

(ix) an opinion of tax counsel (the cost of which shall be borne by the Lessor) to the Lessor, satisfactory to the Lessor as to the tax effects of the transactions contemplated hereby; and

(x) such other documents as the Lessor may reasonably request.

§ 16. Recording. The Lessee, at its own expense, will cause this Lease and the Assignment to be filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303 and filed or deposited with the appropriate registries in the Provinces of Alberta, British Columbia and Saskatchewan, within 20 days after the execution thereof has been completed and will cause notice of this Lease and the Assignment to be filed or deposited with the appropriate registry in the Province of Manitoba. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to its satisfaction, of the Lessor's interest in the Units, or for the purpose of carrying out the intention of this Lease and the Assignment; and the Lessee will promptly furnish to the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor. This Lease and the Assignment or notice thereof required to be filed or deposited pursuant to this § 16 shall be filed with the Interstate Commerce Commission or filed or deposited with the appropriate registries in the Provinces of Alberta, British Columbia, Manitoba and Saskatchewan prior to the delivery and acceptance hereunder of any Unit.

§ 17. Federal Income Taxes. The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), to an owner of property, including, without limitation, (A) the depreciation deduction with respect to the Units pursuant to Section 167 of the Code as in effect on the date hereof with respect to each Unit (a) commencing in the taxable year of the Lessor during which the date of delivery (the "Delivery Date") with respect to such Unit occurs and calculated on the assumption that each Unit is placed in service on the Delivery Date with respect to such Unit, (b) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 77-10 for property in Asset Guideline Class No. 00.25, in accordance with the Class Life Asset Depreciation Range System under Section 167(m) of the Code as in effect on the date hereof, (c) employing initially the double declining balance method of depreciation and switching, without the consent of the Commissioner of Internal Revenue, to the sum of the years-digits method of depreciation when most beneficial to the Lessor, (d) utilizing the modified half-year convention or the half-year convention as selected by the Lessor in any taxable year pursuant to Treas. Regs. § 1.167(a)-11(c)(2)(ii) and (iii), (e) including in the basis of each Unit 100% of the Purchase Price thereof and any additional amounts properly includible under Section 1012 of the Code as in effect on the date hereof and (f) taking into account, for each Unit, an estimated gross salvage value of 10% of the Purchase Price thereof, which will be reduced by 10% of the Purchase Price thereof pursuant to Section 167(f) of the Code as in effect on the date hereof (the "Depreciation Deduction"), and (B) the investment credit pursuant to Section 38 and related sections of the Code as in effect on the date hereof, which, for each Unit, shall be equal to 10% of the sum of (a) 100% of the Purchase Price with respect to such Unit and (b) 100% of any additional amounts properly includible in the basis of such Unit under Section 1012 of the Code as in effect on the date hereof and shall be available based on the assumption that such Unit is placed in service by the Lessor on the Delivery Date with respect to such Unit (the "Investment Credit").

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other

documents inconsistent with the foregoing and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

Notwithstanding anything to the contrary contained in § 12 hereof, the Lessee represents and warrants that (i) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under Section 38 and related Sections of the Code; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; and (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code and will not be used predominantly outside the United States within the meaning of said Section 48(a) (or any exception thereto).

Lessee covenants and agrees to maintain such records as shall be reasonably necessary and sufficient to verify the factual basis for the matters referred to in this § 17 and will within five days of written request therefor make copies of such records available for inspection by the Lessor or any authorized agent of the Lessor.

If the Lessor, in computing its Federal income tax liability, shall lose the benefit of, lose the right to claim or suffer recapture with respect to, or there shall be disallowed, all or any portion of the Investment Credit with respect to any Unit under any circumstances or for any reason whatsoever (except as provided below in this § 17), or if the Lessor would otherwise lose, or have recaptured or disallowed, any such portion except for its failure also to have sufficient liability for tax against which to credit such portion, Lessee shall pay to the Lessor an amount which shall be equal to the portion of the Investment Credit so lost, recaptured or disallowed (or which would have been so lost, recaptured or disallowed except for any such failure to have sufficient liability for tax) and the amount of any interest, penalties or additions to tax (including any interest, penalties or additions to

tax because of underpayment of estimated tax) which may be payable to the United States of America by the Lessor in connection with such loss, recapture or disallowance, which amounts shall be payable at such time as the tax and interest, penalties or additions to tax attributable to such loss, recapture or disallowance are payable (or would have been payable), but not sooner than 30 days after receipt by Lessee of written notice from the Lessor; provided, however, that Lessee shall not be liable for the payment of any such amount if and to the extent that such loss, recapture or disallowance would not have resulted but for the occurrence of any of the following events:

