RECORDATION NO. 13592-A FILED 1425
MAR 10 1982 -12 20 PM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 13592-C FILED 1425
MAR 10 1982 -12 20 PM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 13592-B FILED 1425
MAR 10 1982 -12 20 PM
INTERSTATE COMMERCE COMMISSION

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

RECORDATION NO. 13592 FILED 1425
MAR 10 1982 -12 20 PM
INTERSTATE COMMERCE COMMISSION

No. 2-089A045
Date MAR 10 1982
Fee $ 100.00
ICC Washington, D. C.

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March 5, 1982

Northern Petrochemical Company
Lease Financing Dated as of February 1, 1982
Conditional Sale Indebtedness Due June 30, 2001

Dear Madam:

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

(1)(a) Conditional Sale Agreement dated as of February 1, 1982, between Security Pacific Leasing, Inc., and ACF Industries, Incorporated, as Builder;

(b) Agreement and Assignment dated as of February 1, 1982, between The Connecticut Bank and Trust Company, as Agent, and ACF Industries, Incorporated , as Builder;

(2)(a) Lease of Railroad Equipment dated as of February 1, 1982, between Northern Petrochemical Company, as Lessee, and Security Pacific Leasing, Inc., as Lessor; and

(b) Assignment of Lease and Agreement dated as of February 1, 1982, between Security Pacific Leasing, Inc. as Owner, and The Connecticut Bank and Trust Company, as Agent.

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

(1) Owner-Lessor:

Security Pacific Leasing, Inc.,
Four Embarcadero Center,
Suite 1200,
San Francisco, California 94111.

(2) Lessee:

Northern Petrochemical Company,
2350 East Devon Avenue,
Des Plaines, Illinois 60018.

(3) Builder:

ACF Industries, Incorporated,
750 Third Avenue,
New York, N. Y. 10017

(4) Agent:

The Connecticut Bank and Trust Company,
One Constitution Plaza,
Hartford, Connecticut 06115.

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

The equipment covered by the aforementioned Agreement appears in Exhibit A attached hereto and also bears the legend "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission".

There is also enclosed a check for $100 payable to the Interstate Commerce Commission representing the required recordation fee.

Please stamp all counterparts of the enclosed Agreements with your official recording samp. You will wish

to retain one copy of the instrument for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

James C. Vardell, III
As Agent for Northern
Petrochemical Company

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

Encls.

RECORDATION NO. 13592-B Filed 1425

MAR 10 1982 -12 20 PM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 4876-031]

# LEASE OF RAILROAD EQUIPMENT

Dated as of February 1, 1982

Between

NORTHERN PETROCHEMICAL COMPANY,
Lessee,

and

SECURITY PACIFIC EQUIPMENT LEASING, INC.,
as Lessor.

[Covering 400 covered hopper cars]

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of THE CONNECTICUT BANK AND TRUST COMPANY, as Agent for one or more institutional investors. The original of this Lease is held by said Agent.

LEASE OF RAILROAD EQUIPMENT dated as of February 1, 1982, between NORTHERN PETROCHEMICAL COMPANY, a Delaware corporation ("Lessee"), and SECURITY PACIFIC EQUIPMENT LEASING, INC., a Delaware corporation ("Owner").

Pursuant to a Participation Agreement dated as of the date hereof ("Participation Agreement") among the Lessee, InterNorth, Inc. ("Guarantor"), the Owner, The Connecticut Bank and Trust Company, acting as agent for certain investors (said bank, as so acting, together with its successors and assigns, "Vendor") and said investors ("Investors"), the Owner is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with ACF Industries, Incorporated, a New Jersey corporation ("Builder"), by which the Builder has agreed to sell and deliver to the Owner the units of railroad equipment described in Schedule A hereto ("Equipment").

The Builder is assigning its interests in the CSA to the Vendor under an Agreement and Assignment dated as of the date hereof ("CSA Assignment").

The Lessee desires to lease such units of the Equipment as are delivered and accepted and settled for under the CSA ("Units") at the rentals and for the terms and upon the conditions hereinafter provided.

The Guarantor will execute and deliver a guarantee, substantially in the form attached as Exhibit F to the Participation Agreement ("Guarantee"), pursuant to which the Guarantor will guarantee unconditionally the payment by the Lessee of all its obligations under this Lease, an Indemnity Agreement, substantially in the form attached as Exhibit E to the Participation Agreement ("Indemnity Agreement"), and the Participation Agreement.

The Owner will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") and the Lessee and the Guarantor will consent to the Lease Assignment pursuant to the Consent and Agreement dated as of the date hereof ("Consent").

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

## § 1. NET LEASE

1.1. Net Lease. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Lessee shall not be entitled to any abatement of rent or of other amounts due hereunder, reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner under this Lease or under the CSA, including the Lessee's rights by subrogation thereunder against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner 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 of Equipment 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 or approval of this Lease, any present or future 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.

1.2. Recovery From Owner. 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 Owner or the Vendor for any reason whatsoever. Notwithstanding the foregoing, nothing herein shall be deemed to prevent the Lessee from bringing an independent action against the Owner as a result of any default by the Owner in performance of its obligations hereunder.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Owner hereby appoints the Lessee its agent for inspection and acceptance of the Units and the related lining costs and freight charges pursuant to Section 3.4 of the CSA. Each delivery of a Unit to the Owner under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Owner under the CSA. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect same, and if such Unit is found to be acceptable, to accept delivery of such unit on behalf of the Owner under the CSA and itself hereunder and execute and deliver to the Owner a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Section 3.4 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The Lessee hereby represents and warrants to the Owner that no Unit shall be put into service by the Lessee or any person under the control of or with the consent of the Lessee earlier than the date of delivery to and acceptance by the Lessee as agent for the Owner hereunder. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to Section 4.1 thereof shall be null and void and ineffective to subject such Unit to this Lease.

## § 3. RENTALS

3.1. Amount and Date of Payment. The Lessee will pay to the Owner as rental for each Unit subject to this Lease, 38 consecutive semiannual payments, payable in arrears

on January 1 and July 1 each year, commencing January 1, 1983. The first 19 semiannual rental payments shall each be in an amount equal to 5.8222% of the Purchase Price (as defined in the CSA) of each Unit subject to this Lease on the date of such payment and the last 19 semiannual rental payments shall each be in an amount equal to 7.1160% of the Purchase Price of each Unit subject to this Lease on the date of such payment. If the Owner receives any funds from the Agent pursuant to the last sentence of the second paragraph of Section 10.1 of the Participation Agreement, the first semiannual rental payment shall be reduced by an amount equal to the amount of the funds so received.

In addition to the foregoing rentals, the Lessee will pay to the Owner on each Deposit Date (as defined in the Participation Agreement) an amount equal to the interest accrued on the CSA Indebtedness held by the Interim Investor (as defined in the Participation Agreement) on such Deposit Date, and the Owner agrees to apply such amounts to the payment of such accrued interest to the Interim Investor.

In addition to the foregoing rentals, the Lessee agrees to pay to the Owner as additional rentals amounts equal to the amounts required by the Owner to make the payments provided for in the penultimate sentence of Section 2.5 and in clause (a) of the third paragraph of Section 10.1 of the Participation Agreement on the dates required for such payments, and the Owner agrees to apply such rentals for such purposes.

In no event shall the aggregate of the foregoing rentals be less than the amounts required to enable the Owner to satisfy its obligations to pay when due the CSA Indebtedness and interest thereon.

3.2. Payment on Nonbusiness Day. If any of the semiannual rental payment dates provided herein is not a business day (as such term is defined in the CSA) the rental payment otherwise payable on such date shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

3.3. Instructions To Pay Vendor and Owner. Until the Vendor notifies the Lessee that the CSA is no longer in effect, the Owner irrevocably instructs the Lessee to make

all the payments due the Owner provided for in this Lease (other than Excluded Payments as defined in the Lease Assignment) to the Vendor, for the account of the Owner in care of the Vendor. The Owner has instructed the Vendor (a) first to apply such payments to satisfy the obligations of the Owner under the CSA known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Owner or to the order of the Owner in immediately available funds at such place as the Owner shall specify in writing. The Lessee shall have no responsibility with respect to the application by the Vendor of payments made by it in accordance with the first sentence of this paragraph.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for in § 3.1 hereof in immediately available funds at or prior to 11:00 a.m., Hartford, Connecticut, time, at the office of the Vendor on the date due, or, if the CSA shall no longer be in effect, at the office of the Owner.

## § 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to §§ 3, 6, 7, 9, 13 and 15 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights and obligations of the Vendor under the CSA until all obligations of the Owner under the CSA have been satisfied. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term; provided, however, that so long as (i) no Event of Default exists

hereunder, (ii) the Lessee and the Guarantor are complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment under § 12 hereof.

## § 5. IDENTIFICATION MARKS

The Lessee will 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 in letters not less than one inch in height, the words, "OWNED BY A LEASING COMPANY. OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION.", or other appropriate words designated by the Vendor or the Owner, with appropriate changes thereof and additions thereto as from time to time may be designated by the Owner or the Vendor as required by law or reasonably requested in order to protect the Owner's and the Vendor's title to and interest in such Unit and the rights of the Owner under this Lease and of the Vendor under the CSA. Any cost involved in changing the specified legend which is not required law shall be borne by the party requesting the change. The Lessee will not place or permit any such Unit to be placed 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 or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed 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 Vendor and the Owner and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Owner an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Owner's interests in such Unit and no filing, recording, deposit or giving of notice with or to any other Federal, state or local

government or agency thereof is necessary to protect the interests of the Vendor and the Owner in such Unit.

Except as above provided, 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 Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee or any of its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Equipment under this Lease, and the Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Lessee therein.

The Lessee may make any change in the lettering of the names, trademarks, initials or other insignias at any time and as often as it deems it appropriate to do so. At the expiration of the Lease or any extension hereof, the Owner will promptly remove, at the Lessee's sole expense, the Lessee's names, trademarks, initials or other insignias and will not allow the Units to be used or operated without first removing same.

## § 6. TAXES

All payments to be made by the Lessee hereunder will be free of expense to the Owner for collection or other charges and will be free of expense to the Owner with respect to the amount of all withholdings of any nature whatsoever, and if any withholding is required, the Lessee shall pay an additional amount of rental such that the net amount of rental actually received by the Owner will equal the amount of rental then due absent such withholding. The Lessee agrees to pay, and on demand to indemnify and hold harmless, the Owner, the Vendor and the Investors and their respective agents, servants, successors and assigns ("Indemnified Persons") from all local, state, Federal or foreign license, documentation, recording and registration fees, and all taxes (including sales, use, property, real or personal, tangible or intangible, interest equalization, stamp and transfer taxes), levies, imposts, duties, assessments, fees, charges or withholdings of any nature whatsoever, together with any penalties, additions to tax, fines or interest thereon imposed or levied against or with respect to the Lessee, any Unit or any part thereof by

any authority asserting jurisdiction to impose or collect any tax upon or with respect to (i) any Unit or any part thereof, (ii) the purchase, acquisition, acceptance, rejection, construction, manufacture, ownership, delivery, nondelivery, leasing, possession, use, operation, repair, maintenance, modification, disservicing, rebuilding, sale, return, assembly, rental, condition, transportation, abandonment, importation, exportation or, upon an occurrence of an Event of Default, other application or disposition of all or any part of any interest in any Unit, (iii) the payment of rent or the receipts or earnings arising from any Unit or any part thereof, (iv) the payment of principal of, or interest or other amounts payable on CSA Indebtedness, (v) this Lease, the Participation Agreement, CSA, the Certificates of Interest or the issuance, acquisition or subsequent transfer thereof, (vi) the payment of any amount pursuant to any document referred to in clause (v) above, or (vii) otherwise with respect to or in connection with the transactions contemplated by this Lease (all such license, documentation, recording and registration fees, taxes, levies, imposts, duties, assessments, fees, charges, withholdings, penalties, fines, additions to taxes and interest imposed as aforesaid being herein referred to collectively as "Impositions"). The foregoing provisions of this § 6 shall not apply to the following:

(a) any United States Federal income tax;

(b) the aggregate of (i) all state and city income taxes and franchise taxes measured by net income, (ii) gross income or gross receipts taxes which are imposed in lieu of net income and franchise taxes and other than gross receipts taxes in the nature of sales or use taxes, and (iii) any excess profits taxes and similar taxes or general corporation, franchise or like taxes measured by the Owner's capital, capital stock or net worth.

The Lessee hereby also agrees to keep at all times all and every part of every Unit free and clear of all Impositions which might in any way affect the title of the Owner or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith such imposi-

tions pursuant to the last paragraph of this § 6 and the nonpayment thereof does not, in the advance opinions of independent counsel to the Owner and the Vendor, adversely affect the title, property or rights of the Owner hereunder or the rights of the Vendor under the CSA and the Lease Assignment. If any Impositions shall have been charged or levied against the Owner or the Vendor directly and paid by the Owner or the Vendor, the Lessee shall reimburse the Owner or the Vendor on presentation of an invoice therefor.

The amount which the Lessee shall be required to pay in accordance with this § 6 shall be an amount which, after deduction of all taxes and other charges in respect of the receipt of such amount under the laws of any Federal, state or local government or taxing authority in the United States or under the laws of any foreign country or subdivision or any taxing authority thereof or therein, is sufficient to restore such Indemnified Person to the same net after-tax position that they would have been in had the Impositions giving rise to such payments not been imposed. The amount to be paid to the Indemnified Person pursuant to the preceding sentence shall be determined in the first instance by the Indemnified Person; if such determination is not acceptable to the Lessee, the Lessee shall at its own expense retain an independent firm of certified public accountants reasonably acceptable to such Indemnified Person, which firm's determination shall be conclusive and binding.

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

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

If claim is made against an Indemnified Person for any Imposition indemnified against under this § 6, the Indemnified Person shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Indemnified Person shall, at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Impositions by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings or both. The Lessee may also contest, at its own expense, the validity, application or amount of such Impositions in the name of the Indemnified Person (with counsel reasonably satisfactory to such Indemnified Person) or in its own name. The Lessee agrees to give the Indemnified Person reasonable notice of such contest prior to the commencement thereof. If the Indemnified Person shall obtain a refund of all or any part of such Impositions previously reimbursed by the Lessee or any amount representing interest thereon, the Indemnified Person shall pay the Lessee the amount of such refund or interest net of expenses. If the Indemnified Person shall actually receive any future additional tax or other benefit from any item with respect to which the Lessee has indemnified the Indemnified Person pursuant to this § 6, the Indemnified Person shall pay to the Lessee the amount of such benefit together with the amount of any tax benefit arising from any payment pursuant to this sentence.

## § 7. PAYMENT FOR CASUALTY OCCURRENCES, INSURANCE, ECONOMIC OBSOLESCENCE

7.1. Definition of Casualty Occurrence; Payments. In the event that any Unit shall be or become lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 365 consecutive days, except requisition for use by the United States Government ("Government") for a period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, or until such Unit shall have been returned in the manner provided in § 11 or 13 hereof, the Lessee shall within 30 days after it shall have reasonably determined that such Unit

has suffered a Casualty Occurrence notify the Owner and the Vendor with respect thereto specifying the date, cause and extent of such Casualty Occurrence. On the semiannual rental payment date next succeeding the delivery of such notice (or, in the event the term of this Lease has already expired or will expire within 10 days after delivery of such notice, on a date within 10 days of such delivery), the Lessee shall pay to the Owner an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as defined in the next sentence) of such Unit as of the date of such payment in accordance with the schedule referred to hereafter. The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner shall be entitled to recover possession of such Unit at its own expense.

If the date upon which the making of such payment by the Lessee in respect of any Unit as required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit shall pay interest thereon from the end of such term to the date of such payment at the rate of 16% per annum. However, if the Casualty Occurrence occurs after this Lease has expired, the Lessee shall pay interest thereon at the rate of 16% per annum commencing 10 days after such Casualty Occurrence to the date of such payment.

7.2. Lessee Agent for Disposal. The Owner hereby appoints the Lessee, at the Lessee's expense, its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable by the Lessee upon exercise of reasonable efforts on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner and is not in default hereunder, the Lessee shall be entitled to the proceeds of such disposition to the extent they do not exceed the Casualty Value of such Unit, plus any disposition expenses of the Lessee.

7.3. Requisition by United States Government. In the event of the requisition for use by the Government of any Unit for a period which does not exceed the term of this Lease, all the obligations of the Lessee under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Owner or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default or Default shall have occurred and be continuing.

7.4. No Release. 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 until expiration of this Lease and Lessee's obligations under §§ 11 and 13 hereof.

7.5. Insurance. The Lessee shall, at all times prior to the return of the Equipment to the Owner, at its own expense, cause to be carried and maintained public liability insurance and all risk property damage insurance in respect of the Units, naming the Owner and the Vendor as additional named insureds and, in the case of property damage insurance, as loss payees, as their interests may appear, at least in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it; provided, however, that, subject to availability, the amount of such public liability coverage shall not, at any time, be less than $50 million per occurrence, and any deductible thereunder shall not, at any time, exceed $1 million per occurrence; provided, however, that the Lessee may in the future request that the Owner and the Vendor consent to a higher deductible in the event that inflation or an improved financial position of the Lessee makes that reasonable, and the Owner and the Vendor will not unreasonably withhold such consent. The Lessee may, in the case of the all risk property damage insurance, self-insure such Units to the extent that such self-insurance is (i) consistent with prudent industry practice and, in any event, (ii) in an amount (considered in relation to the then current value thereof) no greater than the amount of self-insurance maintained with respect to other similar equipment, if any, then owned or leased by the Lessee (considered in relation to the then current value of such

similar equipment). In no event shall the coverage of the all risk property damage insurance with respect to any Unit at any time be less than the applicable Casualty Value for such Unit.

The Lessee shall obtain from each insurer under the paragraph immediately above an agreement, by endorsement or separate instrument, that such insurer will give the Owner and the Vendor 30 days' written notice before such insurer's policy shall be materially altered or canceled or not renewed. On or before April 30 of each year, the Lessee shall deliver to the Owner and the Vendor a certificate of insurance by or on behalf of each insurer stating the coverage, named insureds and limits of each such policy. Any policies of insurance carried in accordance with this paragraph shall in addition waive any right to claim premiums or commissions against the Owner and the Vendor and such policies shall provide that in respect of the interests of the Owner and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Owner and the Vendor, respectively) and shall insure the Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Owner or the Vendor, respectively).

7.6. Insurance Proceeds and Condemnation Payments. Provided that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment to the Owner of the Casualty Values and accrued rentals in respect of Units suffering a Casualty Occurrence, if the Owner shall receive (directly or from the Vendor) any insurance proceeds from a policy or policies obtained by the Lessee or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Owner shall pay forthwith such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to any Unit theretofore paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Owner.

7.7. Economic Obsolescence. During the original term of this Lease, in the event that the Lessee shall, in its reasonable judgment, determine that some of or all the Units remaining under this Lease have become economically obsolete or surplus to the Lessee's requirements in the

Lessee's business and an officer of the Lessee shall have provided a certificate to such effect to the Owner and the Vendor, the Lessee shall have the right, at its option and on at least 120 days' prior written notice to the Owner-Trustee, to terminate (which act shall hereinafter be called the "Termination") this Lease as to not less than 50 of such Units (or such lesser number of Units as are then subject to this Lease) as of any succeeding rental payment date specified in such notice occurring more than 120 days thereafter (such termination date so specified being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than the 14th semiannual rental payment date, (ii) no Event of Default or Default shall have occurred and be continuing on such date and (iii) on the Termination Date all such Units subject to Termination shall be in the condition required for redelivery pursuant to § 14 hereof.

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

On such Termination Date, the Lessee shall pay to the Owner with respect to each such Unit an amount equal to (i) the excess, if any, of the Termination Value (as hereinafter defined) for each such Unit computed as of such date over the sale price of any such Unit so sold after the deduction of all expenses incurred by the Owner in connection with such sale and (ii) the rental payment with respect to each such Unit due on such Termination Date. The Termination Value of each such Unit as of the Termination Date on which payment is to be made shall be that percentae of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date. In no event shall the aggregate amount of sale proceeds retained by the Owner and payments of rental and Termination Value received by the Owner as

aforesaid be less than the "Termination Value" (as defined in Section 7.4 of the CSA) with respect to such Units as of such Termination Date.

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

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

If the Lessee shall exercise its option to effect a Termination, the Owner may, notwithstanding such election by the Lessee, by written notice to the Lessee, the Vendor and the Investors given within 60 days after the termination notice is given to the Owner and upon satisfaction and discharge of the Owner's obligations under the CSA with respect to any such Unit on the Termination Date, elect to retain such Unit. In the event the Owner shall so elect to retain such Unit and delivers to the Lessee evidence of the satisfaction and discharge of the Owner's obligations under the CSA with respect to such Unit, the Lessee shall not be obligated to pay the Termination Value to the Owner and the Lessee shall deliver such Unit to the Owner in accordance with the provisions of § 14 hereof.

## § 8. REPORTS

On or before March 15 in each year, commencing with March 15, 1983, the Lessee will furnish to the Owner and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the

amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and the CSA have been preserved or replaced, (c) providing reports of mileage or percent of utilization of Units in the States where Units are utilized sufficient for the Owner to complete income tax return entries for such States and (d) providing such data with respect to the use of the Units and any other information that is reasonably requested by the Owner and required in order to determine the amount of any income, gain or loss attributable to this Lease. The Owner shall, at its sole cost and expense, have the right, after giving prior written notice, by its agents to inspect the Units and the Lessee's records with respect thereto during normal business hours of the Lessee as the Owner may request as may be reasonably necessary to confirm to the Owner the existence of proper maintenance of the Units during the continuance of this Lease.

