

710
13826-D

RECORDATION NO. 13826-D
Filed 12/21/82

LAW OFFICES

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

ALVORD AND ALVORD

200 WORLD CENTER BUILDING

918 SIXTEENTH STREET, N.W.

WASHINGTON, D. C.

20006-2973

OF COUNSEL
JESS LARSON
JOHN L. INGOLDSBY
URBAN A. LESTER

CABLE ADDRESS
"ALVORD"

TELEPHONE
AREA CODE 202
393-2266

TELEX
440367 A AND A
440348 CDAA UI

ROBERT W. ALVORD
ALBERT H. GREENE
CARL C. DAVIS
CHARLES T. KAMM
JOHN H. DOYLE
MILTON C. GRACE
GEORGE JOHN KETO
RICHARD N. BAGENSTOS

DEC 21 1982 -!! 4:45 AM
INTERSTATE COMMERCE COMMISSION

• NOT A MEMBER OF D. C. BAR
• ALSO A MEMBER OF OHIO BAR

December 21, 1982

2-2555
No. DEC 21 1982
Date
Fee \$ 10.00
ICC Washington, D. C.

RECEIVED
DEC 21 11 37 AM '82
FEE OPERATION BR.

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

Dear Ms. Mergenovich:

Enclosed for recordation under the provisions of Section 11303(a) of Title 49 of the U.S. Code are two fully executed copies of an Assignment and Assumption Agreement dated as of December 20, 1982 (AFG Leasing Venture No. 939), a "secondary document" as that term is defined in 49 C.F.R. §1116.1(b). The enclosed document relates to a Security Agreement dated as of September 30, 1982, which was duly filed and recorded at 3:00 p.m. on October 28, 1982 and assigned Recordation Number 13826.

Inasmuch as the enclosed also relates to certain documents filed and recorded under Recordation Numbers 13824 and 13825, request is hereby made that the recordation index docket sheets of those recordations be marked "See Recordation Number 13826 and subparts thereto".

A general description of the railroad equipment covered by the enclosed document and intended for use related to interstate commerce is set forth in Schedule B attached to this letter and made a part hereof.

The names and addresses of the parties to the Assignment and Assumption Agreement are:

Seller: First Security Bank of Utah, National Association and Robert S. Clark, as Trustees under Lone Star Steel Company Trust No. 82-1
79 South Main Street
Salt Lake City, Utah 84111

Urban Lester
OT. Kammer

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
December 21, 1982
Page Two

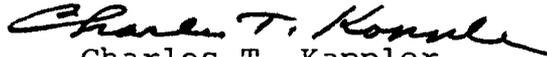
Owner Trustees: First Security Bank of Utah, National
Association and Robert S. Clark, as
Trustees under AFG Trust 939
79 South Main Street
Salt Lake City, Utah 84111

The undersigned is agent for the Owner Trustees
for the purpose of submitting the enclosed document for
recordation and has knowledge of the matters set forth
therein.

Kindly return one stamped executed copy of the
Assignment and Assumption Agreement to Charles T.
Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street,
N.W., Washington, D.C. 20006.

Also enclosed is a check in the amount of \$10
covering the required recordation fee.

Very truly yours,


Charles T. Kappler

SCHEDULE B
TO
ASSIGNMENT AND ASSUMPTION AGREEMENT

DESCRIPTION OF EQUIPMENT

Group C-3

<u>Description of Item</u>	<u>Seller</u>	<u>Group</u>	<u>Serial No.</u>	<u>Lessor's Cost**</u>	<u>Place of Delivery and Location</u>
Terex 33-05B Hauler	*	C-3	68341	\$ 150,900	Lone Star, Tx
Renner RHP60 Straddle Crane	*	C-3	60RHP024	220,200	Lone Star, Tx
New Slug Locomotive	*	C-3	TN3	248,000	Lone Star, Tx
Total Lessor's Cost				<u>\$ 619,100</u>	

* Seller for each item of equipment listed and described above is First Security Bank of Utah, National Association, and Robert S. Clark, not in their individual capacities but solely as trustees under a Trust Agreement entitled "Lone Star Steel Company Trust No. 82-1" dated as of September 30, 1982.