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

(ii) a voluntary transfer by Lessor of legal title to such Unit to anyone or a voluntary disposition by the Lessor of any interest in such Unit or a voluntary reduction by the Lessor of its interest in the profits from such Unit, if such transfer by Lessor or such disposition or reduction by the Lessor (A) shall occur at any time while such Unit is subject to this Lease and no Event of Default (or other event which with notice or lapse of time or both would constitute an Event of Default) has occurred and is continuing under this Lease and (B) shall not be effected with the written consent of Lessee;

(iii) the failure of the Lessor (or if the Lessor files its Federal income tax returns as a member of an affiliated group, the failure of such group) to have sufficient tax liability, within the meaning of Section 46 of the Code, against which to credit the full amount of such Investment Credit;

(iv) the failure of the Lessor timely to claim such Investment Credit in its income tax returns for the taxable year in which the Delivery Date with respect to such Unit occurs or to follow the proper procedure in claiming such Investment Credit in such tax returns for such year, unless independent tax counsel selected by the Lessor and reasonably acceptable to the Lessee determines such Investment Credit

not to be available to it with respect to this transaction, and only if such failure to claim such Investment Credit or follow such procedure shall preclude the Lessor from claiming such Investment Credit; or

(v) with respect to any Unit, any change in or modification of the Code, or the regulations promulgated under § 46, 47 or 48 of the Code, made after the Delivery Date of such Unit.

Anything herein to the contrary notwithstanding, (i) if the Casualty Value has been paid with respect to any Unit pursuant to this Lease, the indemnity otherwise payable under this § 17 with respect to the Investment Credit on such Unit shall be reduced by any amount included in such Casualty Value as of the date of computation on account of the loss of such Investment Credit, and (ii) if Lessee pays an indemnity under this § 17 with respect to the Investment Credit on any Unit, appropriate adjustment shall be made to the Casualty Value percentages with respect to such Unit to reflect such payment.

If the Lessor, in computing its Federal, state or local taxable income for any taxable year (or portion thereof), shall lose the benefit of, lose the right to claim or suffer recapture with respect to, or there shall be disallowed, all or any portion of the Depreciation Deduction with respect to any Unit or if the Lessor shall be required to include in its gross income for any taxable year an amount greater than the sum of rent paid under the Lease for such year (such occurrence being hereinafter called a "Reallocation of Rent"), in any of the above cases under any circumstances or for any reason whatsoever (except as provided below in this § 17), or if the Lessor would otherwise lose, or have recaptured or disallowed, any such portion except for its failure also to have sufficient taxable income against which to deduct such Depreciation Deduction, the Lessee shall pay to the Lessor, in respect of such loss, recapture, disallowance or Reallocation of Rent, an amount which shall be equal to the sum of (A) any additional income taxes required to be paid (or which would have been payable except for any such failure to have sufficient taxable income) to the United States of America or to any state or local taxing jurisdiction by the Lessor with respect to such year by reason of such loss, recapture or disallowance of such Depreciation Deduction or such Reallocation of Rent and (B) the amount of any interest,

penalties or additions to tax (including any interest, penalties or additions to tax because of underpayment of estimated tax) which may be payable to the United States of America or to any state or local taxing jurisdiction by the Lessor in connection with such loss, recapture, disallowance or Reallocation of Rent, which amount shall be payable at such time as the tax and interest, penalties or additions to tax attributable to such loss, recapture, disallowance or Reallocation of Rent are payable (or would have been payable), but not sooner than 30 days after receipt by Lessee of written notice from the Lessor; provided, however, that Lessee shall not be liable for payment of any such amount if and to the extent that such loss, recapture, disallowance or Reallocation of Rent would not have resulted but for the occurrence of any of the following events:

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

(ii) a voluntary transfer by Lessor of legal title to such Unit to anyone or a voluntary disposition by the Lessor of any interest in such Unit or a voluntary reduction by the Lessor of its interest in the profits from such Unit, if such transfer by Lessor or such disposition or reduction by the Lessor (A) shall occur at any time while such Unit is subject to this Lease and no Event of Default (or other event which with notice or lapse of time or both would constitute an Event of Default) has occurred and is continuing unremedied under this Lease, and (B) shall not be effected with the written consent of Lessee;

(iii) the failure of the Lessor (or if the Lessor files its Federal income tax returns as a member of an affiliated group, the failure of such group) to have sufficient taxable income, against which to deduct such Depreciation Deduction;

(iv) the failure of the Lessor timely to claim such Depreciation Deduction in its income tax returns for the appropriate year or to follow the proper procedure in claiming such deductions in such tax returns for such year, unless independent tax counsel

selected by the Lessor and reasonably acceptable to the Lessee determines such deductions not to be available to it with respect to this transaction, and only if such failure to claim such deductions or follow such procedure shall preclude the Lessor from claiming such deductions; or

(v) with respect to any Unit, any change in or modification of the Code, or the regulations promulgated under § 167(m) of the Code, made after the Delivery Date of such Unit.

If the Lessor, as the result of such loss, recapture or disallowance of the Depreciation Deduction or a Reallocation of Rent with respect to any year under circumstances which require Lessee to indemnify the Lessor with respect to such loss, recapture, disallowance or Reallocation of Rent, shall actually realize Federal income tax savings which it would not have realized but for such loss, recapture, disallowance or Reallocation of Rent with respect to any subsequent year, the Lessor shall pay Lessee an amount equal to the sum of such Federal income tax savings actually realized by the Lessor plus any tax savings actually realized under the laws of any Federal, state or local government or taxing authority, as the result of any payment made pursuant to this sentence when, as, if and to the extent such Federal income or other tax savings are actually realized; provided, however, that (i) such sum shall not exceed the excess of the amounts previously paid by Lessee to the Lessor pursuant to this § 17 with respect to such loss, recapture, disallowance or Reallocation of Rent over the amounts previously paid by the Lessor to Lessee pursuant to this § 17, (ii) such sum shall not be payable before such time as Lessee shall have made all payments or indemnities then due pursuant to this § 17, (iii) no Event of Default (or other event which with notice or lapse of time or both would constitute an Event of Default) shall have occurred and be continuing, (iv) in computing any tax savings actually realized by the Lessor for purposes of this paragraph, the Lessor shall be deemed first to have utilized all deductions and credits available to it otherwise than by reason of any such loss, recapture, disallowance, Reallocation of Rent or payment to Lessee and (v) any loss, recapture or disallowance of any such tax savings shall be treated as a loss subject to the provisions of this § 17.

In the event a claim shall be made by the Internal Revenue Service which, if successful, would result in a Disallowance (which term, for the purposes of the remainder of this § 17, means a loss of all or any portion of the Investment Credit or the Depreciation Deduction with respect to any Unit or any Reallocation of Rent) under circumstances which would require Lessee to indemnify the Lessor for such Disallowance, the Lessor hereby agrees to take such action in connection with contesting such claim as Lessee shall reasonably request in writing from time to time, provided that (i) within 30 days after notice by the Lessor to Lessee of such claim, Lessee shall request that such claim be contested, (ii) the Lessor shall consult with the Lessee in pursuing any contest so requested by the Lessee; provided, however, that the Lessor shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund or contest the claim in any permissible forum considering, however, in good faith such request as Lessee shall make concerning the most appropriate forum in which to proceed, (iii) prior to taking such action, Lessee shall have furnished the Lessor with an opinion of independent tax counsel of Lessee and reasonably acceptable to the Lessor to the effect that a meritorious defense exists to such claim, (iv) Lessee shall have indemnified the Lessor in a manner satisfactory to it for any liability or loss which the Lessor may incur as the result of contesting such claim and shall have agreed to pay the Lessor on demand all costs and expenses which the Lessor may incur in connection with contesting such claim, including, without limitation, (A) reasonable attorneys', accountants' and investigatory fees and disbursements, and (B) the amount of any interest, penalty or fine which may ultimately be payable as the result of contesting such claim (to the extent not otherwise indemnified under this § 17), and (v) if the Lessor shall determine to pay the tax claimed and sue for a refund, Lessee shall have paid to the Lessor the amounts payable pursuant to this § 17 hereof with respect to the Investment Credit, Depreciation Deduction or Reallocation of Rent. In the case of any such claim referred to above, the Lessor agrees promptly to notify Lessee in writing of such claim, agrees not to make payment of such claim for at least 30 days after the giving of such notice and agrees to give to Lessee any relevant