## § 9. DISCLAIMER OF WARRANTIES; COMPLIANCE WITH LAWS AND RULES; MAINTENANCE; INDEMNIFICATION

9.1. Disclaimer of Warranties. THE OWNER DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND THE OWNER DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR USE OR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Owner and the Lessee, are to be borne by the Lessee; but the Owner 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 Owner and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner may have against the Builder or any other person, including, but not limited to, any claims and rights arising under the provisions of the CSA. The Owner shall not have any responsibility or liability to the Lessee or any other person or entity with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner 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 Owner based on any of the foregoing matters.

9.2. Compliance with Laws and Rules. The Lessee agrees, for the benefit of the Owner and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which 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 ("Applicable Laws"), to the extent that such laws and rules affect the title, maintenance, operation or use of the Units and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Owner or the Vendor, adversely affect the property or rights of the Owner or the Vendor under this Lease or under the CSA.

9.3. Maintenance. The Lessee agrees that, at

its own cost and expense, it will maintain and keep each Unit (including any lining and parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order and repair, ordinary wear and tear from the careful and proper use thereof excepted.

9.4. Additions and Accessions. The Lessee shall notify the Owner of, and shall, at the Lessee's sole cost and expense, make or provide all improvements, alterations, modifications, additions, attachments, or other equipment, or changes ("Improvements") to the Units or any of them deemed necessary or desirable by any Federal, state or local governmental body or agency or the interchange rules of the Association of American Railroads ("legally required Improvements"). Any legally required Improvement and any other Improvements which are not readily removable without causing material damage to a Unit ("nonserverable Improvements") shall be and immediately become the property of the Owner and subject to the terms of this Lease. So long as the Lessee is not in default hereunder, the Lessee may , upon notice to the Owner, at the Lessee's sole cost and expense, make other nonseverable Improvements to a Unit, which are not legally required Improvements; provided, however, that (1) the value of such Unit is not reduced thereby, (2) such Improvements will not cause such Unit to become limited use property, or materially alter or reduce its general usefulness, (3) such Improvements will not increase the productivity or capacity of such Unit in excess of 25% and (4) the cumulative deflated cost (as defined in Rev. Proc 79-48) of any and all such nonseverable Improvements, exclusive of any legally required Improvements involving compliance with health, safety and environmental standards, does not exceed 10% of the Owner's cost of such Unit. So long as the Lessee is not in default hereunder, the Lessee may, upon notice to the Owner, at the Lessee's sole cost and expense, make other readily removable Improvements to a Unit provided that such Improvements do not cause material damage to such Unit or reduce its value or general usefulness. Any such readily removable Improvements shall remain the property of the Lessee and be removed by the Lessee, at its expense, upon or prior to return of any Unit to the Owner pursuant to § 11 or § 14 hereof, and if not so removed by the Lessee may be removed by the Owner without liability to the Lessee therefor. Any and all costs of removal and repair shall be for the Lessee's account. The Owner is hereby granted a security interest in and to any such readily removable Improvements to secure all of the

Lessee's obligations hereunder. Nothing herein shall be deemed to preclude the Owner and the Lessee from negotiating the lease financing hereunder for any proposed Improvements.

9.5. Indemnification. The Lessee agrees to indemnify, protect, hold harmless and defend each Indemnified Person from and against all losses, damages, injuries, liabilities (including, without limitation, strict liability in tort) claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest (herein collectively called "Indemnified Matters"), arising out of or as the result of the entering into or the performance of, or the occurrence of a default, an event of default or an Event of Default under, the CSA, the Participation Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person (except as otherwise provided in § 14 of this Lease) or the transfer of title to the Equipment by the Vendor pursuant to any provision of the CSA. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all other obligations under this Lease or the expiration or termination of the term of this Lease. To the extent the Lessee is required to provide protection or indemnification hereunder, the Lessee may select counsel (which will be reasonably acceptable to the Owner) and direct counsel's actions in respect thereof. The indemnities contained in this § 9.5 shall not extend to any Indemnified Matter incurred by any Indemnified Person (a) caused by the wilful misconduct or gross negligence of such Indemnified Person, (b) resulting from acts or events with respect to any Unit which commence after such Unit has been returned to the Owner in accordance with § 14 hereof, (c) caused by the violation by such Indemnified Person of any banking, investment, insurance or securities law, rule or regulation applicable to it (unless such violation shall be the result of any written misrepresentation, violation or act of the Lessee), (d) arising from the breach of an express duty, obligation, representation or warranty of such Indemnified Person made herein or in any of the documents related to the transactions contemplated hereby, (e) which is related to the lien, charge, security interest or other

encumbrance which the Lessee is not required by § 12 hereof to discharge or in any of the other documents related to the transactions contemplated hereby to be borne by such Indemnified Person or (f) costs and expenses which such Indemnified Person has agreed to be liable for in any of the documents related to the transactions contemplated hereby.

The Lessee shall be obligated under this § 9.5 irrespective of whether the Indemnified Person shall also be indemnified with respect to such Indemnified Matters elsewhere under this Lease or under any other Document or by any other person, and the Indemnified Person may proceed directly against the Lessee under this § 9.5 without first resorting to any such other rights of indemnification. With respect to any payment or indemnity hereunder, such payment or indemnity shall include any amount necessary to hold any Indemnified Person receiving such payment or indemnity harmless on a net after-tax basis and taking into account any tax benefit realized by such Indemnified Person as a result of such payment from all taxes required to be paid by such Indemnified Person with respect to such payment or indemnity under the laws of any Federal, state or local government or taxing authority in the United States of America.

Upon the commencement of any proceeding (including the written threat or written claim of any proceeding) against an Indemnified Person involving one or more Indemnified Matters, such Indemnified Person shall promptly, upon receiving written notice thereof, give notice of such commencement to the Lessee. The Indemnified Person shall supply the Lessee with such information reasonably requested by the Lessee as in the reasonable opinion of counsel to the Lessee is necessary or advisable for the Lessee to control or participate in any proceeding to the extent permitted by this § 9.5. Unless the Lessee is excluded from control of a proceeding involving an Indemnified Person pursuant to the preceding paragraph or Default or an Event of Default has occurred and is continuing, such Indemnified Person shall not enter into a settlement or other compromise with respect to any Indemnified Matter without prior written consent of the Lessee, which consent shall not be unreasonably withheld or delayed, unless such Indemnified Person waives its right to be indemnified with respect to such Indemnified Matter.

After the payment in full to an Indemnified Person

by the Lessee in respect of any Indemnified Matter pursuant to this § 9.5, if such Indemnified Person shall receive any payments in respect of such Indemnified Matter from any person other than the Lessee, such Indemnified Person shall promptly pay to the Lessee the amount of such payment, together with any interest (other than interest for the period, if any, after such Indemnified Matter was paid by such Indemnified Person until such Indemnified Matter was paid or reimbursed by the Lessee) received by such Indemnified Person on account of such payment.

9.6. Survival. The indemnities contained in this § 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation which do not already exist in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

9.7. Payments for Indemnification. All payments hereunder shall be made directly to the Indemnified Person.

## § 10. DEFAULT

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

(a) payment of any part of the rental provided in § 3 hereof or payment in respect of any Casualty Occurrence or Termination pursuant to § 7 hereof during the initial or any renewal term shall not be made by the Lessee when such payment is due and such default shall continue for 5 business days;

(b) 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, in the Participation Agreement or the Con-

sent, or on the part of the Guarantor contained in the Participation Agreement, the Consent or the Guarantee, and such default shall continue for 30 days after written notice from the Owner or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

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

(d) 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 or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Participation Agreement, the Consent and the Indemnity Agreement, or of the Guarantor under the Participation Agreement, the Consent and the Guarantee, as the case may be, shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees;

(e) any proceedings shall be commenced by or against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease, the Participation Agreement, the Consent or the Indemnity Agreement, or of the Guarantor under the Participation Agreement, the Consent or the Guarantee, 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 ineffective-

ness shall continue), all the obligations of the Lessee under this Lease, the Participation Agreement, the Consent and the Indemnity Agreement, or of the Guarantor under the Participation Agreement, the Consent and the Guarantee, as the case may be, shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

(f) an event of default set forth in Article 16 of the CSA shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder or under its Documents (as defined in the Participation Agreement); or

(g) any of the representations or warranties made by the Lessee herein, or by the Guarantor in the Guarantee, or by the Lessee or the Guarantor in the Participation Agreement or in the Consent or in any statement or certificate at any time given in writing pursuant hereto or in connection herewith shall be breached or found to be false or misleading in any material respect;

then, in any such case, the Owner, at its option, may,

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

(bb) 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 under this Lease to the extent that this Lease provides that the obligations of the Lessee survive the termination or expiration hereof; and thereupon the Owner 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 or for any proceeds arising therefrom; but the Owner 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 Owner, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Owner reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 7% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; 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 Owner reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Owner shall have sold any Unit, the Owner in lieu of collecting any amounts payable to the Owner by the Lessee pursuant to the preceding clauses (x) and (y) of this part (bb) with respect to such Unit, shall demand that the Lessee pay the Owner and the Lessee shall pay to the Owner on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty

Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

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

10.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Owner 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 requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted 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 rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

10.3. Failure To Exercise Rights is not Waiver. The failure of the Owner 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, and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Owner.

10.4. Notice of Event of Default to Owner. The Lessee also agrees to furnish the Owner and the Vendor, promptly upon any responsible officer becoming aware of any condition which constitutes an Event of Default under this Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section, a "responsible officer" shall mean, with respect to the subject matter of any covenant,

agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

## § 11. RETURN OF UNITS UPON DEFAULT

11.1. Return of Units. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Owner and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Owner pursuant to this § 11 shall (i) be in the condition required by § 9.3 hereof and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Owner as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner place such Units upon such storage tracks as shall reasonably be designated by the Owner,

(b) cause such Units to be stored on such tracks without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Owner (but such storage period shall not exceed 120 days if the Owner is under no legal impediment to sell, lease or otherwise dispose of such Units), and

(c) cause the Units to be moved to the nearest interchange point or points as shall be designated by the Owner.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Owner or any person designated by it,

including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event that the Units or any thereof are sold the Lessee shall pay to the Owner the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

11.2. Owner Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Owner as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner, 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

12.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Owner without the consent of the Lessee to the Vendor or, with the consent of the Vendor (which consent shall not be unreasonably withheld), to other institutional investors, but the Lessee shall be entitled to the possession and use of the Units in accordance with § 12.2 hereof and shall not be under any obligation to any assignee of the Owner other than the Vendor except upon written notice of such assignment from the Owner. All the rights of the Owner hereunder (including, but not limited to, the rights under §§ 6, 7, 9.5 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Owner's assigns except as may be limited by any assignment thereof.

12.2. Lessee's Right To Use the Units. (1) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA, subject to the provisions of § 4.2 of this Lease. The Lessee agrees (i) not to use or permit the use of any Unit in Canda and/or Mexico to the extent that the use of such Unit would cause the same to be property which is used predominately outside the United States within the meaning of Section 48(a)(2) of the Internal Revenue Code of 1954 as

amended and (ii) not to use or permit the use at any time of more than 15% of all Units then subject to this Lease in Canada and/or Mexico. Such 15% limitation shall not apply to the use of any Unit in any jurisdiction of Canada or Mexico, in which jurisdiction all necessary action has been taken to protect the rights of the Owner and the Vendor in the Units and the Owner and the Vendor have received an opinion of counsel to such effect, satisfactory to them. ~~The Lessee in the future may request that such 15% limitation~~ be increased temporarily because of changed circumstances or a strengthening of the financial condition of the Lessee and/or the Guarantor, and the Owner and the Vendor will give due consideration to each such request but a consent to such request shall be in the sole discretion of each of the Owner and the Vendor.

RIDER L-28

(2) The Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Owner and the Vendor, except as provided in paragraph (3) of this § 12.2; and the Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units without the prior written consent of the Owner and the Vendor except as provided in said paragraph (3).

(3) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units by it or any affiliate upon lines of any railroad or other trackage over which railroad equipment is regularly operated and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through or triplease agreements and to sublease the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease or use or permit the assignment, sublease or use of any Unit except upon the terms and conditions of this Lease and the CSA, nor shall the Lessee assign or sublease to or permit the sublease or use of the Units by any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. Any such triplease or sublease permitted by this paragraph shall be expressly subordinate to the rights and remedies of the Vendor under the CSA and the Owner under this Lease in respect of the Units covered by such triplease or sublease and no such triplease or sublease shall relieve the Lessee

Rider L-28

The Lessee in the future may from time to time request that such 15% limitation be raised for a twelve-month period because of changed circumstances (which shall be set forth in detail in such request), and the Owner and the Vendor will give due consideration to each such request and shall consent to such request if each of the Owner and the Vendor is satisfied that the Guarantor is at least as creditworthy as it was on the date hereof; provided, however, that such percentage limitation shall never be raised above the percentage represented by the ratio of (a) the difference between the aggregate Purchase Price of all Units then subject to this Lease and the amount of CSA Indebtedness then outstanding to (b) the aggregate Purchase Price of all Units then subject to this Lease.

of any of its obligations hereunder which, notwithstanding any such triplease or sublease, shall remain in full force and effect.

12.3. Lessee's Duty To Discharge Encumbrances. The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Owner or the Vendor not related to the ownership or leasing of, or the security interest of the Vendor in, the Units) which may be imposed during the term hereof, during the period the Lessee is obligated to pay rental hereunder or during the period any Unit is in the possession of the Lessee following default, on or with respect to any Unit (including any accession thereto) or the interest of the Owner, the Vendor or the Lessee therein; except that this covenant will not be breached by reason of liens, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialman's, mechanic's, workmen's, repairmen's or other like liens arising in the ordinary course of business 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 proceedings and the Owner and the Vendor advise the Lessee in writing that the failure to discharge the same does not adversely affect the title, property or rights of the Owner or the security interest and rights of the Vendor under the Documents.

12.4. Merger, Acquisition or Consolidation. Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder and under the Consent by an appropriate instrument in writing) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease.

12.5. Mileage. During the term of this lease the Lessee shall receive, insofar as applicable law and regulations allow, all mileage allowances, rentals and/or compensation payable by carriers by reason of the use of any unit (hereinafter called "mileage") leased to the Lessee hereunder. It is understood and agreed that if for any reason the Owner receives any mileage, then (unless an Event of Default shall have occurred and be continuing) the Owner shall promptly remit such mileage to the Lessee.

## § 13. RIGHT OF FIRST REFUSAL AND RENEWAL OPTIONS

13.1. Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Owner elects to sell any Units to third parties within a period of one year after the expiration of the original or any extended term of this Lease, the Lessee shall be given 60 days' prior written notice of such intention prior to the expiration of such period. In the event that during such one-year period the Owner shall receive a bona fide offer from another party unrelated to the Lessee to purchase Units and the Owner elects to sell Units pursuant to such offer, the Owner 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 Owner. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which such 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 Owner of a written notice within 15 days of receipt of notice of the proposed sale from the Owner 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 Owner.

13.2. Renewal Options. 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 Owner (which notice shall be irrevocable) not less than 90 days prior to the end of the then current term of this Lease, elect to extend the original or extended term of this Lease in respect of all, but not less than all, the Units then covered by this Lease on a year-to-year basis or for such longer term as the Lessee may elect. The rental payable during each extended term shall be payable semi-

annually on the anniversaries of the payment dates of the preceding term of this Lease in each year of such extended term and shall be in an amount equal to the "Fair Market Rental". Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to the rental which would obtain in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and, in such determination, cost of removal from the location of current use shall not be a deduction from such rental. If on or prior to 60 days before the commencement of the extended term, the Owner and Lessee are unable to agree upon the determination of the Fair Market Rental of the Units to be leased, such rental shall be determined in accordance with the foregoing definition by an Appraiser in the manner described below. The Casualty Values applicable to any extended term shall be equal to the estimated Fair Market Value of the Units at each rental payment date under the extended term. If on or prior to 60 days before the commencement of the extended term, the Owner and the Lessee are unable to agree upon a determination of such Casualty Values, such Casualty Values shall be determined by an Appraiser in a manner described below. The Appraiser shall be instructed to make such determination within a period of 20 days following appointment and shall promptly communicate such determination in writing to the Owner and the Lessee. The determination so made shall be conclusively binding upon both the Owner and the Lessee, but the Lessee shall not be obligated to lease for any extended term if it feels the Fair Market Rental is so determined is too high. The expenses and fees of the Appraiser shall be borne solely by the Lessee. The term Appraiser shall mean such independent appraiser as the Owner 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 Owner, the second by the Lessee and the third designated by the first two so selected.

## § 14. RETURN OF UNITS UPON EXPIRATION OF TERM

On or prior to the termination of the term of this Lease (or any renewal pursuant to § 13 hereof) the Lessee will, at its own cost and expense, at the request of the Owner, deliver possession of the Units to the Owner upon

such storage tracks as the Owner may reasonably designate (but in no event at more than three locations) within a 100 mile radius of Chicago, Illinois, or, in absence of such designation, as the Lessee may select, and permit the Owner to store such Units on such tracks for a period not exceeding 60 days from the date at which at least 90% of the Units then subject to this Lease are first placed in storage; the assembly, delivery, storage and transporting of such Units to be at the expense and risk of the Lessee. Arrival of a Unit at the designated point shall constitute "return" for the purposes hereof. During any such storage period the Lessee will permit the Owner 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 the storage locations; provided, however, that the Lessee shall not be liable, except in the case of negligence or intentional act of the Lessee or of its employees or agents and except to the extent otherwise provided by law, for any injury to or the death of any prospective purchaser or lessee exercising the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner pursuant to this § 14 shall (i) be in the condition required by § 9.3 hereof, (ii) have attached or affixed thereto any Part title to which is in the Owner pursuant to § 9 hereof and have removed therefrom at the Lessee's expense any part title to which is in the Lessee or any other person pursuant to such § 9 and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, provided that the Lessee shall not be required to make any additions, modifications or improvements which would not be required of the Lessee if the Lessee continued to operate the Units. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 14, the Lessee shall pay to the Owner-Trustee the Casualty Value of such Unit as determined in accordance with § 7 hereof. The Lessee shall pay rental at the rate of 0.03954% of the Purchase Price of such Unit per day for any Unit not returned to the Owner immediately upon expiration of the termination of the initial or any extended term of this Lease. Nothing contemplated by this § 14, including payment by the Lessee of the above-speci-

fied amounts, shall be deemed to relieve the Lessee from its obligations to assemble, deliver and store the Units or affect the Owner's rights and remedies with respect to such obligation.

## § 15. RECORDING

The Owner, at its own expense, will cause this Lease, the CSA, the Lease Assignment and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303. The Lessee, at its own expense, will undertake any filing, registering, deposit and recording required of the Owner under the CSA and 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 Owner or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Owner's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA or the Lease Assignment.

The party making the filing will promptly furnish to the Vendor and the other party hereto evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the party making the filing with respect thereto satisfactory to the Vendor and the other party hereto. This Lease and the CSA shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

## § 16. OWNER'S RIGHT TO PERFORM; INTEREST ON OVERDUE RENTALS

Should the Lessee fail to make any payment or to do any act as provided by this Lease, then the Owner shall have the right (but not the obligation), with such notice as may be practical under the circumstances to the Lessee of its intention to do so and without releasing the Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Units or the Owner's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in

the judgment of the Owner appears to affect the Units, and in exercising any such rights, the Owner may insure any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by the Owner shall be due and payable by the Lessee within ten days of notice thereof. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to interest at a rate equal to the greater of (i) 17% per annum or (ii) the prime rate announced from time to time by Security Pacific Bank, to the extent legally enforceable, on the overdue rentals and other obligations for the period of time during which they are overdue.

## § 17. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or deposited in the United States mails, first-class postage prepaid, addressed as follows:

> if to the Owner, at Four Embarcadero Center, Suite 1200, San Francisco, California 94111, Attention of Manager Operation Division-LEV.;
>
> if to the Lessee, at 2223 Dodge Street, Omaha, Nebraska 68102, Attention of Assistant Secretary and Controller, with a copy to the Guarantor at the same address, Attention of Corporate Secretary;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Copies of each such notice shall be given to the Vendor at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department or such other address designated by the Vendor. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party. Any notice to the Lessee by the Vendor regarding the Lessee's failure to perform any obligation hereunder shall also be furnished by the Lessee to the Owner.

## § 18. SEVERABILITY; EFFECT AND MODIFICATION OF LEASE; THIRD-PARTY BENEFICIARIES

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

18.2. Effect of Modification of Lease. This Lease and the Indemnity Agreement exclusively and completely state the rights of the Owner and the Lessee with respect to the leasing of the Units and supersede all other agreements, oral or written, with respect thereto, except the Participation Agreement and the Guarantee. 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 Owner and the Lessee.

18.3. No Third-Party Beneficiaries. Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Vendor and the permitted successors and assigns of a party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

## § 19. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof.

## § 20. NO GUARANTEE OF CSA INDEBTEDNESS OR RESIDUAL VALUE

Nothing in this Agreement is intended or shall be

construed to constitute a guarantee by the Lessee of the CSA Indebtedness under the CSA or a guarantee of the residual value of any Unit.

## § 21. LAW GOVERNING

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

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

[Corporate Seal]

NORTHERN PETROCHEMICAL COMPANY,

by _____

Attest:

_____

SECURITY PACIFIC EQUIPMENT LEASING, INC.,

by _____

[Corporate Seal]

Attest:

_____
Assistant Secretary

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

On this 8 th day of March 1982, before me personally appeared W.R. Beasley, to me personally known, who, being by me duly sworn, says that he is an Officer of NORTHERN PETROCHEMICAL COMPANY, a Delaware corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

GENERAL NOTARY-State of Nebraska
DOROTHY J. NORMAN
My Comm. Exp. Oct. 22, 1983

Dorothy J. Norman
Notary Public

[Notarial Seal]

My Commission Expires
October 22, 1983

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STATE OF CALIFORNIA, )
) ss.:
COUNTY OF SAN FRANCISCO,)

On this th day of 1982, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a of SECURITY PACIFIC EQUIPMENT LEASING, INC., 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.