** Lessor's Cost shall also mean the cost to the Owner Trustees, defined as First Security Bank of Utah, National Association, and Robert S. Clark, not in their individual capacities but solely as trustees under Trust Agreement for "AFG Leasing Venture No. 939" dated as of November 17, 1982.

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

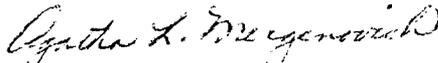
Charles T. Kappler
Alvord and Alvord
200 World Center Building
918 Sixteenth St. N. W.
Washington, D. C. 20006-2973

December 21, 1982

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/21/82 at 11:45AM , and assigned re-
recording number(s). 13826-D

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

(Lone Star)

RECORDATION NO. 13826-D
Filed 1425
DEC 21 1982 11 15 AM
INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AND ASSUMPTION AGREEMENT

(AFG Leasing Venture No. 939)

: ASSIGNMENT AND ASSUMPTION AGREEMENT dated as of December 20, 1982, among First Security Bank of Utah, National Association, a national banking association having a principal place of business at 79 South Main Street, Salt Lake City, Utah 84111 and Robert S. Clark, not in their individual capacities but solely as trustees under a Trust Agreement dated as of September 30, 1982, and entitled Lone Star Steel Company Trust No. 82-1 (the "Lone Star Trust Agreement") (collectively, the "Lone Star Trustees" and hereinafter sometimes called the "Seller"); First Security Bank of Utah, National Association, a national banking association having a principal place of business at 79 South Main Street, Salt Lake City, Utah 84111 (hereinafter called the "Corporate Trustee"), and Robert S. Clark (hereinafter called the "Individual Trustee" and, collectively with the Corporate Trustee, the "Owner Trustees"), not in their individual capacities, but solely as trustees under a Trust Agreement entitled "AFG Trust 939" dated as of November 17, 1982 (the "Owner Trust Agreement"), among them and American Finance Group, Inc. ("AFG") as trustor; and certain beneficiaries identified in the Owner Trust Agreement (the "Beneficiaries").

WITNESSETH

WHEREAS, the Seller is the owner of certain capital equipment described in Schedule B hereto (each item an "Item of Equipment" and collectively the "Equipment");

WHEREAS, the Seller has entered into a Lease Agreement dated as of September 30, 1982, and Lease Supplement No. 1C which describes the Equipment together with other equipment, each with Lone Star Steel Company (the "Lessee"), copies of which are attached hereto as Schedule C (such Lease Supplement and such Lease Agreement as it relates to such Lease Supplement hereinafter collectively referred to as the "Original Lease");

WHEREAS, State of Wisconsin Investment Board (the "Secured Party") has financed a portion of the purchase price of the Equipment pursuant to the Security Agreement dated as of September 30, 1982 (the "Security Agreement") (a copy of which is attached hereto as Schedule D), the Participation Agreement dated as of September 30, 1982, among Philadelphia and Reading Corporation, AFG, the Secured Party, Unionmutual Stock Life Insurance Co. of America, and the Seller (the "Participation Agreement" and, together with the Security Agreement, the "Security Documents"); and the Secured Note in the original amount of

\$2,069,631.71 (the "Original Note") between Seller as borrower and the Secured Party as lender in favor of the Secured Party.

WHEREAS, the Owner Trustees, AFG and the Beneficiaries are parties to the Owner Trust Agreement (unless otherwise defined herein, all terms used herein shall have the respective meanings set forth in the Owner Trust Agreement), pursuant to which the Owner Trustees have agreed to perform the duties and responsibilities set forth therein and hold the Trust Estate in trust for the Beneficiaries, subject to the rights of the Secured Party under the New Note (as hereinafter defined) and the Security Documents, the rights of the Lessee under the Lease (as hereinafter defined), the rights of AFG under certain Administration Agreements between AFG and each of the Beneficiaries (the "Administration Agreements"), and the rights of AFG Financial Services, Inc. (an affiliate of AFG) as Remarketing Agent (the "Remarketing Agent") under certain Remarketing Agreements between the Remarketing Agent and each of the Beneficiaries (the "Remarketing Agreements"); and