information relating to such claim which may be particularly within the knowledge of the Lessor, and otherwise to cooperate with Lessee in good faith in order to contest effectively any such claim and, if and to the extent agreeable to the Lessor, to permit Lessee to participate in the proceedings relating to such claim. Nothing contained in this § 17 shall require the Lessor to contest a claim which it would otherwise be required to contest pursuant to this § 17 if the Lessor waives the payment by Lessee of any amount that might otherwise be payable by Lessee under this § 17 with respect to the Investment Credit, Depreciation Deduction or Reallocation of Rent by way of indemnity in respect of such claim.

If, after actual receipt by the Lessor of an amount paid by Lessee and attributable to a Disallowance, the extent of such Disallowance shall be established by the final judgment or decree of a court or administrative agency having jurisdiction thereof or a settlement with the consent of Lessee, the Lessor shall, within 30 days, pay to Lessee all or the portion of any refund received by the Lessor with respect to such Disallowance (together with any interest paid thereon by the taxing authority) plus simple interest at the rate or rates per annum which Morgan Guaranty Trust Company, New York, New York, charges for 90-day unsecured loans to large corporate borrowers of the highest credit standing from time to time from the date of actual collection by the Lessor of such refund (and any such interest thereon) to the date of payment by the Lessor to Lessee hereunder. Notwithstanding the foregoing, the Lessor shall not be required to make any payment hereunder (i) to the extent such payment (minus any such interest attributable thereto not previously reimbursed by Lessee) would exceed the amount previously paid by Lessee to the Lessor with respect to the Disallowance giving rise to such refund, (ii) before such time as Lessee shall have made all payments or indemnities then due pursuant to this § 17 and (iii) so long as an Event of Default (or other event which with notice or lapse of time or both would constitute an Event of Default) shall have occurred and be continuing.

If for any reason whatsoever any amount in respect of any replacement, alteration, modification, substitution, improvement and/or addition to any Unit or any expenditure by Lessee or any of its affiliates, or by any sublessee of any thereof or by any other person which

any of the foregoing shall have permitted to use any Unit, in respect of any Unit or this Lease or any agreement contemplated hereby (hereinafter called "Additional Expenditures") made by any of the foregoing under and pursuant to the terms of this Lease or otherwise is required to be included in the gross income of the Lessor for Federal, state or local income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, Lessee shall pay to the Lessor in respect of such inclusion an amount which shall be equal to any additional taxes required to be paid by the Lessor and the amount of any interest, penalties or additions to tax which may be payable by the Lessor in connection with such inclusion, which amounts shall be payable at such time as the tax and interest, penalties or additions to tax are payable, but not sooner than 30 days after receipt by Lessee of written notice from the Lessor.

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

Notwithstanding any other provision of this § 17, to the extent Lessee is required to make any payment under this § 17, Lessee agrees that its payment or indemnity obligation will be grossed up, that is, increased to include any amount necessary to hold the Lessor harmless on an after-tax basis from all taxes required to be paid by Lessor with respect to such payment or indemnity (including any payment made pursuant to this paragraph) under the laws of any Federal, state or local government or taxing authority, or under the laws of any foreign government or taxing authority. Whenever any payment is to be made by Lessee under this § 17 and it is necessary in calculating the amount of such payment to compute the amount of any liability for Federal, state or local tax imposed on or measured by the net income of the Lessor, such computation shall be based on the assumption that such taxes are payable at an assumed marginal effective rate of 48%.

All amounts due to the Lessor under this § 17 shall bear interest at the rate of 18% per annum from the date of payment by the Lessor of any tax and interest to the date the Lessee shall reimburse the Lessor for such amounts in accordance with the provisions of this § 17.