Notary Public

[Notarial Seal]

My Commission Expires

## Units of Railroad Equipment

| Type | AAR Mechanical Designation | Quantity | Lessee's Identification Numbers (inclusive) |
|---|---|---|---|
| 100 Ton CF 5251 Steel Center Flow Hopper Cars and related linings | LO<br>L254 | 400 | NPCX 7150-7549 |

## CASUALTY AND TERMINATION VALUES

| Rental Payment Date | Percentage of Purchase Price* | |
|---|---|---|
| | Termination | Casualty |
| January 1, 1983 | -- | 111.70433 |
| July 1, 1983 | -- | 111.55389 |
| January 1, 1984 | -- | 116.38588 |
| July 1, 1984 | -- | 116.12128 |
| January 1, 1985 | -- | 119.29950 |
| July 1, 1985 | -- | 118.81870 |
| January 1, 1986 | -- | 120.25461 |
| July 1, 1986 | -- | 119.44569 |
| January 1, 1987 | -- | 119.02530 |
| July 1, 1987 | -- | 118.04524 |
| January 1, 1988 | -- | 117.33302 |
| July 1, 1988 | -- | 116.26279 |
| January 1, 1989 | -- | 115.43247 |
| July 1, 1989 | -- | 114.29776 |
| January 1, 1990 | 111.59935 | 113.34620 |
| July 1, 1990 | 110.17252 | 112.13773 |
| January 1, 1991 | 108.86546 | 111.06110 |
| July 1, 1991 | 107.32945 | 109.76906 |
| January 1, 1992 | 105.86738 | 108.56302 |
| July 1, 1992 | 102.91832 | 105.88353 |
| January 1, 1993 | 99.94180 | 103.18865 |
| July 1, 1993 | 96.74695 | 100.28897 |
| January 1, 1994 | 93.49460 | 97.34387 |
| July 1, 1994 | 90.04327 | 94.21331 |
| January 1, 1995 | 86.50033 | 91.00322 |
| July 1, 1995 | 82.77092 | 87.62019 |
| January 1, 1996 | 78.92075 | 84.12847 |
| July 1, 1996 | 74.89011 | 80.46981 |
| January 1, 1997 | 70.71450 | 76.67826 |
| July 1, 1997 | 66.35785 | 72.71920 |
| January 1, 1998 | 61.83688 | 68.60789 |
| July 1, 1998 | 57.12725 | 64.32145 |
| January 1, 1999 | 52.23630 | 59.86577 |
| July 1, 1999 | 47.14471 | 55.22297 |
| January 1, 2000 | 41.85406 | 50.39319 |
| July 1, 2000 | 36.35003 | 45.36356 |
| January 1, 2001 | 30.71236 | 40.21236 |
| July 1, 2001 | 25.00000 | 35.00000 |

* As defined in the CSA.

[CS&M Ref. 4876-031]

# LEASE OF RAILROAD EQUIPMENT

Dated as of February 1, 1982

Between

NORTHERN PETROCHEMICAL COMPANY,
Lessee,

and

SECURITY PACIFIC EQUIPMENT LEASING, INC.,
as Lessor.

[Covering 400 covered hopper cars]

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of THE CONNECTICUT BANK AND TRUST COMPANY, as Agent for one or more institutional investors. The original of this Lease is held by said Agent.

LEASE OF RAILROAD EQUIPMENT dated as of February 1, 1982, between NORTHERN PETROCHEMICAL COMPANY, a Delaware corporation ("Lessee"), and SECURITY PACIFIC EQUIPMENT LEASING, INC., a Delaware corporation ("Owner").

Pursuant to a Participation Agreement dated as of the date hereof ("Participation Agreement") among the Lessee, InterNorth, Inc. ("Guarantor"), the Owner, The Connecticut Bank and Trust Company, acting as agent for certain investors (said bank, as so acting, together with its successors and assigns, "Vendor") and said investors ("Investors"), the Owner is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with ACF Industries, Incorporated, a New Jersey corporation ("Builder"), by which the Builder has agreed to sell and deliver to the Owner the units of railroad equipment described in Schedule A hereto ("Equipment").

The Builder is assigning its interests in the CSA to the Vendor under an Agreement and Assignment dated as of the date hereof ("CSA Assignment").

The Lessee desires to lease such units of the Equipment as are delivered and accepted and settled for under the CSA ("Units") at the rentals and for the terms and upon the conditions hereinafter provided.

The Guarantor will execute and deliver a guarantee, substantially in the form attached as Exhibit F to the Participation Agreement ("Guarantee"), pursuant to which the Guarantor will guarantee unconditionally the payment by the Lessee of all its obligations under this Lease, an Indemnity Agreement, substantially in the form attached as Exhibit E to the Participation Agreement ("Indemnity Agreement"), and the Participation Agreement.

The Owner will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") and the Lessee and the Guarantor will consent to the Lease Assignment pursuant to the Consent and Agreement dated as of the date hereof ("Consent").

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

## § 1. NET LEASE

1.1. Net Lease. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Lessee shall not be entitled to any abatement of rent or of other amounts due hereunder, reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner under this Lease or under the CSA, including the Lessee's rights by subrogation thereunder against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner 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 of Equipment 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 or approval of this Lease, any present or future 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.

1.2. Recovery From Owner. 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 Owner or the Vendor for any reason whatsoever. Notwithstanding the foregoing, nothing herein shall be deemed to prevent the Lessee from bringing an independent action against the Owner as a result of any default by the Owner in performance of its obligations hereunder.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Owner hereby appoints the Lessee its agent for inspection and acceptance of the Units and the related lining costs and freight charges pursuant to Section 3.4 of the CSA. Each delivery of a Unit to the Owner under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Owner under the CSA. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect same, and if such Unit is found to be acceptable, to accept delivery of such unit on behalf of the Owner under the CSA and itself hereunder and execute and deliver to the Owner a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Section 3.4 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The Lessee hereby represents and warrants to the Owner that no Unit shall be put into service by the Lessee or any person under the control of or with the consent of the Lessee earlier than the date of delivery to and acceptance by the Lessee as agent for the Owner hereunder. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to Section 4.1 thereof shall be null and void and ineffective to subject such Unit to this Lease.

## § 3. RENTALS

3.1. Amount and Date of Payment. The Lessee will pay to the Owner as rental for each Unit subject to this Lease, 38 consecutive semiannual payments, payable in arrears

on January 1 and July 1 each year, commencing January 1, 1983. The first 19 semiannual rental payments shall each be in an amount equal to 5.8222% of the Purchase Price (as defined in the CSA) of each Unit subject to this Lease on the date of such payment and the last 19 semiannual rental payments shall each be in an amount equal to 7.1160% of the Purchase Price of each Unit subject to this Lease on the date of such payment. If the Owner receives any funds from the Agent pursuant to the last sentence of the second paragraph of Section 10.1 of the Participation Agreement, the first semiannual rental payment shall be reduced by an amount equal to the amount of the funds so received.

In addition to the foregoing rentals, the Lessee will pay to the Owner on each Deposit Date (as defined in the Participation Agreement) an amount equal to the interest accrued on the CSA Indebtedness held by the Interim Investor (as defined in the Participation Agreement) on such Deposit Date, and the Owner agrees to apply such amounts to the payment of such accrued interest to the Interim Investor.

In addition to the foregoing rentals, the Lessee agrees to pay to the Owner as additional rentals amounts equal to the amounts required by the Owner to make the payments provided for in the penultimate sentence of Section 2.5 and in clause (a) of the third paragraph of Section 10.1 of the Participation Agreement on the dates required for such payments, and the Owner agrees to apply such rentals for such purposes.

In no event shall the aggregate of the foregoing rentals be less than the amounts required to enable the Owner to satisfy its obligations to pay when due the CSA Indebtedness and interest thereon.

3.2. Payment on Nonbusiness Day. If any of the semiannual rental payment dates provided herein is not a business day (as such term is defined in the CSA) the rental payment otherwise payable on such date shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

3.3. Instructions To Pay Vendor and Owner. Until the Vendor notifies the Lessee that the CSA is no longer in effect, the Owner irrevocably instructs the Lessee to make

all the payments due the Owner provided for in this Lease (other than Excluded Payments as defined in the Lease Assignment) to the Vendor, for the account of the Owner in care of the Vendor. The Owner has instructed the Vendor (a) first to apply such payments to satisfy the obligations of the Owner under the CSA known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Owner or to the order of the Owner in immediately available funds at such place as the Owner shall specify in writing. The Lessee shall have no responsibility with respect to the application by the Vendor of payments made by it in accordance with the first sentence of this paragraph.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for in § 3.1 hereof in immediately available funds at or prior to 11:00 a.m., Hartford, Connecticut, time, at the office of the Vendor on the date due, or, if the CSA shall no longer be in effect, at the office of the Owner.

## § 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to §§ 3, 6, 7, 9, 13 and 15 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights and obligations of the Vendor under the CSA until all obligations of the Owner under the CSA have been satisfied. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term; provided, however, that so long as (i) no Event of Default exists

hereunder, (ii) the Lessee and the Guarantor are complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment under § 12 hereof.

## § 5. IDENTIFICATION MARKS

The Lessee will 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 in letters not less than one inch in height, the words, "OWNED BY A LEASING COMPANY. OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION.", or other appropriate words designated by the Vendor or the Owner, with appropriate changes thereof and additions thereto as from time to time may be designated by the Owner or the Vendor as required by law or reasonably requested in order to protect the Owner's and the Vendor's title to and interest in such Unit and the rights of the Owner under this Lease and of the Vendor under the CSA. Any cost involved in changing the specified legend which is not required law shall be borne by the party requesting the change. The Lessee will not place or permit any such Unit to be placed 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 or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed 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 Vendor and the Owner and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Owner an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Owner's interests in such Unit and no filing, recording, deposit or giving of notice with or to any other Federal, state or local

government or agency thereof is necessary to protect the interests of the Vendor and the Owner in such Unit.

Except as above provided, 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 Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee or any of its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Equipment under this Lease, and the Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Lessee therein.

The Lessee may make any change in the lettering of the names, trademarks, initials or other insignias at any time and as often as it deems it appropriate to do so. At the expiration of the Lease or any extension hereof, the Owner will promptly remove, at the Lessee's sole expense, the Lessee's names, trademarks, initials or other insignias and will not allow the Units to be used or operated without first removing same.

## § 6. TAXES

All payments to be made by the Lessee hereunder will be free of expense to the Owner for collection or other charges and will be free of expense to the Owner with respect to the amount of all withholdings of any nature whatsoever, and if any withholding is required, the Lessee shall pay an additional amount of rental such that the net amount of rental actually received by the Owner will equal the amount of rental then due absent such withholding. The Lessee agrees to pay, and on demand to indemnify and hold harmless, the Owner, the Vendor and the Investors and their respective agents, servants, successors and assigns ("Indemnified Persons") from all local, state, Federal or foreign license, documentation, recording and registration fees, and all taxes (including sales, use, property, real or personal, tangible or intangible, interest equalization, stamp and transfer taxes), levies, imposts, duties, assessments, fees, charges or withholdings of any nature whatsoever, together with any penalties, additions to tax, fines or interest thereon imposed or levied against or with respect to the Lessee, any Unit or any part thereof by

any authority asserting jurisdiction to impose or collect any tax upon or with respect to (i) any Unit or any part thereof, (ii) the purchase, acquisition, acceptance, rejection, construction, manufacture, ownership, delivery, nondelivery, leasing, possession, use, operation, repair, maintenance, modification, disservicing, rebuilding, sale, return, assembly, rental, condition, transportation, abandonment, importation, exportation or, upon an occurrence of an Event of Default, other application or disposition of all or any part of any interest in any Unit, (iii) the payment of rent or the receipts or earnings arising from any Unit or any part thereof, (iv) the payment of principal of, or interest or other amounts payable on CSA Indebtedness, (v) this Lease, the Participation Agreement, CSA, the Certificates of Interest or the issuance, acquisition or subsequent transfer thereof, (vi) the payment of any amount pursuant to any document referred to in clause (v) above, or (vii) otherwise with respect to or in connection with the transactions contemplated by this Lease (all such license, documentation, recording and registration fees, taxes, levies, imposts, duties, assessments, fees, charges, withholdings, penalties, fines, additions to taxes and interest imposed as aforesaid being herein referred to collectively as "Impositions"). The foregoing provisions of this § 6 shall not apply to the following:

(a) any United States Federal income tax;

(b) the aggregate of (i) all state and city income taxes and franchise taxes measured by net income, (ii) gross income or gross receipts taxes which are imposed in lieu of net income and franchise taxes and other than gross receipts taxes in the nature of sales or use taxes, and (iii) any excess profits taxes and similar taxes or general corporation, franchise or like taxes measured by the Owner's capital, capital stock or net worth.

The Lessee hereby also agrees to keep at all times all and every part of every Unit free and clear of all Impositions which might in any way affect the title of the Owner or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith such imposi-

tions pursuant to the last paragraph of this § 6 and the nonpayment thereof does not, in the advance opinions of independent counsel to the Owner and the Vendor, adversely affect the title, property or rights of the Owner hereunder or the rights of the Vendor under the CSA and the Lease Assignment. If any Impositions shall have been charged or levied against the Owner or the Vendor directly and paid by the Owner or the Vendor, the Lessee shall reimburse the Owner or the Vendor on presentation of an invoice therefor.

The amount which the Lessee shall be required to pay in accordance with this § 6 shall be an amount which, after deduction of all taxes and other charges in respect of the receipt of such amount under the laws of any Federal, state or local government or taxing authority in the United States or under the laws of any foreign country or subdivision or any taxing authority thereof or therein, is sufficient to restore such Indemnified Person to the same net after-tax position that they would have been in had the Impositions giving rise to such payments not been imposed. The amount to be paid to the Indemnified Person pursuant to the preceding sentence shall be determined in the first instance by the Indemnified Person; if such determination is not acceptable to the Lessee, the Lessee shall at its own expense retain an independent firm of certified public accountants reasonably acceptable to such Indemnified Person, which firm's determination shall be conclusive and binding.

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

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

If claim is made against an Indemnified Person for any Imposition indemnified against under this § 6, the Indemnified Person shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Indemnified Person shall, at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Impositions by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings or both. The Lessee may also contest, at its own expense, the validity, application or amount of such Impositions in the name of the Indemnified Person (with counsel reasonably satisfactory to such Indemnified Person) or in its own name. The Lessee agrees to give the Indemnified Person reasonable notice of such contest prior to the commencement thereof. If the Indemnified Person shall obtain a refund of all or any part of such Impositions previously reimbursed by the Lessee or any amount representing interest thereon, the Indemnified Person shall pay the Lessee the amount of such refund or interest net of expenses. If the Indemnified Person shall actually receive any future additional tax or other benefit from any item with respect to which the Lessee has indemnified the Indemnified Person pursuant to this § 6, the Indemnified Person shall pay to the Lessee the amount of such benefit together with the amount of any tax benefit arising from any payment pursuant to this sentence.

## § 7. PAYMENT FOR CASUALTY OCCURRENCES, INSURANCE, ECONOMIC OBSOLESCENCE

7.1. Definition of Casualty Occurrence; Payments. In the event that any Unit shall be or become lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 365 consecutive days, except requisition for use by the United States Government ("Government") for a period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, or until such Unit shall have been returned in the manner provided in § 11 or 13 hereof, the Lessee shall within 30 days after it shall have reasonably determined that such Unit

has suffered a Casualty Occurrence notify the Owner and the Vendor with respect thereto specifying the date, cause and extent of such Casualty Occurrence. On the semiannual rental payment date next succeeding the delivery of such notice (or, in the event the term of this Lease has already expired or will expire within 10 days after delivery of such notice, on a date within 10 days of such delivery), the Lessee shall pay to the Owner an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as defined in the next sentence) of such Unit as of the date of such payment in accordance with the schedule referred to hereafter. The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner shall be entitled to recover possession of such Unit at its own expense.

If the date upon which the making of such payment by the Lessee in respect of any Unit as required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit shall pay interest thereon from the end of such term to the date of such payment at the rate of 16% per annum. However, if the Casualty Occurrence occurs after this Lease has expired, the Lessee shall pay interest thereon at the rate of 16% per annum commencing 10 days after such Casualty Occurrence to the date of such payment.

7.2. Lessee Agent for Disposal. The Owner hereby appoints the Lessee, at the Lessee's expense, its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable by the Lessee upon exercise of reasonable efforts on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner and is not in default hereunder, the Lessee shall be entitled to the proceeds of such disposition to the extent they do not exceed the Casualty Value of such Unit, plus any disposition expenses of the Lessee.

7.3. Requisition by United States Government. In the event of the requisition for use by the Government of any Unit for a period which does not exceed the term of this Lease, all the obligations of the Lessee under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Owner or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default or Default shall have occurred and be continuing.

7.4. No Release. 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 until expiration of this Lease and Lessee's obligations under §§ 11 and 13 hereof.

7.5. Insurance. The Lessee shall, at all times prior to the return of the Equipment to the Owner, at its own expense, cause to be carried and maintained public liability insurance and all risk property damage insurance in respect of the Units, naming the Owner and the Vendor as additional named insureds and, in the case of property damage insurance, as loss payees, as their interests may appear, at least in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it; provided, however, that, subject to availability, the amount of such public liability coverage shall not, at any time, be less than $50 million per occurrence, and any deductible thereunder shall not, at any time, exceed $1 million per occurrence; provided, however, that the Lessee may in the future request that the Owner and the Vendor consent to a higher deductible in the event that inflation or an improved financial position of the Lessee makes that reasonable, and the Owner and the Vendor will not unreasonably withhold such consent. The Lessee may, in the case of the all risk property damage insurance, self-insure such Units to the extent that such self-insurance is (i) consistent with prudent industry practice and, in any event, (ii) in an amount (considered in relation to the then current value thereof) no greater than the amount of self-insurance maintained with respect to other similar equipment, if any, then owned or leased by the Lessee (considered in relation to the then current value of such

similar equipment). In no event shall the coverage of the all risk property damage insurance with respect to any Unit at any time be less than the applicable Casualty Value for such Unit.

The Lessee shall obtain from each insurer under the paragraph immediately above an agreement, by endorsement or separate instrument, that such insurer will give the Owner and the Vendor 30 days' written notice before such insurer's policy shall be materially altered or canceled or not renewed. On or before April 30 of each year, the Lessee shall deliver to the Owner and the Vendor a certificate of insurance by or on behalf of each insurer stating the coverage, named insureds and limits of each such policy. Any policies of insurance carried in accordance with this paragraph shall in addition waive any right to claim premiums or commissions against the Owner and the Vendor and such policies shall provide that in respect of the interests of the Owner and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Owner and the Vendor, respectively) and shall insure the Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Owner or the Vendor, respectively).

7.6. Insurance Proceeds and Condemnation Payments. Provided that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment to the Owner of the Casualty Values and accrued rentals in respect of Units suffering a Casualty Occurrence, if the Owner shall receive (directly or from the Vendor) any insurance proceeds from a policy or policies obtained by the Lessee or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Owner shall pay forthwith such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to any Unit theretofore paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Owner.

7.7. Economic Obsolescence. During the original term of this Lease, in the event that the Lessee shall, in its reasonable judgment, determine that some of or all the Units remaining under this Lease have become economically obsolete or surplus to the Lessee's requirements in the

Lessee's business and an officer of the Lessee shall have provided a certificate to such effect to the Owner and the Vendor, the Lessee shall have the right, at its option and on at least 120 days' prior written notice to the Owner-Trustee, to terminate (which act shall hereinafter be called the "Termination") this Lease as to not less than 50 of such Units (or such lesser number of Units as are then subject to this Lease) as of any succeeding rental payment date specified in such notice occurring more than 120 days thereafter (such termination date so specified being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than the 14th semiannual rental payment date, (ii) no Event of Default or Default shall have occurred and be continuing on such date and (iii) on the Termination Date all such Units subject to Termination shall be in the condition required for redelivery pursuant to § 14 hereof.

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

On such Termination Date, the Lessee shall pay to the Owner with respect to each such Unit an amount equal to (i) the excess, if any, of the Termination Value (as hereinafter defined) for each such Unit computed as of such date over the sale price of any such Unit so sold after the deduction of all expenses incurred by the Owner in connection with such sale and (ii) the rental payment with respect to each such Unit due on such Termination Date. The Termination Value of each such Unit as of the Termination Date on which payment is to be made shall be that percentae of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date. In no event shall the aggregate amount of sale proceeds retained by the Owner and payments of rental and Termination Value received by the Owner as

aforesaid be less than the "Termination Value" (as defined in Section 7.4 of the CSA) with respect to such Units as of such Termination Date.

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

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

If the Lessee shall exercise its option to effect a Termination, the Owner may, notwithstanding such election by the Lessee, by written notice to the Lessee, the Vendor and the Investors given within 60 days after the termination notice is given to the Owner and upon satisfaction and discharge of the Owner's obligations under the CSA with respect to any such Unit on the Termination Date, elect to retain such Unit. In the event the Owner shall so elect to retain such Unit and delivers to the Lessee evidence of the satisfaction and discharge of the Owner's obligations under the CSA with respect to such Unit, the Lessee shall not be obligated to pay the Termination Value to the Owner and the Lessee shall deliver such Unit to the Owner in accordance with the provisions of § 14 hereof.