WHEREAS, the Seller wishes to sell and assign, and the Owner Trustees wish to purchase and assume, all of the Seller's rights, title and interest and obligations in and to the Equipment, the Original Lease but only with respect to the Equipment (the Original Lease only with respect to the Equipment and rental schedule as described in Schedule B hereto hereinafter referred to as the "Lease"), the New Note (as hereinafter defined), and the Security Documents but only as they relate to the Equipment and the Lease.

NOW THEREFORE, in consideration of the covenants and premises hereof and other good and valuable consideration, the parties hereto agree as follows:

1. Purchase and Sale of Equipment

1.1 Sale of the Equipment. The Seller hereby agrees to sell, and the Owner Trustees hereby agree to purchase, on the terms of this Agreement, the Items of Equipment described in Schedule B hereto.

At the time of delivery of each Item of Equipment, the Seller shall execute and deliver to the Owner Trustees a warranty bill of sale substantially in the form attached hereto as Exhibit A (the "Warranty Bill of Sale").

1.2 Title. The Warranty Bill of Sale shall transfer a good record and marketable title to each Item of Equipment free from any security interest, lien or encumbrance except the Lease and the Security Documents and the New Note (as hereinafter defined).

1.3 Price. The equity portion of the purchase price for each Item of Equipment shall be as set forth in Schedule B hereto

which shall be paid by the Owner Trustees to the Seller by wire transfer as determined by the Seller, when the Warranty Bill of Sale is delivered and title passes to the Owner Trustees with respect to each Item of Equipment.

1.4 The Closing. The Closing under this Agreement shall take place on December 20, 1982, at Boston, Massachusetts, or at such other place and such subsequent date as the parties shall agree upon. (Such date of closing is hereinafter called a "Closing Date.")

1.5 Delivery of Documents, etc. At, and in connection with the Closing:

- (a) The Seller shall deliver the Items of Equipment to the Owner Trustees and the Owner Trustees shall accept delivery of the Items of Equipment, by delivery and acceptance of the Warranty Bill of Sale.
- (b) The Seller shall execute and deliver to the Owner Trustees the Warranty Bill of Sale applicable to such Items of Equipment.
- (c) The Owner Trustees shall pay the Seller the price for the Items of Equipment delivered as provided in Section 1.3 above.
- (d) The Owner Trustees shall deliver to the Secured Party a secured note in the form attached hereto as Schedule E in the original principal amount of \$527,483.02 (the "New Note").
- (e) The Seller shall deliver to the Owner Trustees a true copy of the Original Lease.
- (f) The Seller shall deliver to the Owner Trustees a true copy of the Security Documents.
- (g) The Seller shall deliver to the Owner Trustees such legal opinion or opinions and such documents, instruments and correspondence as to the Items of Equipment and Lease as the Owner Trustees may reasonably request.
- (h) The Owner Trustees shall execute and deliver to the Seller such UCC financing statements as the Seller may reasonably request.
- (i) The Owner Trustees shall deliver to the Seller, the Note Purchasers, and the Sublessee as defined in the Participation Agreement such legal opinion called for in Section 7(a)(vi) of the Participation Agreement.

- (j) The Seller shall deliver its own certificate and a certificate of the Lessee and any sublessee that there exists no event of default or any event which with the giving of notice or the passage of time or both would constitute an event of default under the Lease.
- (k) The Owner Trustees shall deliver to the Note Purchasers and Sublessee as defined in the Participation Agreement the certificate called for under Section 7(a)(v) of the Participation Agreement.
- (l) There shall also be executed and/or delivered such additional documents as may be reasonably required by the parties.