The indemnity contained in this § 17 shall survive the expiration or other termination of this Lease. This remedy shall be in addition to all other remedies in favor of the Lessor existing in this Lease or at law or in equity.

For purposes of this § 17, the term "Lessor" shall include (i) C.I.T. Corporation and (ii) any successor to C.I.T. Corporation, and the affiliated group which files a consolidated Federal or state income tax return which includes the Lessor shall be deemed to be the Lessor where the income tax liability of the Lessor or the realization of an item of income, gain, deduction or credit in connection with the determination thereof is an issue.

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

§ 19. Representations and Warranties.

(a) The Lessee represents and warrants as follows:

(A) the Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware with corporate power to own its properties and to carry on its business as now conducted, and to enter into the Assignment and this Lease and is duly qualified to do business and is in good standing in such other jurisdictions in which the failure to so qualify or be in good standing could affect its ability to perform its obligations under this Lease and the Assignment;

(B) the Assignment and this Lease have been duly authorized, executed and delivered by the Lessee and constitute legal, valid and binding agreements of the Lessee, enforceable in accordance with their respective terms;

(C) no approval is required from any governmental or public body or authority with respect to the entering into or performance of this Lease or the Assignment by the Lessee;

(D) the entering into and performance of this Lease and the Assignment by the Lessee will not conflict with, result in any breach of, or constitute a default under the charter or by-laws of the Lessee or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee or any of its subsidiaries is a party or by which they may be bound;

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

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

(G) except as set forth in a letter to the Lessor from the Lessee's General Counsel dated the First Delivery Date, there is no proceeding pending or threatened against or affecting the Lessee in any court or before any governmental authority or arbitration board or tribunal which involves the possibility

of materially and adversely affecting the properties, business, prospects, profits or condition (financial or other) of the Lessee or the ability of the Lessee to perform its obligations under this Lease or the Assignment, and the Lessee is not in default with respect to any order, judgment or award of any court, governmental authority or arbitration board or tribunal;

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

(I) the Lessee has filed all foreign, Federal, state and local tax returns which (to its knowledge) are required to be filed, and has paid or made adequate provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith or which in the aggregate do not involve a material amount;

(J) the Lessee has furnished to the Lessor its consolidated balance sheet as of December 31, 1979, and the related consolidated statements of income and retained earnings for the year then ended and its unaudited consolidated balance sheet as at the end of, and its unaudited consolidated income statement for, the quarter ended September 30, 1980; such consolidated financial statements are in accordance with the books and records of the Lessee and have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the periods covered thereby and on a basis consistent with prior periods; such consolidated financial statements present fairly the financial condition of the Lessee at such dates and the consolidated results of its operations for such periods; and there has not been any material adverse change in the assets, liabilities, business or condition (financial or otherwise) of the Lessee since December 31, 1979;

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

(L) no filing, recording or deposit (or giving of notice) with any Federal, state, provincial or local government or agency thereof, other than the filing of this Lease with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and this Lease and the Assignment with the appropriate registries in each of the Provinces of Alberta, Saskatchewan, British Columbia and Manitoba, Canada, is necessary in order to protect the rights of the Lessor under this Lease in and to the Units in any state of the United States of America or the District of Columbia or in such Provinces;

(M) there is no fact known to the Lessee which the Lessee has not disclosed to the Lessor in writing or which is not disclosed in the financial statements of the Lessee dated as of December 31, 1979, or misrepresentation contained herein, which materially adversely affects or, so far as the Lessee can now foresee, will materially adversely affect the ability of the Lessee to perform its obligations under this Lease; and

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

(b) The Lessor represents, warrants and agrees as follows:

(A) the Lessor is a corporation legally incorporated and validly existing, in good standing under the laws of the State of New York, with corporate power to enter into this Lease and the Assignment;

(B) this Lease and the Assignment have been duly

authorized, executed and delivered by the Lessor and constitute the legal, valid and binding agreements of the Lessor, enforceable in accordance with their respective terms; and

(C) the Lessor shall make its investment in the units with its general assets, and not directly or indirectly with the assets of any employee benefit plan (other than a governmental plan) with respect to which the Lessor, or to its knowledge, the Lessee or the Builder is a party in interest, all within the meaning of ERISA.