## § 8. REPORTS

On or before March 15 in each year, commencing with March 15, 1983, the Lessee will furnish to the Owner and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the

amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and the CSA have been preserved or replaced, (c) providing reports of mileage or percent of utilization of Units in the States where Units are utilized sufficient for the Owner to complete income tax return entries for such States and (d) providing such data with respect to the use of the Units and any other information that is reasonably requested by the Owner and required in order to determine the amount of any income, gain or loss attributable to this Lease. The Owner shall, at its sole cost and expense, have the right, after giving prior written notice, by its agents to inspect the Units and the Lessee's records with respect thereto during normal business hours of the Lessee as the Owner may request as may be reasonably necessary to confirm to the Owner the existence of proper maintenance of the Units during the continuance of this Lease.

## § 9. DISCLAIMER OF WARRANTIES; COMPLIANCE WITH LAWS AND RULES; MAINTENANCE; INDEMNIFICATION

9.1. Disclaimer of Warranties. THE OWNER DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND THE OWNER DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR USE OR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Owner and the Lessee, are to be borne by the Lessee; but the Owner 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 Owner and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner may have against the Builder or any other person, including, but not limited to, any claims and rights arising under the provisions of the CSA. The Owner shall not have any responsibility or liability to the Lessee or any other person or entity with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner 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 Owner based on any of the foregoing matters.

9.2. Compliance with Laws and Rules. The Lessee agrees, for the benefit of the Owner and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which 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 ("Applicable Laws"), to the extent that such laws and rules affect the title, maintenance, operation or use of the Units and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Owner or the Vendor, adversely affect the property or rights of the Owner or the Vendor under this Lease or under the CSA.

9.3. Maintenance. The Lessee agrees that, at

its own cost and expense, it will maintain and keep each Unit (including any lining and parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order and repair, ordinary wear and tear from the careful and proper use thereof excepted.

9.4. Additions and Accessions. The Lessee shall notify the Owner of, and shall, at the Lessee's sole cost and expense, make or provide all improvements, alterations, modifications, additions, attachments, or other equipment, or changes ("Improvements") to the Units or any of them deemed necessary or desirable by any Federal, state or local governmental body or agency or the interchange rules of the Association of American Railroads ("legally required Improvements"). Any legally required Improvement and any other Improvements which are not readily removable without causing material damage to a Unit ("nonserverable Improvements") shall be and immediately become the property of the Owner and subject to the terms of this Lease. So long as the Lessee is not in default hereunder, the Lessee may , upon notice to the Owner, at the Lessee's sole cost and expense, make other nonseverable Improvements to a Unit, which are not legally required Improvements; provided, however, that (1) the value of such Unit is not reduced thereby, (2) such Improvements will not cause such Unit to become limited use property, or materially alter or reduce its general usefulness, (3) such Improvements will not increase the productivity or capacity of such Unit in excess of 25% and (4) the cumulative deflated cost (as defined in Rev. Proc 79-48) of any and all such nonseverable Improvements, exclusive of any legally required Improvements involving compliance with health, safety and environmental standards, does not exceed 10% of the Owner's cost of such Unit. So long as the Lessee is not in default hereunder, the Lessee may, upon notice to the Owner, at the Lessee's sole cost and expense, make other readily removable Improvements to a Unit provided that such Improvements do not cause material damage to such Unit or reduce its value or general usefulness. Any such readily removable Improvements shall remain the property of the Lessee and be removed by the Lessee, at its expense, upon or prior to return of any Unit to the Owner pursuant to § 11 or § 14 hereof, and if not so removed by the Lessee may be removed by the Owner without liability to the Lessee therefor. Any and all costs of removal and repair shall be for the Lessee's account. The Owner is hereby granted a security interest in and to any such readily removable Improvements to secure all of the

Lessee's obligations hereunder. Nothing herein shall be deemed to preclude the Owner and the Lessee from negotiating the lease financing hereunder for any proposed Improvements.

9.5. Indemnification. The Lessee agrees to indemnify, protect, hold harmless and defend each Indemnified Person from and against all losses, damages, injuries, liabilities (including, without limitation, strict liability in tort) claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest (herein collectively called "Indemnified Matters"), arising out of or as the result of the entering into or the performance of, or the occurrence of a default, an event of default or an Event of Default under, the CSA, the Participation Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person (except as otherwise provided in § 14 of this Lease) or the transfer of title to the Equipment by the Vendor pursuant to any provision of the CSA. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all other obligations under this Lease or the expiration or termination of the term of this Lease. To the extent the Lessee is required to provide protection or indemnification hereunder, the Lessee may select counsel (which will be reasonably acceptable to the Owner) and direct counsel's actions in respect thereof. The indemnities contained in this § 9.5 shall not extend to any Indemnified Matter incurred by any Indemnified Person (a) caused by the wilful misconduct or gross negligence of such Indemnified Person, (b) resulting from acts or events with respect to any Unit which commence after such Unit has been returned to the Owner in accordance with § 14 hereof, (c) caused by the violation by such Indemnified Person of any banking, investment, insurance or securities law, rule or regulation applicable to it (unless such violation shall be the result of any written misrepresentation, violation or act of the Lessee), (d) arising from the breach of an express duty, obligation, representation or warranty of such Indemnified Person made herein or in any of the documents related to the transactions contemplated hereby, (e) which is related to the lien, charge, security interest or other

encumbrance which the Lessee is not required by § 12 hereof to discharge or in any of the other documents related to the transactions contemplated hereby to be borne by such Indemnified Person or (f) costs and expenses which such Indemnified Person has agreed to be liable for in any of the documents related to the transactions contemplated hereby.

The Lessee shall be obligated under this § 9.5 irrespective of whether the Indemnified Person shall also be indemnified with respect to such Indemnified Matters elsewhere under this Lease or under any other Document or by any other person, and the Indemnified Person may proceed directly against the Lessee under this § 9.5 without first resorting to any such other rights of indemnification. With respect to any payment or indemnity hereunder, such payment or indemnity shall include any amount necessary to hold any Indemnified Person receiving such payment or indemnity harmless on a net after-tax basis and taking into account any tax benefit realized by such Indemnified Person as a result of such payment from all taxes required to be paid by such Indemnified Person with respect to such payment or indemnity under the laws of any Federal, state or local government or taxing authority in the United States of America.

Upon the commencement of any proceeding (including the written threat or written claim of any proceeding) against an Indemnified Person involving one or more Indemnified Matters, such Indemnified Person shall promptly, upon receiving written notice thereof, give notice of such commencement to the Lessee. The Indemnified Person shall supply the Lessee with such information reasonably requested by the Lessee as in the reasonable opinion of counsel to the Lessee is necessary or advisable for the Lessee to control or participate in any proceeding to the extent permitted by this § 9.5. Unless the Lessee is excluded from control of a proceeding involving an Indemnified Person pursuant to the preceding paragraph or Default or an Event of Default has occurred and is continuing, such Indemnified Person shall not enter into a settlement or other compromise with respect to any Indemnified Matter without prior written consent of the Lessee, which consent shall not be unreasonably withheld or delayed, unless such Indemnified Person waives its right to be indemnified with respect to such Indemnified Matter.

After the payment in full to an Indemnified Person

by the Lessee in respect of any Indemnified Matter pursuant to this § 9.5, if such Indemnified Person shall receive any payments in respect of such Indemnified Matter from any person other than the Lessee, such Indemnified Person shall promptly pay to the Lessee the amount of such payment, together with any interest (other than interest for the period, if any, after such Indemnified Matter was paid by such Indemnified Person until such Indemnified Matter was paid or reimbursed by the Lessee) received by such Indemnified Person on account of such payment.

9.6. Survival. The indemnities contained in this § 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation which do not already exist in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

9.7. Payments for Indemnification. All payments hereunder shall be made directly to the Indemnified Person.

## § 10. DEFAULT

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

(a) payment of any part of the rental provided in § 3 hereof or payment in respect of any Casualty Occurrence or Termination pursuant to § 7 hereof during the initial or any renewal term shall not be made by the Lessee when such payment is due and such default shall continue for 5 business days;

(b) 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, in the Participation Agreement or the Con-

sent, or on the part of the Guarantor contained in the Participation Agreement, the Consent or the Guarantee, and such default shall continue for 30 days after written notice from the Owner or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

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

(d) 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 or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Participation Agreement, the Consent and the Indemnity Agreement, or of the Guarantor under the Participation Agreement, the Consent and the Guarantee, as the case may be, shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees;

(e) any proceedings shall be commenced by or against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease, the Participation Agreement, the Consent or the Indemnity Agreement, or of the Guarantor under the Participation Agreement, the Consent or the Guarantee, 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 ineffective-

ness shall continue), all the obligations of the Lessee under this Lease, the Participation Agreement, the Consent and the Indemnity Agreement, or of the Guarantor under the Participation Agreement, the Consent and the Guarantee, as the case may be, shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

(f) an event of default set forth in Article 16 of the CSA shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder or under its Documents (as defined in the Participation Agreement); or

(g) any of the representations or warranties made by the Lessee herein, or by the Guarantor in the Guarantee, or by the Lessee or the Guarantor in the Participation Agreement or in the Consent or in any statement or certificate at any time given in writing pursuant hereto or in connection herewith shall be breached or found to be false or misleading in any material respect;

then, in any such case, the Owner, at its option, may,

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

(bb) 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 under this Lease to the extent that this Lease provides that the obligations of the Lessee survive the termination or expiration hereof; and thereupon the Owner 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 or for any proceeds arising therefrom; but the Owner 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 Owner, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Owner reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 7% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; 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 Owner reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Owner shall have sold any Unit, the Owner in lieu of collecting any amounts payable to the Owner by the Lessee pursuant to the preceding clauses (x) and (y) of this part (bb) with respect to such Unit, shall demand that the Lessee pay the Owner and the Lessee shall pay to the Owner on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty

Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

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

10.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Owner 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 requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted 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 rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

10.3. Failure To Exercise Rights is not Waiver. The failure of the Owner 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, and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Owner.

10.4. Notice of Event of Default to Owner. The Lessee also agrees to furnish the Owner and the Vendor, promptly upon any responsible officer becoming aware of any condition which constitutes an Event of Default under this Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section, a "responsible officer" shall mean, with respect to the subject matter of any covenant,

agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

## § 11. RETURN OF UNITS UPON DEFAULT

11.1. Return of Units. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Owner and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Owner pursuant to this § 11 shall (i) be in the condition required by § 9.3 hereof and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Owner as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner place such Units upon such storage tracks as shall reasonably be designated by the Owner,

(b) cause such Units to be stored on such tracks without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Owner (but such storage period shall not exceed 120 days if the Owner is under no legal impediment to sell, lease or otherwise dispose of such Units), and

(c) cause the Units to be moved to the nearest interchange point or points as shall be designated by the Owner.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Owner or any person designated by it,

including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event that the Units or any thereof are sold the Lessee shall pay to the Owner the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

11.2. Owner Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Owner as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner, 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

12.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Owner without the consent of the Lessee to the Vendor or, with the consent of the Vendor (which consent shall not be unreasonably withheld), to other institutional investors, but the Lessee shall be entitled to the possession and use of the Units in accordance with § 12.2 hereof and shall not be under any obligation to any assignee of the Owner other than the Vendor except upon written notice of such assignment from the Owner. All the rights of the Owner hereunder (including, but not limited to, the rights under §§ 6, 7, 9.5 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Owner's assigns except as may be limited by any assignment thereof.

12.2. Lessee's Right To Use the Units. (1) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA, subject to the provisions of § 4.2 of this Lease. The Lessee agrees (i) not to use or permit the use of any Unit in Canda and/or Mexico to the extent that the use of such Unit would cause the same to be property which is used predominately outside the United States within the meaning of Section 48(a)(2) of the Internal Revenue Code of 1954 as

amended and (ii) not to use or permit the use at any time of more than 15% of all Units then subject to this Lease in Canada and/or Mexico. Such 15% limitation shall not apply to the use of any Unit in any jurisdiction of Canada or Mexico, in which jurisdiction all necessary action has been taken to protect the rights of the Owner and the Vendor in the Units and the Owner and the Vendor have received an opinion of counsel to such effect, satisfactory to them. ~~The Lessee in the future may request that such 15% limitation be increased temporarily because of changed circumstances or a strengthening of the financial condition of the Lessee and/or the Guarantor, and the Owner and the Vendor will give due consideration to each such request but a consent to such request shall be in the sole discretion of each of the Owner and the Vendor.~~

RIDER L-28

(2) The Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Owner and the Vendor, except as provided in paragraph (3) of this § 12.2; and the Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units without the prior written consent of the Owner and the Vendor except as provided in said paragraph (3).

(3) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units by it or any affiliate upon lines of any railroad or other trackage over which railroad equipment is regularly operated and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through or triplease agreements and to sublease the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease or use or permit the assignment, sublease or use of any Unit except upon the terms and conditions of this Lease and the CSA, nor shall the Lessee assign or sublease to or permit the sublease or use of the Units by any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. Any such triplease or sublease permitted by this paragraph shall be expressly subordinate to the rights and remedies of the Vendor under the CSA and the Owner under this Lease in respect of the Units covered by such triplease or sublease and no such triplease or sublease shall relieve the Lessee

Rider L-28

The Lessee in the future may from time to time request that such 15% limitation be raised for a twelve-month period because of changed circumstances (which shall be set forth in detail in such request), and the Owner and the Vendor will give due consideration to each such request and shall consent to such request if each of the Owner and the Vendor is satisfied that the Guarantor is at least as creditworthy as it was on the date hereof; provided, however, that such percentage limitation shall never be raised above the percentage represented by the ratio of (a) the difference between the aggregate Purchase Price of all Units then subject to this Lease and the amount of CSA Indebtedness then outstanding to (b) the aggregat Purchase Price of all Units then subject to this Lease.

of any of its obligations hereunder which, notwithstanding any such triplease or sublease, shall remain in full force and effect.

12.3. Lessee's Duty To Discharge Encumbrances. The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Owner or the Vendor not related to the ownership or leasing of, or the security interest of the Vendor in, the Units) which may be imposed during the term hereof, during the period the Lessee is obligated to pay rental hereunder or during the period any Unit is in the possession of the Lessee following default, on or with respect to any Unit (including any accession thereto) or the interest of the Owner, the Vendor or the Lessee therein; except that this covenant will not be breached by reason of liens, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialman's, mechanic's, workmen's, repairmen's or other like liens arising in the ordinary course of business 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 proceedings and the Owner and the Vendor advise the Lessee in writing that the failure to discharge the same does not adversely affect the title, property or rights of the Owner or the security interest and rights of the Vendor under the Documents.

12.4. Merger, Acquisition or Consolidation. Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder and under the Consent by an appropriate instrument in writing) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease.

12.5. Mileage. During the term of this lease the Lessee shall receive, insofar as applicable law and regulations allow, all mileage allowances, rentals and/or compensation payable by carriers by reason of the use of any unit (hereinafter called "mileage") leased to the Lessee hereunder. It is understood and agreed that if for any reason the Owner receives any mileage, then (unless an Event of Default shall have occurred and be continuing) the Owner shall promptly remit such mileage to the Lessee.

## § 13. RIGHT OF FIRST REFUSAL AND RENEWAL OPTIONS

13.1. Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Owner elects to sell any Units to third parties within a period of one year after the expiration of the original or any extended term of this Lease, the Lessee shall be given 60 days' prior written notice of such intention prior to the expiration of such period. In the event that during such one-year period the Owner shall receive a bona fide offer from another party unrelated to the Lessee to purchase Units and the Owner elects to sell Units pursuant to such offer, the Owner 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 Owner. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which such 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 Owner of a written notice within 15 days of receipt of notice of the proposed sale from the Owner 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 Owner.

13.2. Renewal Options. 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 Owner (which notice shall be irrevocable) not less than 90 days prior to the end of the then current term of this Lease, elect to extend the original or extended term of this Lease in respect of all, but not less than all, the Units then covered by this Lease on a year-to-year basis or for such longer term as the Lessee may elect. The rental payable during each extended term shall be payable semi-

annually on the anniversaries of the payment dates of the preceding term of this Lease in each year of such extended term and shall be in an amount equal to the "Fair Market Rental". Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to the rental which would obtain in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and, in such determination, cost of removal from the location of current use shall not be a deduction from such rental. If on or prior to 60 days before the commencement of the extended term, the Owner and Lessee are unable to agree upon the determination of the Fair Market Rental of the Units to be leased, such rental shall be determined in accordance with the foregoing definition by an Appraiser in the manner described below. The Casualty Values applicable to any extended term shall be equal to the estimated Fair Market Value of the Units at each rental payment date under the extended term. If on or prior to 60 days before the commencement of the extended term, the Owner and the Lessee are unable to agree upon a determination of such Casualty Values, such Casualty Values shall be determined by an Appraiser in a manner described below. The Appraiser shall be instructed to make such determination within a period of 20 days following appointment and shall promptly communicate such determination in writing to the Owner and the Lessee. The determination so made shall be conclusively binding upon both the Owner and the Lessee, but the Lessee shall not be obligated to lease for any extended term if it feels the Fair Market Rental is so determined is too high. The expenses and fees of the Appraiser shall be borne solely by the Lessee. The term Appraiser shall mean such independent appraiser as the Owner 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 Owner, the second by the Lessee and the third designated by the first two so selected.

## § 14. RETURN OF UNITS UPON EXPIRATION OF TERM

On or prior to the termination of the term of this Lease (or any renewal pursuant to § 13 hereof) the Lessee will, at its own cost and expense, at the request of the Owner, deliver possession of the Units to the Owner upon

such storage tracks as the Owner may reasonably designate (but in no event at more than three locations) within a 100 mile radius of Chicago, Illinois, or, in absence of such designation, as the Lessee may select, and permit the Owner to store such Units on such tracks for a period not exceeding 60 days from the date at which at least 90% of the Units then subject to this Lease are first placed in storage; the assembly, delivery, storage and transporting of such Units to be at the expense and risk of the Lessee. Arrival of a Unit at the designated point shall constitute "return" for the purposes hereof. During any such storage period the Lessee will permit the Owner 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 the storage locations; provided, however, that the Lessee shall not be liable, except in the case of negligence or intentional act of the Lessee or of its employees or agents and except to the extent otherwise provided by law, for any injury to or the death of any prospective purchaser or lessee exercising the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner pursuant to this § 14 shall (i) be in the condition required by § 9.3 hereof, (ii) have attached or affixed thereto any Part title to which is in the Owner pursuant to § 9 hereof and have removed therefrom at the Lessee's expense any part title to which is in the Lessee or any other person pursuant to such § 9 and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, provided that the Lessee shall not be required to make any additions, modifications or improvements which would not be required of the Lessee if the Lessee continued to operate the Units. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 14, the Lessee shall pay to the Owner-Trustee the Casualty Value of such Unit as determined in accordance with § 7 hereof. The Lessee shall pay rental at the rate of 0.03954% of the Purchase Price of such Unit per day for any Unit not returned to the Owner immediately upon expiration of the termination of the initial or any extended term of this Lease. Nothing contemplated by this § 14, including payment by the Lessee of the above-speci-

fied amounts, shall be deemed to relieve the Lessee from its obligations to assemble, deliver and store the Units or affect the Owner's rights and remedies with respect to such obligation.

## § 15. RECORDING

The Owner, at its own expense, will cause this Lease, the CSA, the Lease Assignment and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303. The Lessee, at its own expense, will undertake any filing, registering, deposit and recording required of the Owner under the CSA and 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 Owner or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Owner's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA or the Lease Assignment.

The party making the filing will promptly furnish to the Vendor and the other party hereto evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the party making the filing with respect thereto satisfactory to the Vendor and the other party hereto. This Lease and the CSA shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

## § 16. OWNER'S RIGHT TO PERFORM; INTEREST ON OVERDUE RENTALS

Should the Lessee fail to make any payment or to do any act as provided by this Lease, then the Owner shall have the right (but not the obligation), with such notice as may be practical under the circumstances to the Lessee of its intention to do so and without releasing the Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Units or the Owner's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in

the judgment of the Owner appears to affect the Units, and in exercising any such rights, the Owner may insure any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by the Owner shall be due and payable by the Lessee within ten days of notice thereof. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to interest at a rate equal to the greater of (i) 17% per annum or (ii) the prime rate announced from time to time by Security Pacific Bank, to the extent legally enforceable, on the overdue rentals and other obligations for the period of time during which they are overdue.

## § 17. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or deposited in the United States mails, first-class postage prepaid, addressed as follows:

> if to the Owner, at Four Embarcadero Center, Suite 1200, San Francisco, California 94111, Attention of Manager Operation Division-LEV.;
>
> if to the Lessee, at 2223 Dodge Street, Omaha, Nebraska 68102, Attention of Assistant Secretary and Controller, with a copy to the Guarantor at the same address, Attention of Corporate Secretary;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Copies of each such notice shall be given to the Vendor at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department or such other address designated by the Vendor. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party. Any notice to the Lessee by the Vendor regarding the Lessee's failure to perform any obligation hereunder shall also be furnished by the Lessee to the Owner.

## § 18. SEVERABILITY; EFFECT AND MODIFICATION OF LEASE; THIRD-PARTY BENEFICIARIES

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

18.2. Effect of Modification of Lease. This Lease and the Indemnity Agreement exclusively and completely state the rights of the Owner and the Lessee with respect to the leasing of the Units and supersede all other agreements, oral or written, with respect thereto, except the Participation Agreement and the Guarantee. 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 Owner and the Lessee.

18.3. No Third-Party Beneficiaries. Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Vendor and the permitted successors and assigns of a party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

## § 19. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof.

## § 20. NO GUARANTEE OF CSA INDEBTEDNESS OR RESIDUAL VALUE

Nothing in this Agreement is intended or shall be

construed to constitute a guarantee by the Lessee of the CSA Indebtedness under the CSA or a guarantee of the residual value of any Unit.