2. Assignment and Assumption; Reconveyance

2.1 Assignment. The Seller hereby sells, assigns, transfers and sets over unto the Owner Trustees, their successors and assigns, subject to the terms of the Owner Trust Agreement, the Lease (but only with respect to the Equipment), and the Security Documents (but only with respect to the Equipment), all the Seller's right, title, interest, duties and obligations (subject to Section 8 hereof) of the Seller in and to:

- (a) The Lease;
- (b) The Original Note (to the extent of the original principal amount of the New Note); and
- (c) The Security Documents.

2.2 Assumption. The Owner Trustees, not in their individual capacities but solely as Trustees under the Trust Agreement, hereby accept such assignment and confirm and agree that they shall be deemed a party to the Lease and the Security Documents (but only as they relate to the Equipment and the Lease) and shall be bound by all of the terms of each thereof and undertake all of the due and punctual performance of the duties and obligations of the Seller thereunder (to the extent and with the same force and effect as if the Owner Trustees had originally entered into the same) subject to Section 8 hereof.

2.3 Release. The Owner Trustees hereby acknowledge and agree that the Seller is hereby released and discharged from each and all of its obligations under the Original Lease and the Original Note and the Security Documents (but in each case only with respect to the Equipment) effective as of the Closing Date under this Agreement; but the Seller shall retain as security for the performance of the Owner Trustees hereunder a secondary security interest in the Equipment and the Lease which secondary security interest shall be subordinate to the security interest of the Secured Party under the New Note and the Security Agreement as it relates to the Equipment.

2.4 Reconveyance. Upon revocation of the Secured Party's consent hereto pursuant to its terms, the Owner Trustees agree to execute and deliver to the Seller such financing statements and instruments of transfer as the Seller may reasonably require to effect a reassignment and transfer to and reassumption by the Seller of the right, title, interest, duties and obligations assigned and transferred to and assumed by Seller in the Equipment, the Lease and the Security Agreement hereunder, and simultaneously therewith the Seller shall execute and deliver such financing statements and instruments as the Owner Trustees shall reasonably require to effect such reassignment of and release from the obligations created hereby. The transactions contemplated by this Section 2.4 shall include a release by the Secured Party of the Beneficiaries from and with respect to the obligations assumed by the Beneficiaries pursuant to this Agreement, including without limitation Section 4.1 hereof, from and after the effective date of such transactions (which shall not, pursuant to the terms of the Secured Party's consent, be later than December 31, 1982), and the Secured Party shall execute and deliver such documents and instruments relating to such release and the protection of the Beneficiaries with respect thereto as the Owner Trustees may reasonably require.

3. Amendments to the Security Agreement

Effective on the Closing Date hereunder, the Security Agreement is hereby amended as follows:

(a) The Security Agreement is hereby amended to provide that the Owner Trustees are the Debtor under the Security Agreement with respect to the Equipment and the Original Lease as transferred, assigned and assumed pursuant to this Assignment and Assumption Agreement.

(b) Schedule 2 to the Security Agreement, insofar as the Security Agreement is assigned to and assumed by the Owner Trustees pursuant to this Agreement, is hereby deleted and Schedule B hereto shall be redesignated "Schedule 2" and substituted therefor.

4. Assumption of Liabilities by Beneficiaries

In consideration of the Secured Party consenting to the assignment of the Seller's obligations to the Owner Trustees and the assumption thereof by the Owner Trustees and by the Beneficiaries to the extent provided herein, the parties hereby agree as follows:

4.1. Each Beneficiary identified in Schedule A hereto expressly (a) agrees to be bound by the provisions of the New Note and the Security Documents as they relate to the Equipment, the

Lease, and the New Note, and (b) acknowledges and agrees unconditionally that any and all rights, title, interests and claims which it may have in or to the Equipment or the Original Lease, including without limitation its ownership of the beneficial interests in the Equipment and the Original Lease, shall be and is in all respects, including without limitation for purposes of the Federal Bankruptcy Act, subject and subordinate to the right, title, interest and claims of the Secured Party in and to the Equipment and the Original Lease, whether as evidenced by the New Note, or the Security Documents as they relate to the Equipment, or otherwise; and that any claims which it may have or allege to have for damages or other rights in respect of the Equipment or the Original Lease, whether arising under the Securities Act of 1933, as amended, or otherwise, shall be subject and subordinate to the right, title, interest and claims of the Secured Party in and to the Equipment and the Original Lease. Any provision in this Agreement or the New Note, the Security Documents as they relate to the Equipment and the New Note to the contrary notwithstanding, recourse shall be had against such Beneficiary personally under or in respect of the New Note and the Security Documents as they relate to the Equipment and the New Note, and recourse shall be had against such Beneficiary personally for any obligations contained therein but only up to the Liability Amount set forth in Schedule A hereto.