§ 20. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class certified, or if sent by telecommunication when received, addressed as follows:

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

(b) if to the Lessee, at 124 West Putnam Avenue, Greenwich, Connecticut, Attention of the Executive Vice President-Finance,

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

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

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

§ 22. Execution. This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties so long as each party hereto shall have executed and delivered one counterpart hereof. Although this Assignment is dated for convenience as of the date specified in the introductory paragraph of this Assignment, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 23. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, the Conditional Sales Acts of the Provinces of Alberta, British Columbia and Saskatchewan and the Personal Property Securities Act of the Province of Manitoba.

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

C.I.T. CORPORATION,

by

Keith L. Fitel
Vice President

[Corporate Seal]

Attest:

Leo Sheu

Assistant Secretary

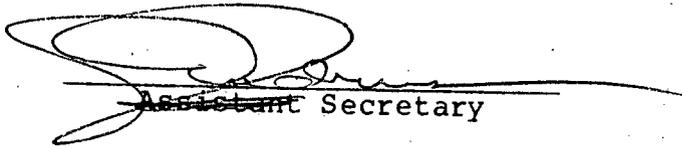
BEKER INDUSTRIES CORP.,

by


SENIOR Vice President

[Corporate Seal]

Attest:


Assistant Secretary

SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Place of Delivery</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
13,500 Gallon Molten Sulfur Cars, AAR Mechanical Designation: T-104	50	Trinity Industries, Inc. Highway 80 East Longview, Texas 75607	BICX 101-150

SCHEDULE B TO LEASE

Casualty Value

<u>Date</u>	<u>Percentage</u>	<u>Date</u>	<u>Percentage</u>
Up to 3/31/81	104.9	40 7/1/84	99.8
1 4/1/81	104.9	41 8/1/84	99.7
2 5/1/81	104.9	42 9/1/84	99.6
3 6/1/81	104.9	43 10/1/84	99.5
4 7/1/81	105.0	44 11/1/84	99.4
5 8/1/81	105.1	45 12/1/84	99.3
6 9/1/81	105.3	46 1/1/85	99.1
7 10/1/81	105.5	47 2/1/85	98.9
8 11/1/81	105.6	48 3/1/85	98.8
9 12/1/81	105.8	49 4/1/85	98.6
10 1/1/82	105.9	50 5/1/85	98.5
11 2/1/82	106.0	51 6/1/85	98.4
12 3/1/82	106.1	52 7/1/85	98.2
13 4/1/82	106.2	53 8/1/85	98.0
14 5/1/82	106.3	54 9/1/85	97.9
15 6/1/82	106.4	55 10/1/85	97.7
16 7/1/82	106.4	56 11/1/85	97.5
17 8/1/82	106.5	57 12/1/85	97.3
18 9/1/82	106.6	58 1/1/86	97.1
19 10/1/82	106.6	59 2/1/86	96.9
20 11/1/82	106.6	60 3/1/86	96.7
21 12/1/82	106.7	61 4/1/86	94.3
22 1/1/83	106.7	62 5/1/86	91.9
23 2/1/83	106.8	63 6/1/86	89.5
24 3/1/83	106.8	64 7/1/86	89.2
25 4/1/83	106.8	65 8/1/86	88.9
26 5/1/83	106.8	66 9/1/86	88.7
27 6/1/83	106.8	67 10/1/86	88.5
28 7/1/83	106.8	68 11/1/86	88.2
29 8/1/83	106.7	69 12/1/86	88.0
30 9/1/83	106.7	70 1/1/87	87.7
31 10/1/83	106.7	71 2/1/87	87.4
32 11/1/83	106.7	72 3/1/87	87.1
33 12/1/83	106.7	73 4/1/87	86.8
34 1/1/84	106.7	74 5/1/87	86.5
35 2/1/84	106.6	75 6/1/87	86.2
36 3/1/84	106.5	76 7/1/87	85.9
37 4/1/84	104.3	77 8/1/87	85.5
38 5/1/84	102.2	78 9/1/87	85.2
39 6/1/84	100.0	79 10/1/87	84.8