§ 21. LAW GOVERNING

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

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

NORTHERN PETROCHEMICAL COMPANY,

by _____

[Corporate Seal]

Attest:

_____

SECURITY PACIFIC EQUIPMENT LEASING, INC.,

by Deanne Hartstad

CONTRACT ADMINISTRATOR

[Corporate Seal]

Attest:

~~Assistant~~ Secretary

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

On this th day of 1982, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an of NORTHERN PETROCHEMICAL COMPANY, a Delaware corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF CALIFORNIA, )
) ss.:
COUNTY OF SAN FRANCISCO,)

On this 5 th day of March 1982, before me personally appeared Leanne Harstad , to me personally known, who, being by me duly sworn, says that she is a CONTRACT ADMINISTRATOR of SECURITY PACIFIC EQUIPMENT LEASING, INC., 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 she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

OFFICIAL SEAL
GAIL D. SMEDAL
Notary Public-California
City and County of
SAN FRANCISCO
My Commission Expires April 21, 1985

Gail D. Smedal
Notary Public

[Notarial Seal]

My Commission Expires 4/21/85

## Units of Railroad Equipment

| Type | AAR Mechanical Designation | Quantity | Lessee's Identification Numbers (inclusive) |
|---|---|---|---|
| 100 Ton CF 5251 Steel Center Flow Hopper Cars and related linings | LO L254 | 400 | NPCX 7150-7549 |

## CASUALTY AND TERMINATION VALUES

| Rental Payment Date | Percentage of Purchase Price* | |
|---|---|---|
| | Termination | Casualty |
| January 1, 1983 | -- | 111.70433 |
| July 1, 1983 | -- | 111.55389 |
| January 1, 1984 | -- | 116.38588 |
| July 1, 1984 | -- | 116.12128 |
| January 1, 1985 | -- | 119.29950 |
| July 1, 1985 | -- | 118.81870 |
| January 1, 1986 | -- | 120.25461 |
| July 1, 1986 | -- | 119.44569 |
| January 1, 1987 | -- | 119.02530 |
| July 1, 1987 | -- | 118.04524 |
| January 1, 1988 | -- | 117.33302 |
| July 1, 1988 | -- | 116.26279 |
| January 1, 1989 | -- | 115.43247 |
| July 1, 1989 | -- | 114.29776 |
| January 1, 1990 | 111.59935 | 113.34620 |
| July 1, 1990 | 110.17252 | 112.13773 |
| January 1, 1991 | 108.86546 | 111.06110 |
| July 1, 1991 | 107.32945 | 109.76906 |
| January 1, 1992 | 105.86738 | 108.56302 |
| July 1, 1992 | 102.91832 | 105.88353 |
| January 1, 1993 | 99.94180 | 103.18865 |
| July 1, 1993 | 96.74695 | 100.28897 |
| January 1, 1994 | 93.49460 | 97.34387 |
| July 1, 1994 | 90.04327 | 94.21331 |
| January 1, 1995 | 86.50033 | 91.00322 |
| July 1, 1995 | 82.77092 | 87.62019 |
| January 1, 1996 | 78.92075 | 84.12847 |
| July 1, 1996 | 74.89011 | 80.46981 |
| January 1, 1997 | 70.71450 | 76.67826 |
| July 1, 1997 | 66.35785 | 72.71920 |
| January 1, 1998 | 61.83688 | 68.60789 |
| July 1, 1998 | 57.12725 | 64.32145 |
| January 1, 1999 | 52.23630 | 59.86577 |
| July 1, 1999 | 47.14471 | 55.22297 |
| January 1, 2000 | 41.85406 | 50.39319 |
| July 1, 2000 | 36.35003 | 45.36356 |
| January 1, 2001 | 30.71236 | 40.21236 |
| July 1, 2001 | 25.00000 | 35.00000 |

* As defined in the CSA.

[CS&M Ref. 4876-031]

# CONDITIONAL SALE AGREEMENT

Dated as of February 1, 1982

Between

ACF INDUSTRIES, INCORPORATED

and

SECURITY PACIFIC EQUIPMENT LEASING, INC.

Conditional Sale Indebtedness Due June 30, 2001

[Covering 400 covered hopper cars]

CONDITIONAL SALE AGREEMENT

TABLE OF CONTENTS*


| | | Page |
|---|---|---|
| ARTICLE 1. | ASSIGNMENT; DEFINITIONS..... | C-1 |
| ARTICLE 2. | CONSTRUCTION AND SALE ..... | C-2 |
| ARTICLE 3. | INSPECTION AND DELIVERY ..... | C-3 |
| ARTICLE 4. | PURCHASE PRICE AND PAYMENT ..... | C-5 |
| ARTICLE 5. | SECURITY INTEREST IN EQUIPMENT ..... | C-10 |
| ARTICLE 6. | TAXES ..... | C-11 |
| ARTICLE 7. | MAINTENANCE; TERMINATION AND CASUALTY OCCURRENCES ..... | C-13 |
| ARTICLE 8. | INSURANCE; CONDEMNATION ..... | C-15 |
| ARTICLE 9. | REPORTS AND INSPECTIONS ..... | C-15 |
| ARTICLE 10. | MARKING OF EQUIPMENT ..... | C-15 |
| ARTICLE 11. | COMPLIANCE WITH LAWS ..... | C-16 |
| ARTICLE 12. | POSSESSION AND USE ..... | C-16 |
| ARTICLE 13. | PROHIBITION AGAINST LIENS ..... | C-17 |
| ARTICLE 14. | INDEMNITIES AND WARRANTIES ..... | C-18 |
| ARTICLE 15. | ASSIGNMENTS ..... | C-21 |
| ARTICLE 16. | DEFAULTS ..... | C-22 |
| ARTICLE 17. | REMEDIES ..... | C-25 |
| ARTICLE 18. | APPLICABLE STATE LAWS ..... | C-30 |
| ARTICLE 19. | FILING ..... | C-30 |
| ARTICLE 20. | HEADINGS; MODIFICATION OF AGREEMENT ... | C-31 |
| ARTICLE 21. | NOTICES ..... | C-31 |
| ARTICLE 22. | IMMUNITIES; SATISFACTION OF UNDERTAKINGS ..... | C-32 |
| ARTICLE 23. | GOVERNING LAW ..... | C-32 |
| ARTICLE 24. | EXECUTION ..... | C-33 |
| Schedule I | Amortization of CSA Indebtedness ..... | C-36 |
| Annex A--Information Relating to Building of Equipment ..... | | C-37 |
| Annex B--Units of Railroad Equipment ..... | | C-40 |
| Annex C--Lease of Railroad Equipment | | |


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

CONDITIONAL SALE AGREEMENT dated as of February 1, 1982, between the corporation named in Item 1 of Annex A hereto (said corporation being hereinafter called the "Builder" or the "Vendor", as the context may require, all as more particularly set forth in Section 1.3 hereof), and SECURITY PACIFIC EQUIPMENT LEASING, INC., a Delaware corporation ("Owner").

The Builder has agreed to conditionally sell to the Owner, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto ("Equipment").

The Owner is entering into a Lease of Railroad Equipment with NORTHERN PETROCHEMICAL COMPANY ("Lessee"), substantially in the form of Annex C hereto ("Lease").

THE CONNECTICUT BANK AND TRUST COMPANY ("Agent") is acting as agent for the investors ("Investors") pursuant to a Participation Agreement dated as of the date hereof ("Participation Agreement") among the Lessee, INTERNORTH, INC. ("Guarantor"), the Agent, the Owner and the Investors.

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

## ARTICLE 1. ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; Assignment. The parties hereto contemplate that the Owner will furnish that percentage of the Purchase Price (as defined in Section 4.1 hereof) of the Equipment as is specified in Section 4.3 and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Agent pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") between the Builder and the Agent.

1.2. Lease Assignment. As security for the payment and performance of all the Owner's obligations hereunder, the Owner will assign to the Agent certain of the rights, title and interests of the Owner in and to the Lease pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto ("Lease Assignment"), and the Lessee and the Guarantor shall acknowledge and consent thereto pursuant to a Consent and Agreement substantially in the form attached to the Lease Assignment ("Consent").

1.3. Meaning of "Vendor" and "Builder". The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment, and any successor or successors for the time being to its manufacturing properties and business.

## ARTICLE 2. CONSTRUCTION AND SALE

The Builder shall construct the Equipment as its plant or plants set forth in Annex B hereto and will sell and deliver the Equipment to the Owner. Each unit of Equipment shall be constructed in accordance with the specifications referred to in Annex B and the Purchase Order (as hereinafter defined) and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Owner and the Lessee (such specifications and any modifications called "Specifications"). The design, quality and component parts of each unit of Equipment shall conform, on the date of delivery and acceptance thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to each such unit of Equipment and each such unit will be

new railroad equipment when delivered to the Owner and the original use thereof shall commence with the Owner.

## ARTICLE 3. INSPECTION AND DELIVERY

3.1. Place of Delivery. The Builder will deliver the Equipment to the Owner at the place or places specified in Annex B hereto in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) or (d) of Section 16.1 hereof or subsequent to the occurrence of any event of default as described in Section 16.1 hereof or of any event which with the giving of notice or lapse of time or both would constitute such an event of default. The Builder agrees not to deliver any unit of its Equipment hereunder (a) following receipt of written notice from the Owner or the Agent of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, or (b) until it receives notice from the Agent or the Owner, or their counsel on their behalf, that the respective conditions contained in Section 8.1 and Section 9.1 of the Participation Agreement have been met.

3.2. Force Majeure. The obligations of the Builder as to time of delivery are subject to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, differences with workmen, accidents, fires, floods, explosions, damage to plant, equipment or facilities, delays in receiving necessary materials, delays of carriers or subcontractors.

3.3. Exclusion of Equipment. Notwithstanding the provisions of Section 3.2 hereof, any unit of Equipment not delivered to the Owner pursuant to Section 3.1 hereof and any unit of Equipment not delivered and accepted by the Owner hereunder on or before June 30, 1982, shall be excluded from this Agreement, and the Owner shall be relieved of its obligations hereunder to purchase and pay for such Equipment. If any unit of Equipment shall be so excluded, the parties hereto shall execute an agreement

supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions or pursuant to Section 4.1 hereof, or in the event the Owner is relieved of its obligations hereunder to accept or pay for any or all units of Equipment in accordance with the terms and conditions hereof for any reason whatsoever, the Lessee will be obligated pursuant to Article I of the Participation Agreement to accept all such units completed and delivered by the Builder and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with the Builder relating to the Equipment (the "Purchase Order"), and the Owner will reassign, transfer and set over to the Lessee all the right, title and interest of the Owner in and to the units so excluded and the Purchase Order to the extent relating thereto. The Owner agrees, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of equipment so excluded from this Agreement.

3.4. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Owner (who may be employees and agents of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant at which the units of Equipment are being constructed. Prior to delivery to the Owner by the Builder, each unit of Equipment shall be presented to an authorized inspector of the Owner for inspection at the place specified for delivery of such unit, and if such unit conforms to the Specifications, requirements and standards applicable thereto, such authorized inspector shall execute and deliver to the Builder a certificate of acceptance ("Certificate of Acceptance") stating that such unit has been inspected and accepted on behalf of the Owner and is marked in accordance with Article 10 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Articles 2 and 14 hereof. By § 2 of the Lease and by this Section 3.4, the Owner hereby appoints the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit hereunder by the Owner.

3.5. The Builder's Responsibilities After Delivery. Upon delivery to and acceptance by the Owner of each unit of Equipment at the place specified for delivery, the Builder shall have no further responsibility for nor bear any risk of any damage to or the destruction or loss of any such unit; provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Articles 2 and 14 hereof.

## ARTICLE 4. PURCHASE PRICE AND PAYMENT

4.1. The base price or prices per unit of Equipment and related lining cost and freight are set forth in Annex B hereto. Such base price or prices per unit of Equipment are subject to such increase or decrease as is agreed to by the Builder, the Owner and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices per unit of Equipment as so increased or decreased and as set forth in the Builder's invoice or invoices delivered to the Owner, and shall also include the related lining costs and freight charges, and if the Purchase Price of a unit of Equipment or the lining costs or the related freight charges is higher than the respective base price or prices set forth in Annex B the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Owner (such invoice or invoices being hereinafter called "Invoices"). The Lessee, as agent for the Owner, has heretofore made payments in respect of some of the lining costs and freight charges, and on the first Closing Date (as hereinafter defined) hereunder the Lessee will submit its Invoices for the same (accompanied by appropriate supporting invoices and evidence of payment for the same) and such Invoices shall be settled for as if the Lessee were the Builder hereunder. From time to time, the Lessee acting as agent for the Owner may pay certain additional lining costs and freight charges, and on the next Closing Date following such payment the Lessee will submit its Invoices for the same (accompanied by appropriate supporting invoices and evidence of payment for the same) and such Invoices shall be settled for as if the Lessee were the Builder hereunder. If on any Closing Date the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Owner may at its option agree to prior to delivery of any unit or units of

Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Owner will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for in inverse order of their delivery pursuant to Article 3 hereof, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid), and the Owner shall take such other steps, including the execution of instruments of transfer, as it may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Owner shall have no further obligation or liability in respect of units so excluded.

4.2. Settlement and Closing Dates. The Equipment shall be settled for in such number of groups ("Groups") of units of Equipment delivered to and accepted by the Owner as is provided in Item 2 of Annex A hereto. The term "Closing Date" with respect to any group of units shall be such date as is specified by the Lessee in accordance with Item 2 of Annex A hereto by six business days' written notice thereof with the concurrence of the Owner and the Agent, but in no event shall such Closing Date be later than June 30, 1982. Such notice shall specify the aggregate Purchase Price of the Equipment to be settled for and a copy thereof shall be sent by the Lessee to the Agent and the Owner. The place of each closing shall be determined by mutual agreement among the parties hereto. At least five business days prior to any Closing Date, the Builder shall present the Invoice to the Owner and the Lessee for the Equipment to be settled for. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, Hartford, Connecticut, San Francisco, California, or New York, N. Y., are authorized or obligated to remain closed.

4.3. Indebtedness of Owner to Vendor. Subject to the terms of this Agreement and the satisfaction of the conditions set forth in the Participation Agreement, the Owner hereby acknowledges itself to be indebted to the Vendor in the amount of the aggregate Purchase Price of the Equipment to be settled for and hereby promises to pay the

same in immediately available funds to the Vendor at such place as the Vendor may designate, as follows:

(a) on each Closing Date, an amount equal to 33.416111% of the aggregate Purchase Price of the Equipment for which settlement is being made; and

(b) in 38 semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the Equipment for which settlement is being made less the aggregate amount paid or payable with respect thereto pursuant to subsection (a) of this Section (said portion of the aggregate Purchase Price payable in installments called "CSA Indebtedness").

4.4. CSA Indebtedness; Payment Dates; Interest. (a) The installments of the CSA Indebtedness shall be payable semiannually on December 30 and June 30 in each year, commencing on December 30, 1982 (each such date a "Payment Date"). The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 17.9% per annum in the case of the Interim Investor (as defined in the Participation Agreement) and at the rate of 16% per annum in the case of the Permanent Investor (as defined in the Participation Agreement). Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued on June 30, 1982, and semiannually on each Payment Date thereafter. The amounts of principal of and interest on the CSA Indebtedness payable on each Payment Date shall be calculated to be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal shall completely amortize the CSA Indebtedness at maturity. The Owner will furnish to the Vendor and the Lessee schedules showing the respective amounts of principal and interest payable on each Payment Date promptly after the last Closing Date, in such number of counterparts as shall be requested by the Vendor.

(b) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

4.5. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months, except that the interest accrued to June 30, 1982, and all interest to be paid to the Interim Investor shall be calculated on an actual days elapsed, 365-day year basis.

4.6. Penalty Interest. The Owner will pay interest, to the extent legally enforceable, at the rate of 17.9% per annum in the case of the Interim Investor and at the rate of 17% per annum in the case of the Permanent Investor ("Penalty Rate") upon all amounts remaining unpaid on the CSA Indebtedness after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. Currency of Payment. All payments provided for in this Agreement shall be made by bank wire transfer of immediately available funds in such coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Articles 7 and 16 hereof and except for prepayments to the Interim Investor, the Owner shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date on which it becomes due.

4.8. Liability of Owner Limited to "Income and Proceeds from Equipment". Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof) but not limiting the effect of Article 22 hereof, it is understood and agreed by the Vendor that the liability of the Owner or any assignee of the Owner for all payments to be made by it under and pursuant to this Agreement or the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in the third paragraph of Section 13.3 hereof, the payments to be made pursuant to Section 4.3(a) hereof and the interest payable on the CSA Indebtedness due June 30, 1982, pursuant to Section 4.4(a) hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment". As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Owner or any assignee of the Owner at any time after

any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences or Terminations (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease (other than indemnity payments paid or payable under § 9.5 of the Lease and taxes and indemnities paid or payable to the Owner under § 6 of the Lease) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time, only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Owner or any assignee of the Owner and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or Terminations) and/or interest thereon due and payable on or within three days prior to the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that (1) "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) received by the Owner or any assignee of the Owner prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or Terminations) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Owner or any assignee of the Owner were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease, (2) "income and proceeds from the Equipment" shall also mean and include the amounts to be paid by the Owner pursuant to Paragraph 17.1 of the Participation Agreement and (3) "income and proceeds from the Equipment" shall in no event include the amounts paid pursuant to § 3 of the Lease on any rental payment date if, but only if, the Owner has made the payment of CSA Indebtedness and interest due on the immediately preceding December 30 or June 30, as the case may be, pursuant to this Article 4. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Owner for an amount in excess of the amounts payable by the Owner pursuant to

the limitations set forth in this paragraph, it will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Owner shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder.

## ARTICLE 5. SECURITY INTEREST IN EQUIPMENT

5.1. Vendor To Retain Security Interest; Accessions Are Part of Equipment. The Vendor hereby retains a security interest in the Equipment until the Owner shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Owner and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Owner and the Lessee as provided in this Agreement and the Lease. Any and all parts (in which the Owner has any right, title or interest) installed on and additions and replacements made to any unit of Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used herein.

5.2. Obligations upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Owner at that time, will, at the expense of the Owner, (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Owner or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Owner at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing in all necessary public offices, such instrument or instruments in

writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Owner to the Equipment and (c) pay to the Owner any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as provided therein. The Owner hereby waives and releases any and all rights existing or that may be acquired in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Owner.

## ARTICLE 6. TAXES

6.1. General Tax Indemnification. Whether or not any of the transactions contemplated hereby are consummated, the Owner agrees to pay and to indemnify and hold the Vendor harmless from all Impositions (as defined in § 6 of the Lease) for which indemnification is required under the Lease; excluding, however, (i) any United States Federal income tax; and (ii) the aggregate of (a) all state and city income taxes and franchise taxes measured by net income, (b) gross income or gross receipts taxes which are imposed in lieu of net income and franchise taxes and other than gross receipts taxes in the nature of sales or use taxes, and (c) any excess profits taxes and similar taxes or general corporation, franchise or like taxes measured by the Vendor's capital, capital stock or net worth; provided, however, that the Owner shall not be required to pay any Impositions during the period it may be contesting the same in the manner provided in Section 6.2 hereof. The amount which the Owner shall be required to pay in accordance with this § 6.1 shall be an amount which, after deduction of all taxes and other charges in respect of the receipt of such amount under the laws of any Federal, state or local government or taxing authority, is sufficient to restore the Investors to the same net after-tax position that they would have been in had the Impositions giving rise to such payments not been imposed. The amount to be paid to the Vendor pursuant to the preceding sentence shall be determined in the first instance by the Vendor; if such determination is not acceptable to the Owner, the Owner shall at its own expense retain an independent firm of certified public accountants reasonably acceptable to the Vendor, which firm's determination shall be conclusive and binding.

6.2. Claims; Contests; Refunds. If claim is made against the Vendor for any Impositions indemnified against under this Article 6, the Vendor shall promptly notify the Owner. If reasonably requested by the Owner in writing, the Vendor shall, at the expense of the Owner, contest in good faith the validity, applicability or amount of such Impositions by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings or both. The Owner may also contest, at its own expense, the validity, applicability or amount of such Impositions in the name of the Vendor (with counsel reasonably satisfactory to the Vendor) or in its own name. The Owner agrees to give the Vendor reasonable notice of such contest prior to the commencement thereof. If the Vendor shall obtain a refund of all or any part of such Impositions previously reimbursed by the Owner or any amount representing interest thereon, the Vendor shall pay the Owner the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in Section 16.1 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. Reports or Returns. In the event any reports with regard to Impositions are required to be made on the basis of individual units of Equipment or otherwise, the Owner will, where permitted to do so under applicable rules or regulations, make and timely file such reports in such manner as to show the interests of the Vendor in such units as shall be satisfactory to the Vendor or, where not so permitted, will notify the Vendor of such requirement and will prepare and deliver such reports to the Vendor within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Vendor.

6.4. Survival. All of the obligations of the Owner under this Article 6 shall survive and continue, notwithstanding payment in full of all other amounts due under this Agreement.

ARTICLE 7. MAINTENANCE; TERMINATION AND CASUALTY OCCURRENCES

7.1. Maintenance. The Owner shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear from the proper and careful use thereof excepted, and eligible for railroad interchange in accordance with the Applicable Laws and in the same condition as other similar equipment owned or leased by the Lessee.