4.2. Nothing contained herein shall constitute or be deemed to constitute a release of any Beneficiary from or a derogation of any of its covenants, representations, obligations and undertakings (a) contained in the Co-Maker Power of Attorney executed by him as attached as set forth as Exhibit 1 to said Schedule A or (b) by any other agreement, document or instrument, or any subsequent amendments or modifications thereto, executed by any Beneficiary.

4.3. Nothing contained in this Agreement shall be deemed to obligate the Secured Party to proceed against the Beneficiaries or the Owner Trustees to discharge or liquidate its loan evidenced by the New Note but on the contrary the Secured Party in its sole discretion may proceed against the collateral securing such New Note or against the Beneficiaries or any of them as it may deem appropriate.

4.4. This Agreement and all of the agreements and obligations of the Beneficiaries hereunder shall be binding upon the successors and assigns of the Beneficiaries and shall inure to the benefit of and be enforceable by the successors and assigns of the Secured Party.

5. Representations and Warranties of Seller

The Seller hereby represents and warrants as follows:

5.1 Organization, Power, etc. The Lone Star Trust Agreement has been duly executed and delivered by the Lone Star Trustees and is a legal, valid, and binding obligation enforceable in accordance with its terms, and the trust created thereby is a valid trust under the laws of the State of Utah.

First Security Bank of Utah, National Association, is a national banking association duly organized and existing and in good standing under the laws of the United States, with adequate power and authority to act as trustee under the Lone Star Trust Agreement.

The Lone Star Trustees have adequate power and authority to enter into and perform this Agreement and all documents contemplated hereby, none of which shall result in breach of any provision of, or constitute a default under any provisions of the Loan Star Trust Agreement.

The Lone Star Trustees are not subject to any restriction or agreement which, with or without the giving of notice, the passage of time, or both, prohibits or would be violated by the execution, delivery or consummation of this Agreement and transactions herein contemplated, other than the terms and conditions set forth in Section 7(a) of the Participation Agreement as defined in the Lone Star Trust Agreement.

5.2 Title. At the time the Owner Trustees acquire title to the Equipment, the right, title and interest in the Equipment which is transferred and conveyed by the Seller to the Owner Trustees pursuant to the Warranty Bill of Sale will be free and clear of any liens and encumbrances created by the Lone Star Trustees (other than those created pursuant to the Lone Star Operative Agreements as defined in the Lone Star Trust Agreement) or which result from claims asserted against the Lone Star Trustees in their individual capacities, which are not related to the ownership of the Equipment or to the administration of the Trust Estate as defined in the Lone Star Trust Agreement or to any other transaction pursuant to the Lone Star Trust Agreement or the Operative Agreements as defined in the Lone Star Trust Agreement. The Lone Star Trustees acquired the right, title and interest in the Equipment as evidenced by a warranty bill of sale which states that the title to the Equipment was transferred thereby free and of any liens and encumbrances.

5.3 Authorization and Binding Effect. The sale and lease of the Equipment and this Agreement, and the transactions contemplated hereunder, have been duly authorized by the Seller and, upon execution and delivery by the Seller, this Agreement and all documents contemplated hereby will be legal, valid and binding obligations of the Seller enforceable in accordance with their respective terms except as such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting the rights of creditors generally.