<u>Date</u>	<u>Percentage</u>	<u>Date</u>	<u>Percentage</u>		
80	11/1/87	84.5	125	8/1/91	56.0
81	12/1/87	84.1	126	9/1/91	55.4
82	1/1/88	83.7	127	10/1/91	54.8
83	2/1/88	83.4	128	11/1/91	54.1
84	3/1/88	83.0	129	12/1/91	53.5
85	4/1/88	80.5	130	1/1/92	52.8
86	5/1/88	78.0	131	2/1/92	52.2
87	6/1/88	75.5	132	3/1/92	51.5
88	7/1/88	75.1	133	4/1/92	50.8
89	8/1/88	74.6	134	5/1/92	50.2
90	9/1/88	74.2	135	6/1/92	49.5
91	10/1/88	73.8	136	7/1/92	48.4
92	11/1/88	73.4	137	8/1/92	48.2
93	12/1/88	73.0	138	9/1/92	47.5
94	1/1/89	72.5	139	10/1/92	46.8
95	2/1/89	72.1	140	11/1/92	46.1
96	3/1/89	71.6	141	12/1/92	45.4
97	4/1/89	71.4	142	1/1/93	44.7
98	5/1/89	70.7	143	2/1/93	43.9
99	6/1/89	70.2	144	3/1/93	43.2
100	7/1/89	69.7	145	4/1/93	42.3
101	8/1/89	69.3	146	5/1/93	41.7
102	9/1/89	68.8	147	6/1/93	41.0
103	10/1/89	68.3	148	7/1/93	40.2
104	11/1/89	67.8	149	8/1/93	39.5
105	12/1/89	67.3	150	9/1/93	38.8
106	1/1/90	66.8	151	10/1/93	38.0
107	2/1/90	66.3	152	11/1/93	37.3
108	3/1/90	65.8	153	12/1/93	36.5
109	4/1/90	65.2	154	1/1/94	35.7
110	5/1/90	64.7	155	2/1/94	34.9
111	6/1/90	64.2	156	3/1/94	34.1
112	7/1/90	63.6	157	4/1/94	33.3
113	8/1/90	63.1	158	5/1/94	32.5
114	9/1/90	62.5	159	6/1/94	31.7
115	10/1/90	61.9	160	7/1/94	30.9
116	11/1/90	61.4	161	8/1/94	30.0
117	12/1/90	60.8	162	9/1/94	29.2
118	1/1/91	60.2	163	10/1/94	28.4
119	2/1/91	59.6	164	11/1/94	27.5
120	3/1/91	59.0	165	12/1/94	26.7
121	4/1/91	58.4	166	1/1/95	25.9
122	5/1/91	57.8	167	2/1/95	25.0
123	6/1/91	57.2	168	3/1/95	24.2
124	7/1/91	56.6	169	4/1/95	23.3

	<u>Date</u>	<u>Percentage</u>
170	5/1/95	22.5
171	6/1/95	21.6
172	7/1/95	
	and	
	thereafter	20.0

To the extent the Lessor incurs a loss of any tax benefits described in § 17 hereof by reason of an event or condition not fully taken into account in the computation of Casualty Value by reason of the fact that the date as of which such Casualty Value is computed is later than the date as of which the Lessor is affected for tax purposes, Casualty Value shall be increased by Lessor in accordance with the manner and based on the assumptions on which such values were originally computed by the Lessor.

STATE OF CONNECTICUT:)
COUNTY OF *Fairfield*,) ss.:

On this *12th* day of January 1981, before me personally appeared *John J. Fitteron*, to me personally known, who, being by me duly sworn, says that he is a Vice President of BEKER INDUSTRIES CORP., 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.

[Notarial Seal]

Doris L. Moore

Notary Public

DORIS L. MOORE

NOTARY PUBLIC

MY COMMISSION EXPIRES MARCH 31, 1982

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

On this 9th day of January 1981, before me personally appeared Keith L. Fitch, to me personally known, who, being by me duly sworn, says that he is a Vice President of C.I.T. 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.

Michael T. Concannon
Notary Public

[Notarial Seal]

MICHAEL T. CONCANNON
Notary Public, State of New York
No. 41-4711290
Qualified in Queens County
Commission Expires March 30, 1982