7.2. Termination; Casualty Occurrences. In the event that the Lease is terminated pursuant to § 7.7 of the Lease (a "Termination"), or any unit of Equipment shall suffer a Casualty Occurrence (as defined in § 7.1 of the Lease), the Owner shall, promptly after it shall have received notice from the Lessee or has otherwise been informed of a Termination or that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto by written notice; provided that, in the case of a Termination, the Owner shall give such written notice to the Vendor no less than 30 days prior to the Settlement Date, as hereinafter defined. On the next succeeding date for the payment of rentals under the Lease (or, in the event such date will occur within 10 days of the delivery of notice, on the following payment date) after such notice from the Lessee has been received or on the Termination Date (as defined in § 7.7 of the Lease) in the case of a Termination (each such date hereinafter called a "Settlement Date"), the Owner shall, subject to the limitations contained in Section 4.8 hereof, pay to the Vendor (i) in the case of a Casualty Occurrence, a sum equal to the Casualty Value (as defined in Section 7.3 hereof) of such unit suffering a Casualty Occurrence as of such Settlement Date, together with an amount equal to accrued interest thereon and (ii) in the case of a Termination a sum equal to the Termination Value (as defined in Section 7.4 hereof) of all units being terminated as of such Settlement Date, together with an amount equal to accrued interest thereon (as hereinafter provided). The Owner shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or the Termination Value of all units being terminated, as the case may be. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of principal and interest due on such date in respect of CSA

Indebtedness not being prepaid) to prepay, without penalty or premium, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. The Owner shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in Section 4.4 hereof.

7.3. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit). For the purpose of this Section 7.3 and Section 7.4 hereof, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

7.4. Termination Value. The Termination Value of any unit of Equipment subject to the Lease shall be the same as the Casualty Value thereof.

7.5. Obligations upon Payment of Casualty or Termination Value. Upon payment by the Owner to the Vendor of the Casualty Value or Termination Value of any unit of the Equipment having suffered a Casualty Occurrence or having been subject to Termination, as the case may be, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Owner, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Owner, will execute and deliver to the Owner, at the expense of the Owner, an appropriate instrument confirming such passage to the Owner of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Owner may make clear upon the public records the title of the Owner to such unit.

## ARTICLE 8. INSURANCE; CONDEMNATION

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of any unit suffering a Casualty Occurrence, the Vendor shall forthwith pay such insurance proceeds or condemnation payments to the Owner after receipt by the Vendor of the Casualty Value of such unit, together with accrued interest thereon, unless an event of default shall have occurred and be continuing hereunder. All insurance proceeds received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be forthwith paid to the Owner upon proof reasonably satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired, provided that an event of default shall not have occurred and be continuing.

## ARTICLE 9. REPORTS AND INSPECTIONS

On or before March 15 in each year, commencing with March 15, 1983, the Owner shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Owner's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

## ARTICLE 10. MARKING OF EQUIPMENT

The Owner will cause each unit of Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Owner will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed with the Vendor and filed by or on behalf of the Owner in all public offices where this Agreement shall have been filed. Except as aforesaid, the Owner will not allow the name of any person, association or corporation to be placed on any unit of Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee, its subsidiaries and affiliated companies,

and provided, further, that Lessee may make any change in the lettering of the names, trademarks, initials or other insignia at any time and as often as it deems it appropriate to do so.

## ARTICLE 11. COMPLIANCE WITH LAWS

During the term of this Agreement, the Owner will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including without limitation the use, maintenance and operation of the Equipment) with all Applicable Laws and in the event the Applicable Laws require any alteration, replacement or addition of or to any part on any unit of Equipment, the Owner will or will cause any lessee to conform therewith at no expense to the Vendor; provided, however, that the Owner or any lessee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Vendor, materially and adversely affect the property or rights of the Vendor under this Agreement.

## ARTICLE 12. POSSESSION AND USE

12.1. Possession and Use of Equipment by Owner. So long as an event of default shall not have occurred and be continuing under this Agreement, the Owner shall be entitled to the possession of the Equipment and the use thereof from and after delivery of the Equipment by the Builder to the Owner, but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Owner simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights and shall be subject to the remedies of the Vendor under this Agreement. The Lease shall not be amended in any respect or terminated without the prior written consent of the Vendor; provided, however, that the Vendor shall consent to any agreement in writing between the Lessee and the Owner increasing the rentals or Casualty Values or Termination Values payable pursuant to § 3 or § 7 of the Lease and shall consent to any amendment to the Lease which could not, in the opinion of the Vendor, adversely affect the interests of the Investors.

## ARTICLE 13. PROHIBITION AGAINST LIENS

13.1. Owner To Discharge Liens. The Owner will pay or discharge any and all sums claimed by any party from, through or under the Owner or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or any unit thereof or the Lease or the income and proceeds from the Equipment or the Lease and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, materially and adversely affect the security interest of the Vendor in or to the Equipment, its interest in the income and proceeds from the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment or the income and proceeds from the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. The covenant set forth in Section 13.1 will not be deemed breached by reason of liens for taxes, assessments or governmental charges or 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, liens or claims arising hereunder or under the Participation Agreement and the documents contemplated thereby or from the Vendor's acts or out of judgments under appeal and with execution thereon stayed.

13.3. Prohibition Against Liens. The Owner will pay or discharge any and all sums claimed by any party from, through or under the Owner or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any Unit thereof, or the Owner's interests in the Lease and the payments to be made thereunder equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but the Owner shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or

administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or 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.

The foregoing provisions of this Section 13.3 shall be subject to the limitations set forth in Section 4.8 hereof and the provisions of Article 22 hereof; provided, however, that the Owner will pay or discharge any and all taxes, claims, liens, charges or Security interests claimed by any party from, through or under the Owner or its successors or assigns, not arising out of the transactions contemplated hereby (but including taxes arising out of the receipt of the rentals and other payments under the Lease and any other proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Owner's interest in the Lease and the payments to be made thereunder, but the Owner shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interests of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

## ARTICLE 14. INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Owner shall pay and shall protect, indemnify and hold harmless the Vendor, its successors, assigns, agents and servants ("Indemnified Persons"), from and against any and all Indemnified Matters (as defined in § 9.5 of the Lease), except that the Owner

shall not be liable to the Builder in respect of any Indemnified Matter to the extent liability in respect thereof arises from an act or omission of the Builder or is covered by the Builder's warranties or patent indemnities referred to in Articles 2 and 14 hereof. The Owner shall be obligated under this Article 14, whether or not any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Owner under this Article 14 without first resorting to any such other rights of indemnification. To the extent the Owner is required to provide protection or indemnification hereunder, the Owner may select counsel (which will be reasonably acceptable to the Indemnified Person) and direct counsel's actions in respect thereof. In the event the Owner is required to make any payment under this Article 14, the Owner shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Owner agree to give each other written notice of any claim or liability hereby indemnified against promptly upon obtaining knowledge thereof. Upon the payment in full by the Owner of any indemnity as contained in this Article 14, and provided that no event of default described in Section 16.1 hereof or other event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing, the Owner shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of such Indemnified Matter. Any payments received by such Indemnified Person from the Lessee as a result of any Indemnified Matter shall be paid over to the Owner to the extent necessary to reimburse the Owner for indemnification payments previously made by the Owner in respect of such Indemnified Matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring

or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Owner therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. Owner Not Released if Equipment Damaged or Lost. The Owner will bear the responsibility for and risk of any damage to or destruction or loss of each unit of Equipment and shall not be released from its obligations hereunder in any such event.

14.4. Warranties and Patent Indemnities. The agreement of the parties relating to the Builder's warranties of material and workmanship and to patent indemnification is set forth in Items 3 and 4 of Annex A hereto and Article 2 hereof. Such warranties and covenants of patent indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

14.5. Warranties of Builder. The Builder represents and warrants to the Owner that at the time of delivery and acceptance of each unit of Equipment under this Agreement the Owner will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor, the Lessee and the Owner.

The Builder represents that it is not entering into this Agreement or into any other transaction contemplated by the Participation Agreement 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, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

The Builder hereby represents and warrants to the Owner and its successors and assigns that this Agreement

has been duly authorized by the Builder and lawfully executed and delivered by it for a valid consideration and that, assuming due authorization, execution and delivery by the Owner, this Agreement is, insofar as the Builder is concerned, a legal, valid and binding instrument, enforceable against the Builder in accordance with its terms.

## ARTICLE 15. ASSIGNMENTS

15.1. Assignment by Owner. The Owner will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) without the prior written consent of the Vendor (which consent shall not unreasonably nor untimely be withheld) sell, assign, transfer or otherwise dispose of its rights under this Agreement. Any such sale, assignment, transfer or disposition which may be made by the Owner to another party shall be subject to the assumption by such party of all the obligations of the Owner hereunder.

15.2. Assignment by Vendor. All or any of the rights, remedies, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Owner, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to or relieve the Builder from any of the obligations of the Builder to deliver the Equipment to the Owner in accordance herewith or to respond to its warranties and indemnities referred to in Articles 2 and 14 hereof, or relieve the Owner of its obligations to the Builder contained in Articles 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15 or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. Notice of Assignment by Vendor. Upon any such assignment pursuant to Section 15.2 hereof, the assignor shall give written notice to the Owner and the Lessee, together with a copy of such assignment, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Owner of the notification of any

such assignment, all payments thereafter to be made by the Owner under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct. The Owner shall have no obligation to any assignee prior to actual receipt by the Owner of written notice of any such assignment.

15.4. No Setoff Against CSA Indebtedness. The Owner recognizes that this Agreement will be assigned to the Agent as provided in the CSA Assignment. The Owner expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Agent to the entire unpaid CSA Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Owner arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or with respect to any indemnity herein contained or arising by reason of any other indebtedness or liability at any time owing to the Owner or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Owner against and only against the Builder.

## ARTICLE 16. DEFAULTS

16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness. In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Owner shall fail to pay or cause to be paid in full any sum payable by the Owner when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 22 hereof or any other provision of this Agreement limiting the liability of the Owner) and such default shall continue for 10 business days; or

(b) default shall be made in the observance or performance of any other of the conditions and agree-

ments on the part of the Owner (irrespective of the provisions of Article 4 or 22 hereof or any other provision of this Agreement limiting the liability of the Owner) or the Lessee or the Guarantor, as the case may be, contained herein or in the Participation Agreement, the CSA Assignment, the Lease Assignment, the Guarantee or the Consent and such default shall continue for 30 days after written notice from the Vendor to the Owner and the Lessee specifying the default and demanding that the same be remedied; or

(c) 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 Owner, the Lessee or the Guarantor 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 Owner under this CSA, the CSA Assignment, the Lease and the Lease Assignment, or of the Lessee under the Lease and the Consent, or of the Guarantor under the Guarantee and the Consent, as the case may be, shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees; or

(d) any other proceeding shall be commenced by or against the Owner, the Lessee or the Guarantor for any relief which includes or might result in any modification of the obligations of the Owner under this CSA, the CSA Assignment, the Lease and the Lease Assignment, or of the Lessee under the Lease and under the Consent or of the Guarantor under the Guarantee and under the Consent under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been

commenced, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or the Guarantor, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers; or

(e) any Event of Default under and as defined in the Lease unless the Owner shall have cured the corresponding event of default hereunder within five business days after notice to the Owner of such event of default; provided, however, no event of default shall be deemed to have occurred hereunder if such Event of Default under the Lease shall have arisen as a result of the failure of the Lessee to make any Excluded Payment (as defined in the Lease Assignment) unless and until the Owner shall notify the Vendor in writing that it deems such failure to be an event of default; provided further, that if more than four Events of Default or more than two consecutive Events of Default within 12 calendar months shall have occurred under clause (a) of § 10.1 of the Lease, any such Event of Default shall be an event of default hereunder whether or not the corresponding event of default hereunder is cured;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Owner and the Lessee, and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the term of the Lease immediately upon such notice to terminate; provided, however, that such termination shall not be in derogation of or impair the rights of the Owner or the Agent (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under § 10 of the Lease (subject to the Agent's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Owner or the Agent (under the assignment thereof), as the case may be, to sue for and recover damages provided for in § 10 of the Lease upon the occurrence of an Event of Default under the Lease, and/or (ii) declare ("Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest

thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Owner wherever situated, subject to the provisions of Articles 4 and 22 hereof. The Owner shall promptly notify the Vendor and the Lessee of any event of which it has knowledge which constituted, constitutes, or with the giving of notice or lapse of time or both would constitute an event of default under this Agreement.

Notwithstanding anything hereinabove to the contrary, the Vendor will not cause the Lease to terminate and exercise its rights under Article 17 hereof unless it shall have given not less than 15 days' prior notice to the the Owner of its intention so to do. During such period the Owner may prepay all but not less than all of the outstanding CSA Indebtedness together with accrued interest.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Owner and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this Section, time is of the essence of this Agreement and no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

## ARTICLE 17. REMEDIES

17.1. Vendor May Take Possession of Equipment. At any time during the continuance of a Declaration of Default and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be

taken by the Vendor, the Vendor may take or cause to be taken by its agent or agents immediate possession of the Equipment or one or more of the units thereof without liability to return to the Owner any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Owner, the Lessee, the Guarantor or any other person and for such purpose may enter upon the premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Owner or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment, the Owner shall at its own expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) place such units upon such storage tracks as the Vendor reasonably may designate;

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor (but such storage period shall not exceed 120 days if the Vendor is under no legal impediment to sell, lease or otherwise dispose of such units); and

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

During any storage period, the Owner will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and the Owner acknowledges that upon application to any court

of equity having competent jurisdiction the Vendor shall be entitled to a decree requiring specific performance hereof. The Owner hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of Equipment in any commercially reasonable manner.

17.3. Vendor May Dispose of or Retain Equipment. At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as provided in Section 17.1 hereof) may, at its election, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Owner and the Lessee by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Owner's rights in the Equipment shall thereupon terminate and all payments made by the Owner may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Owner, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid, including penalty interest, and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner; provided, further, that if the Owner, the Lessee or any other persons notified under the terms of this Section object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Owner's Right of Redemption. At any time during the continuance of a Declara-

tion of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Owner, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment or one or more of the units thereof free from any and all claims of the Owner, the Lessee or any other party claiming from, through or under the Owner or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Owner should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner. The proceeds of such sale or other disposition, less the reasonable attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Owner or the Lessee may bid for and become the purchaser of the Equipment or any unit thereof so offered for sale. The Owner and the Lessee shall be given written notice of such sale not less than 10 days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Owner to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price.

In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Owner or the Lessee (except to the extent of surplus money received as provided in Section 17.7 hereof) and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Owner shall not otherwise alter or affect the Vendor's rights or the Owner's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Owner's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. Deficiency or Surplus. If there shall remain any amount due to the Vendor under the provisions of this Agreement after applying all sums of money realized by the Vendor under the remedies herein provided, the Owner shall, subject to the limitations of Section 4.8 hereof and of Article 22 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate and, if the Owner shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Owner. If there shall remain a surplus in the possession of the Vendor after applying as aforesaid all sums realized by the Vendor, such surplus shall be paid forthwith to the Owner.

17.8. Expenses. Subject to the limitations of Section 4.8 and Article 22 hereof, the Owner will pay all rea-

sonable fees, costs and expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

## ARTICLE 18. APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall be ineffective as to such jurisdiction without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Owner to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Owner, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, including notice of intention to take possession of or to sell or lease the Equipment or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

## ARTICLE 19. FILING

The Owner will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and in all other places required by § 15 of the Lease; and the Owner will from time to time perform any other act and will execute, acknowledge, deliver and file any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of

its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Owner will promptly furnish to the Vendor certificates or other evidence of such filing satisfactory to the Vendor.

ARTICLE 20. HEADINGS; MODIFICATION OF AGREEMENT

All article and section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement and the Exhibits thereto, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Owner with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Owner. Any reference herein to this Agreement or any other agreement shall mean such agreement and all amendments and supplements hereto or thereto then in effect.

ARTICLE 21. NOTICES

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered, telexed or mailed to it by first class mail, postage prepaid, at its chief place of business at the following specified address:

(a) to the Builder at its address specified in Item 1 of Annex A hereto;

(b) to the Owner, at Four Embarcadero Center, San Francisco, California 94111, Attention of Manager, Operations Department-LEV;

(c) to the Lessee, at 2223 Dodge Street, Omaha, Nebraska 68102, Attention of Controller;

(d) to the Agent, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department;

(e) to any assignee of the Vendor or of the Owner, at such address as may have been furnished in writing to the Owner, or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. IMMUNITIES; SATISFACTION OF UNDERTAKINGS

22.1. No Recourse Against Certain Persons. No recourse shall be had in respect of any contractual obligation due under this Agreement or referred to herein against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise; all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

22.2. Satisfaction of Certain Covenants. The obligations of the Owner under Sections 7.1, 17.2, 17.7 and 17.8 and under Articles 6, 9, 10, 11, 13 (except as set forth in the proviso in the third paragraph of Section 13.3 thereof), 14 and 19 hereof and any and all obligations at any time arising thereunder shall be deemed satisfied in full in all respects by the Lessee's execution and delivery of the Lease. The Owner shall not have any responsibility for the Lessee's failure to perform such obligations; but if the same shall not be performed, they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof.

ARTICLE 23. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with 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, such additional rights, if any, arising out of the filing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof may be filed or in which any unit of Equipment shall be located and such rights, if any, arising out of the marking of Equipment.

ARTICLE 24. EXECUTION

This Agreement may be executed in any number of counterparts, 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 both the Vendee and the Builder so long as each such party has executed and delivered to the other one counterpart hereof. Although for convenience this Agreement is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

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

ACF INDUSTRIES, INCORPORATED,

[Corporate Seal]

by

_____
Vice President

Attest:

_____
Secretary

SECURITY PACIFIC EQUIPMENT LEASING, INC.,

[Seal]

by Reanne Halstad

CONTRACT ADMINISTRATOR

Attest: Marc L Marker

Assistant Secretary

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

On this day of 1982, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, a New Jersey 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.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF CALIFORNIA, )
) ss.:
COUNTY OF SAN FRANCISCO,)

On this 5th day of MARCH 1982, before me personally appeared LEANNE HARSTAD, to me personally known, who, being by me duly sworn, says that she is a CONTRACT ADMINISTRATOR of SECURITY PACIFIC EQUIPMENT LEASING INC., a Delaware corporation, that one of the seals affixed to the foregoing instrument is the 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.

OFFICIAL SEAL
GAIL D. SMEDAL
Notary Public-California
City and County of
SAN FRANCISCO
My Commission Expires April 21, 1985

[Notarial Seal]

Gail D. Smedal
Notary Public

My Commission expires 4/21/85

SCHEDULE I

ALLOCATION SCHEDULE OF EACH $1,000,000 OF CSA INDEBTEDNESS PAYABLE IN (i) ONE PAYMENT OF INTEREST ONLY ON JUNE 30, 1982, AND (ii) 38 SEMIANNUAL INSTALLMENTS OF PRINCIPAL AND INTEREST COMMENCING DECEMBER 30, 1982

| Installment No. | Total Payment | Interest Payment | Principal Recovery | Remaining Ending Principal |
|---|---|---|---|---|
| 6/30/82 | $ * | $ * | $ -0- | $1,000,000.00 |
| 1 | 87,441.57 | 80,000.00 | 7,441.57 | 992,558.42 |
| 2 | 87,441.57 | 79,404.67 | 8,036.90 | 984,521.52 |
| 3 | 87,441.57 | 78,761.72 | 8,679.85 | 975,841.67 |
| 4 | 87,441.57 | 78,067.33 | 9,374.24 | 966,467.43 |
| 5 | 87,441.57 | 77,317.39 | 10,124.18 | 956,343.26 |
| 6 | 87,441.57 | 76,507.46 | 10,934.11 | 945,409.14 |
| 7 | 87,441.57 | 75,632.73 | 11,808.84 | 933,600.30 |
| 8 | 87,441.57 | 74,688.02 | 12,753.55 | 920,846.75 |
| 9 | 87,441.57 | 73,667.74 | 13,773.83 | 907,072.92 |
| 10 | 87,441.57 | 72,565.83 | 14,875.74 | 892,197.18 |
| 11 | 82,891.93 | 71,375.77 | 11,516.15 | 880,681.03 |
| 12 | 82,106.47 | 70,454.48 | 11,651.99 | 869,029.04 |
| 13 | 81,459.91 | 69,522.32 | 11,937.58 | 857,091.45 |
| 14 | 80,811.92 | 68,567.32 | 12,244.60 | 844,846.85 |
| 15 | 80,147.45 | 67,587.75 | 12,559.70 | 832,287.15 |
| 16 | 79,474.22 | 66,582.97 | 12,891.25 | 819,395.90 |
| 17 | 78,783.25 | 65,551.67 | 13,231.58 | 806,164.32 |
| 18 | 78,082.47 | 64,493.15 | 13,589.33 | 792,574.99 |
| 19 | 77,362.87 | 63,406.00 | 13,956.87 | 778,618.12 |
| 20 | 96,063.46 | 62,289.45 | 33,774.01 | 744,844.11 |
| 21 | 84,967.67 | 59,587.53 | 25,380.15 | 719,463.96 |
| 22 | 83,377.42 | 57,557.12 | 25,820.30 | 693,643.66 |
| 23 | 82,140.35 | 55,491.49 | 26,648.86 | 666,994.80 |
| 24 | 80,888.86 | 53,359.58 | 27,529.27 | 639,465.53 |
| 25 | 79,597.74 | 51,157.24 | 28,440.50 | 611,025.03 |
| 26 | 78,273.45 | 48,882.00 | 29,391.45 | 581,633.58 |
| 27 | 76,906.02 | 46,530.69 | 30,375.34 | 551,258.24 |
| 28 | 75,502.41 | 44,100.66 | 31,401.75 | 519,856.49 |
| 29 | 74,052.57 | 41,588.52 | 32,464.05 | 487,392.43 |
| 30 | 72,563.33 | 38,991.39 | 33,571.94 | 453,820.50 |
| 31 | 71,024.52 | 36,305.64 | 34,718.88 | 419,101.61 |
| 32 | 69,518.73 | 33,528.13 | 35,990.60 | 383,111.01 |
| 33 | 67,961.92 | 30,648.88 | 37,313.04 | 345,797.98 |
| 34 | 66,428.98 | 27,663.84 | 38,765.14 | 307,032.84 |
| 35 | 64,839.72 | 24,562.63 | 40,277.09 | 266,755.75 |
| 36 | 97,513.89 | 21,340.46 | 76,173.43 | 190,582.32 |
| 37 | 106,872.70 | 15,246.59 | 91,626.11 | 98,956.20 |
| 38 | 106,872.70 | 7,916.50 | 98,956.20 | (-.00) |
| | $3,157,124.89 | $2,157,124.89 | $1,000,000.00 | $ (-.00) |

* Interest only on the CSA Indebtedness accrued to this date shall be payable pursuant to Article 4 hereof.