5.4 Litigation. There is no investigation by any governmental agency or any action, suit, proceeding, or claim pending against or, threatened against the Seller with respect to the Equipment, this Agreement, the Original Lease, the Original Note or the Security Agreement, and the Seller knows of no basis or ground for any such investigation, action, suit, proceeding or claim. There is no outstanding order, writ, injunction, or decree of any court, government, or governmental agency against or affecting the Seller with respect to the Equipment, this Agreement, the Original Lease or the Original Note and the Security Agreement.

6. Representations and Warranties of Owner Trustees

The Owner Trustees hereby represent and warrant to the Seller and the Secured Party as follows:

6.1 Organization, Power, etc. The Owner Trust Agreement has been duly executed and delivered by the Owner Trustees and, assuming due authorization and execution by the other parties thereto, is a legal, valid, and binding obligation enforceable in accordance with its terms, and the trust created thereby creates for the Beneficiaries, under the laws of the State of Utah, the beneficial interest in the Trust Estate that it purports to create and is a valid trust under the laws of the State of Utah.

The Owner Trustees have adequate power and authority to enter into and perform this Agreement, the Lease, the New Note and the Security Agreement, and all documents contemplated hereby, none of which shall result in breach of any provision of, or constitute a default under any provisions of the Owner Trust Agreement.

6.2 Authorization and Binding Effect. This Agreement, the Lease, the New Note and the Security Agreement, and all documents contemplated hereby, have been duly authorized, executed and delivered by the Owner Trustees, and the same will be, on the effectiveness of this Agreement, legal, valid, and binding instruments enforceable against the Owner Trustees except as such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, or similar laws affecting the rights of creditors generally.

6.3 Litigation. There is no investigation by any governmental agency or any action, suit, proceeding or claim pending against or, to the knowledge of the Owner Trustees, threatened against the Owner Trustees with respect to the Equipment, this Agreement, the Lease, the New Note, or the Security Agreement, and the Owner Trustees know of no basis or ground for any such investigation, action, suit, proceeding or claim. There is no outstanding order, writ, injunction, or decree of any court,

government, or governmental agency against or affecting the Owner Trustees with respect to the Equipment, this Agreement, the Lease, the New Note, or the Security Agreement.

6.4 Organization, Power, etc. of Corporate Trustee. The Corporate Trustee is a national banking association duly organized and existing and in good standing under the laws of the United States, with adequate power and authority to act as trustee under the Owner Trust Agreement and in such capacity to own and operate its properties, to carry on its business as conducted and proposed to be conducted, and to enter into and perform this Agreement, the Lease, the New Note and the Security Agreement.

6.5 Authorization by Trustees. The execution and delivery by the Corporate Trustee of the Owner Trust Agreement has been duly authorized by all necessary corporate action.

7. Representations and Warranties by the Beneficiaries under the Owner Trust Agreement

American Finance Group, Inc., as agent and attorney-in-fact for the Beneficiaries, hereby represents and warrants to the Seller and the Secured Party to the best of its knowledge:

7.1 Power, etc. The Beneficiaries are individuals and entities with full power and authority to enter into the Consents to the Owner Trust Agreement and to consent to the transactions contemplated thereby and hereby, none of which shall result in breach of any provision of, or constitute a default under the Beneficial Interest Certificate issued under the Owner Trust Agreement, any agreement or instrument to which they are a party or by which they are bound, or any statute, order, rule or regulation applicable to them of any court or other governmental authority.

7.2 Authorization and Binding Effect. The Consents to the Owner Trust Agreement, and all documents contemplated thereby, have been duly authorized by all necessary action on the part of the Beneficiaries and constitute legal, valid and binding obligations of the Beneficiaries except as such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting the rights of creditors generally.

7.3 Litigation. There is no investigation by any governmental agency or any action, suit, proceeding or claim pending against or threatened against the Beneficiaries with respect to the Equipment, this Agreement, the Lease, the New Note, or the Security Agreement, and American Finance Group, Inc. knows of no

basis or ground for any such investigation, action, suit, proceeding or claim. There is no outstanding order, writ, injunction, or decree of any court, governmental agency against or affecting the Beneficiaries with respect to the Equipment, the Lease, the New Note, or the Security Agreement.

8. Participation of Owner Trustees

It is expressly understood and agreed by and between the parties hereto and the Secured Party and the holders of the New Note and their respective successors and assigns that this Agreement is executed by First Security Bank of Utah, National Association and Robert S. Clark, not individually or personally but solely as trustees under the Owner Trust Agreement in the exercise of the power and authority conferred and vested in them as such trustees, that each and all of the representations, warranties, undertakings and agreements herein made on the part of the Owner Trustees are each and every one of them made and intended not as personal representations, warranties, undertakings and agreements by First Security Bank of Utah, National Association or Robert S. Clark, or for the purpose or with the intention of binding First Security Bank of Utah, National Association or Robert S. Clark personally, but are made and intended for the purpose of binding only the Trust Estate as defined in the Owner Trust Agreement, that this Agreement is executed and delivered by First Security Bank of Utah, National Association and Robert S. Clark, solely in the exercise of the powers expressly conferred upon First Security Bank of Utah, National Association and Robert S. Clark, as trustees under the Owner Trust Agreement, that actions to be taken by the Owner Trustees pursuant to their obligations hereunder may in certain instances be taken by the Owner Trustees only upon specific authority of the Beneficiaries, that nothing herein contained shall be construed as creating any liability on First Security Bank of Utah, National Association or Robert S. Clark, personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of First Security Bank of Utah, National Association or Robert S. Clark, to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Secured Party and by any person claiming by, through or under the Secured Party, and that so far as First Security Bank of Utah, National Association and Robert S. Clark personally are concerned, the Secured Party and any person claiming by, through or under the Secured Party shall look solely to the Collateral to the extent it is transferred to the Owner Trustees pursuant to this Agreement for the performance of any obligation under any of the instruments referred to herein; provided, however, that except as herein provided nothing contained in this Section 8 shall be construed to limit or otherwise modify the rights and remedies of the Secured Party and the holders of the New Note contained in Section 5 of the Security

Agreement, and, provided, further, that nothing contained in this Section 8 shall be construed to limit the liability of First Security Bank of Utah, National Association, in its individual capacity for any breach of any representations or warranties set forth in Sections 3.2 and 9.6 of the Participation Agreement or in the second sentence of Section 2.2 of the Security Agreement or to limit the liability of First Security Bank of Utah, National Association, for gross negligence or willful misconduct.

9. Additional Undertakings of Seller

The Seller agrees that at any time and from time to time, upon the written request of the Owner Trustees, the Seller will promptly and duly execute and deliver any and all such further instruments and documents confirming the transfer of the Seller's title to the Owner Trustees and the Seller's undertakings under this Agreement as the Owner Trustees may reasonably request in order to obtain the full benefits of this Agreement.

10. Additional Undertakings by the Owner Trustees

The Owner Trustees agree to cooperate with the Seller and to execute and deliver any and all such instruments and documents and take such action as the Seller shall deem reasonably necessary in performing its obligations under this Agreement.

11. Miscellaneous

11.1 Severability of Invalid Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be 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.

11.2 Benefit of Parties, Successors and Assigns. All representations, warranties, covenants and agreements contained herein or delivered in connection herewith shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and assigns. Without limiting the foregoing, the Seller, the Owner Trustees and the Beneficiaries agree that the Secured Party shall be and hereby is constituted a third-party beneficiary to this Agreement of the representations, warranties, covenants and agreements of the parties hereto, contained herein or delivered in connection herewith.

11.3 Survival of Representations and Warranties. All agreements, indemnities, representations and warranties made with respect hereto shall survive the execution and delivery of this

Agreement, the effectiveness of the assignment provided herein and the termination of the trusts referred to herein.

11.4 Counterpart Execution. This Agreement and any amendment to this Agreement may be executed in any number of counterparts and by the different parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

11.5 Dating of this Agreement. Although this Agreement is dated for convenience and for the purpose of reference as of the date mentioned, the actual date or dates of execution by the parties hereto are the respective dates set forth under their signatures.