ANNEX A
TO
CONDITIONAL SALE AGREEMENT

Information Relating to Building of Equipment

Item 1: ACF Industries, Incorporated
750 Third Avenue
New York, N. Y. 10017.

Item 2: The Equipment shall be settled for in five groups unless the parties hereto shall otherwise agree.

Item 3: The Builder warrants that the Equipment built by it will be built in accordance with the requirements, Specifications and standards set forth in Article 2 of the CSA to which this Annex A is attached (this "Agreement") and warrants its Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service. If any unit of the Equipment covered by the above warranty does not meet the above warranty, within one year after the date of the acceptance of such unit by the Owner, the Builder shall thereupon correct such defect (including nonconformance with the requirements, Specifications and standards set forth in Article 2 of this Agreement), either by (1) repairing or replacing such defective part or parts of any unit of the Equipment, provided that the Owner or the Lessee notifies the Builder in writing promptly after discovery of such defect, and at the expense of the Lessee, makes such defective unit or units of the Equipment promptly available at the Builder's plant for any repair, or by (2) making available at the Builder's plant the necessary repaired or replacement parts, as appropriate and agreed to by the parties. EXCEPT FOR THE OBLIGATIONS AND LIABILITIES OF THE BUILDER UNDER ARTICLES 2, 3, 4 AND 13 OF THE AGREEMENT, THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, LIABILITY FOR LOST PROFIT OR FOR

INDIRECT, INCIDENTAL, CONSEQUENTIAL OR COMMERCIAL LOSSES, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES, AND THE BUILDER DOES NOT ASSUME OR AUTHORIZE ANY PERSON TO ASSUME CONSTRUCTION AND DELIVERY OF THE EQUIPMENT EXCEPT AS AFORESAID. IT IS FURTHER UNDERSTOOD AND AGREED THAT IN NO EVENT SHALL THE BUILDER BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Owner of any of its rights under this Item 3.

Item 4: The Builder agrees to indemnify, protect and hold harmless the Owner and the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Owner or the Lessee because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right, except any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Owner or the Lessee because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination specified by the Lessee and not developed or purported to be developed by the Builder or any article or material specified by the Lessee and not manufactured by the Builder. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment, on the ground that any such design,

system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

Item 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is $26,218,720 (110% of $23,835,400).

ANNEX B
TO
CONDITIONAL SALE AGREEMENT

Units of Railroad Equipment

| | Type | AAR Mechanical Designation | Plant | Quantity | Lessee's Identification Numbers (Inclusive) | Unit Base Price | Total Base Price | Estimated Time and Place of Delivery |
|---|---|---|---|---|---|---|---|---|
| (1) | 100 Ton CF 5251 Steel Center Flow Hopper Cars | LO<br>L 254 | Milton, Pa. | 400 | NPCX 7150-7549 | $56,000 | $22,400,000 | Feb.-June, 1982, at Builder's plant or other points designated by the Lessee. |
| (2) | Lining Costs | — | — | 400 | — | 2,300 | 920,000 | |
| (3) | Freight | — | — | 400 | — | 1,288 | 515,200 | |
| | | | | | | | $23,835,200 | |

Annex C to the
Conditional Sale Agreement

[CS&M Ref. 4876-031]

# LEASE OF RAILROAD EQUIPMENT

Dated as of February 1, 1982

Between

NORTHERN PETROCHEMICAL COMPANY,
Lessee,

and

SECURITY PACIFIC EQUIPMENT LEASING, INC.,
as Lessor.

[Covering 400 covered hopper cars]

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of THE CONNECTICUT BANK AND TRUST COMPANY, as Agent for one or more institutional investors. The original of this Lease is held by said Agent.

LEASE OF RAILROAD EQUIPMENT dated as of February 1, 1982, between NORTHERN PETROCHEMICAL COMPANY, a Delaware corporation ("Lessee"), and SECURITY PACIFIC EQUIPMENT LEASING, INC., a Delaware corporation ("Owner").

Pursuant to a Participation Agreement dated as of the date hereof ("Participation Agreement") among the Lessee, InterNorth, Inc. ("Guarantor"), the Owner, The Connecticut Bank and Trust Company, acting as agent for certain investors (said bank, as so acting, together with its successors and assigns, "Vendor") and said investors ("Investors"), the Owner is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with ACF Industries, Incorporated, a New Jersey corporation ("Builder"), by which the Builder has agreed to sell and deliver to the Owner the units of railroad equipment described in Schedule A hereto ("Equipment").

The Builder is assigning its interests in the CSA to the Vendor under an Agreement and Assignment dated as of the date hereof ("CSA Assignment").

The Lessee desires to lease such units of the Equipment as are delivered and accepted and settled for under the CSA ("Units") at the rentals and for the terms and upon the conditions hereinafter provided.

The Guarantor will execute and deliver a guarantee, substantially in the form attached as Exhibit F to the Participation Agreement ("Guarantee"), pursuant to which the Guarantor will guarantee unconditionally the payment by the Lessee of all its obligations under this Lease, an Indemnity Agreement, substantially in the form attached as Exhibit E to the Participation Agreement ("Indemnity Agreement"), and the Participation Agreement.

The Owner will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") and the Lessee and the Guarantor will consent to the Lease Assignment pursuant to the Consent and Agreement dated as of the date hereof ("Consent").

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

## § 1. NET LEASE

1.1. Net Lease. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Lessee shall not be entitled to any abatement of rent or of other amounts due hereunder, reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner under this Lease or under the CSA, including the Lessee's rights by subrogation thereunder against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner 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 of Equipment 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 or approval of this Lease, any present or future 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.

1.2. Recovery From Owner. 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 Owner or the Vendor for any reason whatsoever. Notwithstanding the foregoing, nothing herein shall be deemed to prevent the Lessee from bringing an independent action against the Owner as a result of any default by the Owner in performance of its obligations hereunder.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Owner hereby appoints the Lessee its agent for inspection and acceptance of the Units and the related lining costs and freight charges pursuant to Section 3.4 of the CSA. Each delivery of a Unit to the Owner under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Owner under the CSA. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect same, and if such Unit is found to be acceptable, to accept delivery of such unit on behalf of the Owner under the CSA and itself hereunder and execute and deliver to the Owner a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Section 3.4 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The Lessee hereby represents and warrants to the Owner that no Unit shall be put into service by the Lessee or any person under the control of or with the consent of the Lessee earlier than the date of delivery to and acceptance by the Lessee as agent for the Owner hereunder. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to Section 4.1 thereof shall be null and void and ineffective to subject such Unit to this Lease.

## § 3. RENTALS

3.1. Amount and Date of Payment. The Lessee will pay to the Owner as rental for each Unit subject to this Lease, 38 consecutive semiannual payments, payable in arrears

on January 1 and July 1 each year, commencing January 1, 1983. The first 19 semiannual rental payments shall each be in an amount equal to 5.8222% of the Purchase Price (as defined in the CSA) of each Unit subject to this Lease on the date of such payment and the last 19 semiannual rental payments shall each be in an amount equal to 7.1160% of the Purchase Price of each Unit subject to this Lease on the date of such payment. If the Owner receives any funds from the Agent pursuant to the last sentence of the second paragraph of Section 10.1 of the Participation Agreement, the first semiannual rental payment shall be reduced by an amount equal to the amount of the funds so received.

In addition to the foregoing rentals, the Lessee will pay to the Owner on each Deposit Date (as defined in the Participation Agreement) an amount equal to the interest accrued on the CSA Indebtedness held by the Interim Investor (as defined in the Participation Agreement) on such Deposit Date, and the Owner agrees to apply such amounts to the payment of such accrued interest to the Interim Investor.

In addition to the foregoing rentals, the Lessee agrees to pay to the Owner as additional rentals amounts equal to the amounts required by the Owner to make the payments provided for in the penultimate sentence of Section 2.5 and in clause (a) of the third paragraph of Section 10.1 of the Participation Agreement on the dates required for such payments, and the Owner agrees to apply such rentals for such purposes.

In no event shall the aggregate of the foregoing rentals be less than the amounts required to enable the Owner to satisfy its obligations to pay when due the CSA Indebtedness and interest thereon.

3.2. Payment on Nonbusiness Day. If any of the semiannual rental payment dates provided herein is not a business day (as such term is defined in the CSA) the rental payment otherwise payable on such date shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

3.3. Instructions To Pay Vendor and Owner. Until the Vendor notifies the Lessee that the CSA is no longer in effect, the Owner irrevocably instructs the Lessee to make

all the payments due the Owner provided for in this Lease (other than Excluded Payments as defined in the Lease Assignment) to the Vendor, for the account of the Owner in care of the Vendor. The Owner has instructed the Vendor (a) first to apply such payments to satisfy the obligations of the Owner under the CSA known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Owner or to the order of the Owner in immediately available funds at such place as the Owner shall specify in writing. The Lessee shall have no responsibility with respect to the application by the Vendor of payments made by it in accordance with the first sentence of this paragraph.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for in § 3.1 hereof in immediately available funds at or prior to 11:00 a.m., Hartford, Connecticut, time, at the office of the Vendor on the date due, or, if the CSA shall no longer be in effect, at the office of the Owner.

## § 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to §§ 3, 6, 7, 9, 13 and 15 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights and obligations of the Vendor under the CSA until all obligations of the Owner under the CSA have been satisfied. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term; provided, however, that so long as (i) no Event of Default exists

hereunder, (ii) the Lessee and the Guarantor are complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment under § 12 hereof.

## § 5. IDENTIFICATION MARKS

The Lessee will 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 in letters not less than one inch in height, the words, "OWNED BY A LEASING COMPANY. OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION.", or other appropriate words designated by the Vendor or the Owner, with appropriate changes thereof and additions thereto as from time to time may be designated by the Owner or the Vendor as required by law or reasonably requested in order to protect the Owner's and the Vendor's title to and interest in such Unit and the rights of the Owner under this Lease and of the Vendor under the CSA. Any cost involved in changing the specified legend which is not required law shall be borne by the party requesting the change. The Lessee will not place or permit any such Unit to be placed 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 or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed 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 Vendor and the Owner and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Owner an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Owner's interests in such Unit and no filing, recording, deposit or giving of notice with or to any other Federal, state or local

government or agency thereof is necessary to protect the interests of the Vendor and the Owner in such Unit.

Except as above provided, 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 Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee or any of its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Equipment under this Lease, and the Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Lessee therein.

The Lessee may make any change in the lettering of the names, trademarks, initials or other insignias at any time and as often as it deems it appropriate to do so. At the expiration of the Lease or any extension hereof, the Owner will promptly remove, at the Lessee's sole expense, the Lessee's names, trademarks, initials or other insignias and will not allow the Units to be used or operated without first removing same.

## § 6. TAXES

All payments to be made by the Lessee hereunder will be free of expense to the Owner for collection or other charges and will be free of expense to the Owner with respect to the amount of all withholdings of any nature whatsoever, and if any withholding is required, the Lessee shall pay an additional amount of rental such that the net amount of rental actually received by the Owner will equal the amount of rental then due absent such withholding. The Lessee agrees to pay, and on demand to indemnify and hold harmless, the Owner, the Vendor and the Investors and their respective agents, servants, successors and assigns ("Indemnified Persons") from all local, state, Federal or foreign license, documentation, recording and registration fees, and all taxes (including sales, use, property, real or personal, tangible or intangible, interest equalization, stamp and transfer taxes), levies, imposts, duties, assessments, fees, charges or withholdings of any nature whatsoever, together with any penalties, additions to tax, fines or interest thereon imposed or levied against or with respect to the Lessee, any Unit or any part thereof by

any authority asserting jurisdiction to impose or collect any tax upon or with respect to (i) any Unit or any part thereof, (ii) the purchase, acquisition, acceptance, rejection, construction, manufacture, ownership, delivery, nondelivery, leasing, possession, use, operation, repair, maintenance, modification, disservicing, rebuilding, sale, return, assembly, rental, condition, transportation, abandonment, importation, exportation or, upon an occurrence of an Event of Default, other application or disposition of all or any part of any interest in any Unit, (iii) the payment of rent or the receipts or earnings arising from any Unit or any part thereof, (iv) the payment of principal of, or interest or other amounts payable on CSA Indebtedness, (v) this Lease, the Participation Agreement, CSA, the Certificates of Interest or the issuance, acquisition or subsequent transfer thereof, (vi) the payment of any amount pursuant to any document referred to in clause (v) above, or (vii) otherwise with respect to or in connection with the transactions contemplated by this Lease (all such license, documentation, recording and registration fees, taxes, levies, imposts, duties, assessments, fees, charges, withholdings, penalties, fines, additions to taxes and interest imposed as aforesaid being herein referred to collectively as "Impositions"). The foregoing provisions of this § 6 shall not apply to the following:

(a) any United States Federal income tax;

(b) the aggregate of (i) all state and city income taxes and franchise taxes measured by net income, (ii) gross income or gross receipts taxes which are imposed in lieu of net income and franchise taxes and other than gross receipts taxes in the nature of sales or use taxes, and (iii) any excess profits taxes and similar taxes or general corporation, franchise or like taxes measured by the Owner's capital, capital stock or net worth.

The Lessee hereby also agrees to keep at all times all and every part of every Unit free and clear of all Impositions which might in any way affect the title of the Owner or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith such imposi-

tions pursuant to the last paragraph of this § 6 and the nonpayment thereof does not, in the advance opinions of independent counsel to the Owner and the Vendor, adversely affect the title, property or rights of the Owner hereunder or the rights of the Vendor under the CSA and the Lease Assignment. If any Impositions shall have been charged or levied against the Owner or the Vendor directly and paid by the Owner or the Vendor, the Lessee shall reimburse the Owner or the Vendor on presentation of an invoice therefor.

The amount which the Lessee shall be required to pay in accordance with this § 6 shall be an amount which, after deduction of all taxes and other charges in respect of the receipt of such amount under the laws of any Federal, state or local government or taxing authority in the United States or under the laws of any foreign country or subdivision or any taxing authority thereof or therein, is sufficient to restore such Indemnified Person to the same net after-tax position that they would have been in had the Impositions giving rise to such payments not been imposed. The amount to be paid to the Indemnified Person pursuant to the preceding sentence shall be determined in the first instance by the Indemnified Person; if such determination is not acceptable to the Lessee, the Lessee shall at its own expense retain an independent firm of certified public accountants reasonably acceptable to such Indemnified Person, which firm's determination shall be conclusive and binding.

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

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

If claim is made against an Indemnified Person for any Imposition indemnified against under this § 6, the Indemnified Person shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Indemnified Person shall, at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Impositions by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings or both. The Lessee may also contest, at its own expense, the validity, application or amount of such Impositions in the name of the Indemnified Person (with counsel reasonably satisfactory to such Indemnified Person) or in its own name. The Lessee agrees to give the Indemnified Person reasonable notice of such contest prior to the commencement thereof. If the Indemnified Person shall obtain a refund of all or any part of such Impositions previously reimbursed by the Lessee or any amount representing interest thereon, the Indemnified Person shall pay the Lessee the amount of such refund or interest net of expenses. If the Indemnified Person shall actually receive any future additional tax or other benefit from any item with respect to which the Lessee has indemnified the Indemnified Person pursuant to this § 6, the Indemnified Person shall pay to the Lessee the amount of such benefit together with the amount of any tax benefit arising from any payment pursuant to this sentence.

## § 7. PAYMENT FOR CASUALTY OCCURRENCES, INSURANCE, ECONOMIC OBSOLESCENCE

7.1. Definition of Casualty Occurrence; Payments. In the event that any Unit shall be or become lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 365 consecutive days, except requisition for use by the United States Government ("Government") for a period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, or until such Unit shall have been returned in the manner provided in § 11 or 13 hereof, the Lessee shall within 30 days after it shall have reasonably determined that such Unit

has suffered a Casualty Occurrence notify the Owner and the Vendor with respect thereto specifying the date, cause and extent of such Casualty Occurrence. On the semiannual rental payment date next succeeding the delivery of such notice (or, in the event the term of this Lease has already expired or will expire within 10 days after delivery of such notice, on a date within 10 days of such delivery), the Lessee shall pay to the Owner an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as defined in the next sentence) of such Unit as of the date of such payment in accordance with the schedule referred to hereafter. The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner shall be entitled to recover possession of such Unit at its own expense.

If the date upon which the making of such payment by the Lessee in respect of any Unit as required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit shall pay interest thereon from the end of such term to the date of such payment at the rate of 16% per annum. However, if the Casualty Occurrence occurs after this Lease has expired, the Lessee shall pay interest thereon at the rate of 16% per annum commencing 10 days after such Casualty Occurrence to the date of such payment.

7.2. Lessee Agent for Disposal. The Owner hereby appoints the Lessee, at the Lessee's expense, its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable by the Lessee upon exercise of reasonable efforts on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner and is not in default hereunder, the Lessee shall be entitled to the proceeds of such disposition to the extent they do not exceed the Casualty Value of such Unit, plus any disposition expenses of the Lessee.

7.3. Requisition by United States Government. In the event of the requisition for use by the Government of any Unit for a period which does not exceed the term of this Lease, all the obligations of the Lessee under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Owner or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default or Default shall have occurred and be continuing.

7.4. No Release. 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 until expiration of this Lease and Lessee's obligations under §§ 11 and 13 hereof.

7.5. Insurance. The Lessee shall, at all times prior to the return of the Equipment to the Owner, at its own expense, cause to be carried and maintained public liability insurance and all risk property damage insurance in respect of the Units, naming the Owner and the Vendor as additional named insureds and, in the case of property damage insurance, as loss payees, as their interests may appear, at least in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it; provided, however, that, subject to availability, the amount of such public liability coverage shall not, at any time, be less than $50 million per occurrence, and any deductible thereunder shall not, at any time, exceed $1 million per occurrence; provided, however, that the Lessee may in the future request that the Owner and the Vendor consent to a higher deductible in the event that inflation or an improved financial position of the Lessee makes that reasonable, and the Owner and the Vendor will not unreasonably withhold such consent. The Lessee may, in the case of the all risk property damage insurance, self-insure such Units to the extent that such self-insurance is (i) consistent with prudent industry practice and, in any event, (ii) in an amount (considered in relation to the then current value thereof) no greater than the amount of self-insurance maintained with respect to other similar equipment, if any, then owned or leased by the Lessee (considered in relation to the then current value of such

similar equipment). In no event shall the coverage of the all risk property damage insurance with respect to any Unit at any time be less than the applicable Casualty Value for such Unit.

The Lessee shall obtain from each insurer under the paragraph immediately above an agreement, by endorsement or separate instrument, that such insurer will give the Owner and the Vendor 30 days' written notice before such insurer's policy shall be materially altered or canceled or not renewed. On or before April 30 of each year, the Lessee shall deliver to the Owner and the Vendor a certificate of insurance by or on behalf of each insurer stating the coverage, named insureds and limits of each such policy. Any policies of insurance carried in accordance with this paragraph shall in addition waive any right to claim premiums or commissions against the Owner and the Vendor and such policies shall provide that in respect of the interests of the Owner and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Owner and the Vendor, respectively) and shall insure the Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Owner or the Vendor, respectively).

7.6. Insurance Proceeds and Condemnation Payments. Provided that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment to the Owner of the Casualty Values and accrued rentals in respect of Units suffering a Casualty Occurrence, if the Owner shall receive (directly or from the Vendor) any insurance proceeds from a policy or policies obtained by the Lessee or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Owner shall pay forthwith such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to any Unit theretofore paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Owner.

7.7. Economic Obsolescence. During the original term of this Lease, in the event that the Lessee shall, in its reasonable judgment, determine that some of or all the Units remaining under this Lease have become economically obsolete or surplus to the Lessee's requirements in the

Lessee's business and an officer of the Lessee shall have provided a certificate to such effect to the Owner and the Vendor, the Lessee shall have the right, at its option and on at least 120 days' prior written notice to the Owner-Trustee, to terminate (which act shall hereinafter be called the "Termination") this Lease as to not less than 50 of such Units (or such lesser number of Units as are then subject to this Lease) as of any succeeding rental payment date specified in such notice occurring more than 120 days thereafter (such termination date so specified being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than the 14th semiannual rental payment date, (ii) no Event of Default or Default shall have occurred and be continuing on such date and (iii) on the Termination Date all such Units subject to Termination shall be in the condition required for redelivery pursuant to § 14 hereof.

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

On such Termination Date, the Lessee shall pay to the Owner with respect to each such Unit an amount equal to (i) the excess, if any, of the Termination Value (as hereinafter defined) for each such Unit computed as of such date over the sale price of any such Unit so sold after the deduction of all expenses incurred by the Owner in connection with such sale and (ii) the rental payment with respect to each such Unit due on such Termination Date. The Termination Value of each such Unit as of the Termination Date on which payment is to be made shall be that percentae of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date. In no event shall the aggregate amount of sale proceeds retained by the Owner and payments of rental and Termination Value received by the Owner as

aforesaid be less than the "Termination Value" (as defined in Section 7.4 of the CSA) with respect to such Units as of such Termination Date.