11.6 Headings. The headings of the articles, sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

11.7 Delivery of Agreement; Governing Law. The parties hereto intend to deliver executed counterparts of this Agreement in the State of Utah. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Utah.

11.8 Effect of Amendments. Except as expressly amended and assigned hereby, the Original Lease, the Original Note and the Security Agreement shall remain in full force and effect.

11.9 Duties to Secured Party Unconditional. The Seller, the Owner Trustees and each of the Beneficiaries, by American Finance Group, Inc. as agent and attorney-in-fact for the Beneficiaries, understands and agrees that on and as of the Closing Date the sale and assignment and assumption herein contemplated shall be and become absolute and unconditional and that the Owner Trustees and the Beneficiaries, except as contemplated by Section 2.4 hereof, shall not thereafter be entitled to any abatement, reduction, set-off, termination or rescission of any of their respective obligations and duties to the Secured Party, whether by reason of anything contained in or contemplated by this Agreement or otherwise.

Nothing contained in this Section 11.9 shall prevent the Seller, the Owner Trustees or the Beneficiaries from exercising

such legal rights and remedies which any such party may otherwise have or believe that it has against any other such party.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be duly executed by their respective officers thereunto duly authorized on the respective dates set forth below.

SELLER:

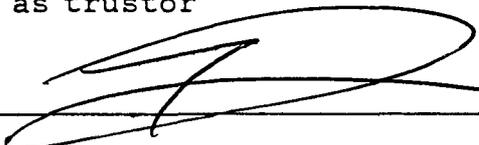
FIRST SECURITY BANK OF UTAH,
NATIONAL ASSOCIATION, not in its
individual capacity but solely as
Trustee under a Trust Agreement
dated as of September 30, 1982,
between it and AFG as trustor

By: 

Title: CORPORATE TRUST COUNSEL

Date: _____

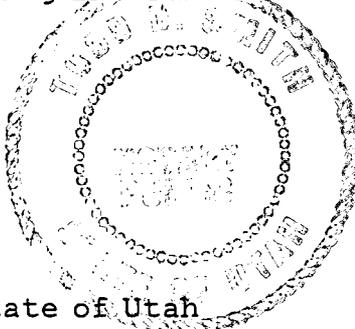
ROBERT S. CLARK, not in his individual capacity but solely as Trustee under a Trust Agreement dated as of September 30, 1982, between it and AFG as trustor



Date: _____

State of Utah)
) ss.
County of Salt Lake)

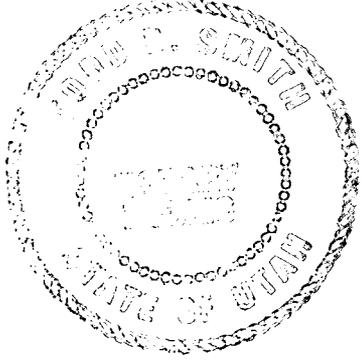
On this 20 day of December, 1982, before me personally appeared TANTA LISA CLAYTON, to me personally known, who being by me duly sworn, says that she is an authorized officer of First Security Bank of Utah, National Association, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



[Signature]
Notary Public
My Commission Expires: 8/13/85

State of Utah)
) ss.
County of Salt Lake)

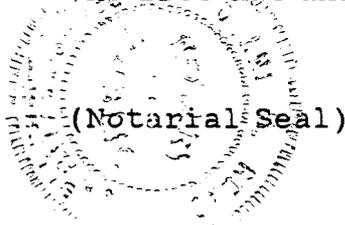
On this 20 day of Dec, 1982, before me personally appeared Robert S. Clark, to me personally known, who being by me duly sworn, says that he is a resident of the State of Utah, that he acknowledged that the execution of the foregoing instrument was his free act and deed.



[Signature]
Notary Public
My Commission Expires: 8/13/85

State of Massachusetts,
County of Suffolk) ss.

On this 16th day of December, 1982, before me personally appeared Jacqueline A Panasuk, to me personally known, who being by me duly sworn, says that he is a Manager Finance of American Finance Group, Inc., that the seal 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.



Jane M Deal
Notary Public

My Commission Expires: 10/13/89