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

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

If the Lessee shall exercise its option to effect a Termination, the Owner may, notwithstanding such election by the Lessee, by written notice to the Lessee, the Vendor and the Investors given within 60 days after the termination notice is given to the Owner and upon satisfaction and discharge of the Owner's obligations under the CSA with respect to any such Unit on the Termination Date, elect to retain such Unit. In the event the Owner shall so elect to retain such Unit and delivers to the Lessee evidence of the satisfaction and discharge of the Owner's obligations under the CSA with respect to such Unit, the Lessee shall not be obligated to pay the Termination Value to the Owner and the Lessee shall deliver such Unit to the Owner in accordance with the provisions of § 14 hereof.

## § 8. REPORTS

On or before March 15 in each year, commencing with March 15, 1983, the Lessee will furnish to the Owner and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the

amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and the CSA have been preserved or replaced, (c) providing reports of mileage or percent of utilization of Units in the States where Units are utilized sufficient for the Owner to complete income tax return entries for such States and (d) providing such data with respect to the use of the Units and any other information that is reasonably requested by the Owner and required in order to determine the amount of any income, gain or loss attributable to this Lease. The Owner shall, at its sole cost and expense, have the right, after giving prior written notice, by its agents to inspect the Units and the Lessee's records with respect thereto during normal business hours of the Lessee as the Owner may request as may be reasonably necessary to confirm to the Owner the existence of proper maintenance of the Units during the continuance of this Lease.

## § 9. DISCLAIMER OF WARRANTIES; COMPLIANCE WITH LAWS AND RULES; MAINTENANCE; INDEMNIFICATION

9.1. Disclaimer of Warranties. THE OWNER DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND THE OWNER DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR USE OR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Owner and the Lessee, are to be borne by the Lessee; but the Owner 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 Owner and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner may have against the Builder or any other person, including, but not limited to, any claims and rights arising under the provisions of the CSA. The Owner shall not have any responsibility or liability to the Lessee or any other person or entity with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner 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 Owner based on any of the foregoing matters.

9.2. Compliance with Laws and Rules. The Lessee agrees, for the benefit of the Owner and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which 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 ("Applicable Laws"), to the extent that such laws and rules affect the title, maintenance, operation or use of the Units and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Owner or the Vendor, adversely affect the property or rights of the Owner or the Vendor under this Lease or under the CSA.

9.3. Maintenance. The Lessee agrees that, at

its own cost and expense, it will maintain and keep each Unit (including any lining and parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order and repair, ordinary wear and tear from the careful and proper use thereof excepted.

9.4. Additions and Accessions. The Lessee shall notify the Owner of, and shall, at the Lessee's sole cost and expense, make or provide all improvements, alterations, modifications, additions, attachments, or other equipment, or changes ("Improvements") to the Units or any of them deemed necessary or desirable by any Federal, state or local governmental body or agency or the interchange rules of the Association of American Railroads ("legally required Improvements"). Any legally required Improvement and any other Improvements which are not readily removable without causing material damage to a Unit ("nonserverable Improvements") shall be and immediately become the property of the Owner and subject to the terms of this Lease. So long as the Lessee is not in default hereunder, the Lessee may , upon notice to the Owner, at the Lessee's sole cost and expense, make other nonseverable Improvements to a Unit, which are not legally required Improvements; provided, however, that (1) the value of such Unit is not reduced thereby, (2) such Improvements will not cause such Unit to become limited use property, or materially alter or reduce its general usefulness, (3) such Improvements will not increase the productivity or capacity of such Unit in excess of 25% and (4) the cumulative deflated cost (as defined in Rev. Proc 79-48) of any and all such nonseverable Improvements, exclusive of any legally required Improvements involving compliance with health, safety and environmental standards, does not exceed 10% of the Owner's cost of such Unit. So long as the Lessee is not in default hereunder, the Lessee may, upon notice to the Owner, at the Lessee's sole cost and expense, make other readily removable Improvements to a Unit provided that such Improvements do not cause material damage to such Unit or reduce its value or general usefulness. Any such readily removable Improvements shall remain the property of the Lessee and be removed by the Lessee, at its expense, upon or prior to return of any Unit to the Owner pursuant to § 11 or § 14 hereof, and if not so removed by the Lessee may be removed by the Owner without liability to the Lessee therefor. Any and all costs of removal and repair shall be for the Lessee's account. The Owner is hereby granted a security interest in and to any such readily removable Improvements to secure all of the

Lessee's obligations hereunder. Nothing herein shall be deemed to preclude the Owner and the Lessee from negotiating the lease financing hereunder for any proposed Improvements.

9.5. Indemnification. The Lessee agrees to indemnify, protect, hold harmless and defend each Indemnified Person from and against all losses, damages, injuries, liabilities (including, without limitation, strict liability in tort) claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest (herein collectively called "Indemnified Matters"), arising out of or as the result of the entering into or the performance of, or the occurrence of a default, an event of default or an Event of Default under, the CSA, the Participation Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person (except as otherwise provided in § 14 of this Lease) or the transfer of title to the Equipment by the Vendor pursuant to any provision of the CSA. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all other obligations under this Lease or the expiration or termination of the term of this Lease. To the extent the Lessee is required to provide protection or indemnification hereunder, the Lessee may select counsel (which will be reasonably acceptable to the Owner) and direct counsel's actions in respect thereof. The indemnities contained in this § 9.5 shall not extend to any Indemnified Matter incurred by any Indemnified Person (a) caused by the wilful misconduct or gross negligence of such Indemnified Person, (b) resulting from acts or events with respect to any Unit which commence after such Unit has been returned to the Owner in accordance with § 14 hereof, (c) caused by the violation by such Indemnified Person of any banking, investment, insurance or securities law, rule or regulation applicable to it (unless such violation shall be the result of any written misrepresentation, violation or act of the Lessee), (d) arising from the breach of an express duty, obligation, representation or warranty of such Indemnified Person made herein or in any of the documents related to the transactions contemplated hereby, (e) which is related to the lien, charge, security interest or other

encumbrance which the Lessee is not required by § 12 hereof to discharge or in any of the other documents related to the transactions contemplated hereby to be borne by such Indemnified Person or (f) costs and expenses which such Indemnified Person has agreed to be liable for in any of the documents related to the transactions contemplated hereby.

The Lessee shall be obligated under this § 9.5 irrespective of whether the Indemnified Person shall also be indemnified with respect to such Indemnified Matters elsewhere under this Lease or under any other Document or by any other person, and the Indemnified Person may proceed directly against the Lessee under this § 9.5 without first resorting to any such other rights of indemnification. With respect to any payment or indemnity hereunder, such payment or indemnity shall include any amount necessary to hold any Indemnified Person receiving such payment or indemnity harmless on a net after-tax basis and taking into account any tax benefit realized by such Indemnified Person as a result of such payment from all taxes required to be paid by such Indemnified Person with respect to such payment or indemnity under the laws of any Federal, state or local government or taxing authority in the United States of America.

Upon the commencement of any proceeding (including the written threat or written claim of any proceeding) against an Indemnified Person involving one or more Indemnified Matters, such Indemnified Person shall promptly, upon receiving written notice thereof, give notice of such commencement to the Lessee. The Indemnified Person shall supply the Lessee with such information reasonably requested by the Lessee as in the reasonable opinion of counsel to the Lessee is necessary or advisable for the Lessee to control or participate in any proceeding to the extent permitted by this § 9.5. Unless the Lessee is excluded from control of a proceeding involving an Indemnified Person pursuant to the preceding paragraph or Default or an Event of Default has occurred and is continuing, such Indemnified Person shall not enter into a settlement or other compromise with respect to any Indemnified Matter without prior written consent of the Lessee, which consent shall not be unreasonably withheld or delayed, unless such Indemnified Person waives its right to be indemnified with respect to such Indemnified Matter.

After the payment in full to an Indemnified Person

by the Lessee in respect of any Indemnified Matter pursuant to this § 9.5, if such Indemnified Person shall receive any payments in respect of such Indemnified Matter from any person other than the Lessee, such Indemnified Person shall promptly pay to the Lessee the amount of such payment, together with any interest (other than interest for the period, if any, after such Indemnified Matter was paid by such Indemnified Person until such Indemnified Matter was paid or reimbursed by the Lessee) received by such Indemnified Person on account of such payment.

9.6. Survival. The indemnities contained in this § 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation which do not already exist in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

9.7. Payments for Indemnification. All payments hereunder shall be made directly to the Indemnified Person.

## § 10. DEFAULT

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

(a) payment of any part of the rental provided in § 3 hereof or payment in respect of any Casualty Occurrence or Termination pursuant to § 7 hereof during the initial or any renewal term shall not be made by the Lessee when such payment is due and such default shall continue for 5 business days;

(b) 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, in the Participation Agreement or the Con-

sent, or on the part of the Guarantor contained in the Participation Agreement, the Consent or the Guarantee, and such default shall continue for 30 days after written notice from the Owner or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

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

(d) 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 or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, the Participation Agreement, the Consent and the Indemnity Agreement, or of the Guarantor under the Participation Agreement, the Consent and the Guarantee, as the case may be, shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees;

(e) any proceedings shall be commenced by or against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease, the Participation Agreement, the Consent or the Indemnity Agreement, or of the Guarantor under the Participation Agreement, the Consent or the Guarantee, 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 ineffective-

ness shall continue), all the obligations of the Lessee under this Lease, the Participation Agreement, the Consent and the Indemnity Agreement, or of the Guarantor under the Participation Agreement, the Consent and the Guarantee, as the case may be, shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

(f) an event of default set forth in Article 16 of the CSA shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder or under its Documents (as defined in the Participation Agreement); or

(g) any of the representations or warranties made by the Lessee herein, or by the Guarantor in the Guarantee, or by the Lessee or the Guarantor in the Participation Agreement or in the Consent or in any statement or certificate at any time given in writing pursuant hereto or in connection herewith shall be breached or found to be false or misleading in any material respect;

then, in any such case, the Owner, at its option, may,

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

(bb) 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 under this Lease to the extent that this Lease provides that the obligations of the Lessee survive the termination or expiration hereof; and thereupon the Owner 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 or for any proceeds arising therefrom; but the Owner 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 Owner, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Owner reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 7% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; 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 Owner reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Owner shall have sold any Unit, the Owner in lieu of collecting any amounts payable to the Owner by the Lessee pursuant to the preceding clauses (x) and (y) of this part (bb) with respect to such Unit, shall demand that the Lessee pay the Owner and the Lessee shall pay to the Owner on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty

Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

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

10.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Owner 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 requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted 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 rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

10.3. Failure To Exercise Rights is not Waiver. The failure of the Owner 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, and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Owner.

10.4. Notice of Event of Default to Owner. The Lessee also agrees to furnish the Owner and the Vendor, promptly upon any responsible officer becoming aware of any condition which constitutes an Event of Default under this Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section, a "responsible officer" shall mean, with respect to the subject matter of any covenant,

agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

## § 11. RETURN OF UNITS UPON DEFAULT

11.1. Return of Units. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Owner and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Owner pursuant to this § 11 shall (i) be in the condition required by § 9.3 hereof and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Owner as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner place such Units upon such storage tracks as shall reasonably be designated by the Owner,

(b) cause such Units to be stored on such tracks without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Owner (but such storage period shall not exceed 120 days if the Owner is under no legal impediment to sell, lease or otherwise dispose of such Units), and

(c) cause the Units to be moved to the nearest interchange point or points as shall be designated by the Owner.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Owner or any person designated by it,

including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event that the Units or any thereof are sold the Lessee shall pay to the Owner the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

11.2. Owner Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Owner as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner, 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

12.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Owner without the consent of the Lessee to the Vendor or, with the consent of the Vendor (which consent shall not be unreasonably withheld), to other institutional investors, but the Lessee shall be entitled to the possession and use of the Units in accordance with § 12.2 hereof and shall not be under any obligation to any assignee of the Owner other than the Vendor except upon written notice of such assignment from the Owner. All the rights of the Owner hereunder (including, but not limited to, the rights under §§ 6, 7, 9.5 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Owner's assigns except as may be limited by any assignment thereof.

12.2. Lessee's Right To Use the Units. (1) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA, subject to the provisions of § 4.2 of this Lease. The Lessee agrees (i) not to use or permit the use of any Unit in Canda and/or Mexico to the extent that the use of such Unit would cause the same to be property which is used predominately outside the United States within the meaning of Section 48(a)(2) of the Internal Revenue Code of 1954 as

amended and (ii) not to use or permit the use at any time of more than 15% of all Units then subject to this Lease in Canada and/or Mexico. Such 15% limitation shall not apply to the use of any Unit in any jurisdiction of Canada or Mexico, in which jurisdiction all necessary action has been taken to protect the rights of the Owner and the Vendor in the Units and the Owner and the Vendor have received an opinion of counsel to such effect, satisfactory to them. The Lessee in the future may request that such 15% limitation be increased temporarily because of changed circumstances or a strengthening of the financial condition of the Lessee and/or the Guarantor, and the Owner and the Vendor will give due consideration to each such request but a consent to such request shall be in the sole discretion of each of the Owner and the Vendor.

(2) The Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Owner and the Vendor, except as provided in paragraph (3) of this § 12.2; and the Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units without the prior written consent of the Owner and the Vendor except as provided in said paragraph (3).

(3) So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units by it or any affiliate upon lines of any railroad or other trackage over which railroad equipment is regularly operated and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through or triplease agreements and to sublease the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease or use or permit the assignment, sublease or use of any Unit except upon the terms and conditions of this Lease and the CSA, nor shall the Lessee assign or sublease to or permit the sublease or use of the Units by any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. Any such triplease or sublease permitted by this paragraph shall be expressly subordinate to the rights and remedies of the Vendor under the CSA and the Owner under this Lease in respect of the Units covered by such triplease or sublease and no such triplease or sublease shall relieve the Lessee

of any of its obligations hereunder which, notwithstanding any such triplease or sublease, shall remain in full force and effect.

12.3. Lessee's Duty To Discharge Encumbrances. The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Owner or the Vendor not related to the ownership or leasing of, or the security interest of the Vendor in, the Units) which may be imposed during the term hereof, during the period the Lessee is obligated to pay rental hereunder or during the period any Unit is in the possession of the Lessee following default, on or with respect to any Unit (including any accession thereto) or the interest of the Owner, the Vendor or the Lessee therein; except that this covenant will not be breached by reason of liens, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialman's, mechanic's, workmen's, repairmen's or other like liens arising in the ordinary course of business 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 proceedings and the Owner and the Vendor advise the Lessee in writing that the failure to discharge the same does not adversely affect the title, property or rights of the Owner or the security interest and rights of the Vendor under the Documents.

12.4. Merger, Acquisition or Consolidation. Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder and under the Consent by an appropriate instrument in writing) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease.

12.5. Mileage. During the term of this lease the Lessee shall receive, insofar as applicable law and regulations allow, all mileage allowances, rentals and/or compensation payable by carriers by reason of the use of any unit (hereinafter called "mileage") leased to the Lessee hereunder. It is understood and agreed that if for any reason the Owner receives any mileage, then (unless an Event of Default shall have occurred and be continuing) the Owner shall promptly remit such mileage to the Lessee.

## § 13. RIGHT OF FIRST REFUSAL AND RENEWAL OPTIONS

13.1. Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Owner elects to sell any Units to third parties within a period of one year after the expiration of the original or any extended term of this Lease, the Lessee shall be given 60 days' prior written notice of such intention prior to the expiration of such period. In the event that during such one-year period the Owner shall receive a bona fide offer from another party unrelated to the Lessee to purchase Units and the Owner elects to sell Units pursuant to such offer, the Owner 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 Owner. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which such 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 Owner of a written notice within 15 days of receipt of notice of the proposed sale from the Owner 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 Owner.

13.2. Renewal Options. 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 Owner (which notice shall be irrevocable) not less than 90 days prior to the end of the then current term of this Lease, elect to extend the original or extended term of this Lease in respect of all, but not less than all, the Units then covered by this Lease on a year-to-year basis or for such longer term as the Lessee may elect. The rental payable during each extended term shall be payable semi-

annually on the anniversaries of the payment dates of the preceding term of this Lease in each year of such extended term and shall be in an amount equal to the "Fair Market Rental". Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to the rental which would obtain in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and, in such determination, cost of removal from the location of current use shall not be a deduction from such rental. If on or prior to 60 days before the commencement of the extended term, the Owner and Lessee are unable to agree upon the determination of the Fair Market Rental of the Units to be leased, such rental shall be determined in accordance with the foregoing definition by an Appraiser in the manner described below. The Casualty Values applicable to any extended term shall be equal to the estimated Fair Market Value of the Units at each rental payment date under the extended term. If on or prior to 60 days before the commencement of the extended term, the Owner and the Lessee are unable to agree upon a determination of such Casualty Values, such Casualty Values shall be determined by an Appraiser in a manner described below. The Appraiser shall be instructed to make such determination within a period of 20 days following appointment and shall promptly communicate such determination in writing to the Owner and the Lessee. The determination so made shall be conclusively binding upon both the Owner and the Lessee, but the Lessee shall not be obligated to lease for any extended term if it feels the Fair Market Rental is so determined is too high. The expenses and fees of the Appraiser shall be borne solely by the Lessee. The term Appraiser shall mean such independent appraiser as the Owner 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 Owner, the second by the Lessee and the third designated by the first two so selected.

## § 14. RETURN OF UNITS UPON EXPIRATION OF TERM

On or prior to the termination of the term of this Lease (or any renewal pursuant to § 13 hereof) the Lessee will, at its own cost and expense, at the request of the Owner, deliver possession of the Units to the Owner upon

such storage tracks as the Owner may reasonably designate (but in no event at more than three locations) within a 100 mile radius of Chicago, Illinois, or, in absence of such designation, as the Lessee may select, and permit the Owner to store such Units on such tracks for a period not exceeding 60 days from the date at which at least 90% of the Units then subject to this Lease are first placed in storage; the assembly, delivery, storage and transporting of such Units to be at the expense and risk of the Lessee. Arrival of a Unit at the designated point shall constitute "return" for the purposes hereof. During any such storage period the Lessee will permit the Owner 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 the storage locations; provided, however, that the Lessee shall not be liable, except in the case of negligence or intentional act of the Lessee or of its employees or agents and except to the extent otherwise provided by law, for any injury to or the death of any prospective purchaser or lessee exercising the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner pursuant to this § 14 shall (i) be in the condition required by § 9.3 hereof, (ii) have attached or affixed thereto any Part title to which is in the Owner pursuant to § 9 hereof and have removed therefrom at the Lessee's expense any part title to which is in the Lessee or any other person pursuant to such § 9 and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, provided that the Lessee shall not be required to make any additions, modifications or improvements which would not be required of the Lessee if the Lessee continued to operate the Units. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 14, the Lessee shall pay to the Owner-Trustee the Casualty Value of such Unit as determined in accordance with § 7 hereof. The Lessee shall pay rental at the rate of 0.03954% of the Purchase Price of such Unit per day for any Unit not returned to the Owner immediately upon expiration of the termination of the initial or any extended term of this Lease. Nothing contemplated by this § 14, including payment by the Lessee of the above-speci-

fied amounts, shall be deemed to relieve the Lessee from its obligations to assemble, deliver and store the Units or affect the Owner's rights and remedies with respect to such obligation.

## § 15. RECORDING

The Owner, at its own expense, will cause this Lease, the CSA, the Lease Assignment and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303. The Lessee, at its own expense, will undertake any filing, registering, deposit and recording required of the Owner under the CSA and 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 Owner or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Owner's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA or the Lease Assignment.

The party making the filing will promptly furnish to the Vendor and the other party hereto evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the party making the filing with respect thereto satisfactory to the Vendor and the other party hereto. This Lease and the CSA shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

## § 16. OWNER'S RIGHT TO PERFORM; INTEREST ON OVERDUE RENTALS

Should the Lessee fail to make any payment or to do any act as provided by this Lease, then the Owner shall have the right (but not the obligation), with such notice as may be practical under the circumstances to the Lessee of its intention to do so and without releasing the Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Units or the Owner's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in

the judgment of the Owner appears to affect the Units, and in exercising any such rights, the Owner may insure any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by the Owner shall be due and payable by the Lessee within ten days of notice thereof. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to interest at a rate equal to the greater of (i) 17% per annum or (ii) the prime rate announced from time to time by Security Pacific Bank, to the extent legally enforceable, on the overdue rentals and other obligations for the period of time during which they are overdue.

## § 17. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or deposited in the United States mails, first-class postage prepaid, addressed as follows:

> if to the Owner, at Four Embarcadero Center, Suite 1200, San Francisco, California 94111, Attention of Manager Operation Division-LEV.;
>
> if to the Lessee, at 2223 Dodge Street, Omaha, Nebraska 68102, Attention of Assistant Secretary and Controller, with a copy to the Guarantor at the same address, Attention of Corporate Secretary;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Copies of each such notice shall be given to the Vendor at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department or such other address designated by the Vendor. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party. Any notice to the Lessee by the Vendor regarding the Lessee's failure to perform any obligation hereunder shall also be furnished by the Lessee to the Owner.

## § 18. SEVERABILITY; EFFECT AND MODIFICATION OF LEASE; THIRD-PARTY BENEFICIARIES

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

18.2. Effect of Modification of Lease. This Lease and the Indemnity Agreement exclusively and completely state the rights of the Owner and the Lessee with respect to the leasing of the Units and supersede all other agreements, oral or written, with respect thereto, except the Participation Agreement and the Guarantee. 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 Owner and the Lessee.

18.3. No Third-Party Beneficiaries. Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Vendor and the permitted successors and assigns of a party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

## § 19. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof.

## § 20. NO GUARANTEE OF CSA INDEBTEDNESS OR RESIDUAL VALUE

Nothing in this Agreement is intended or shall be

construed to constitute a guarantee by the Lessee of the CSA Indebtedness under the CSA or a guarantee of the residual value of any Unit.

§ 21. LAW GOVERNING

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

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

NORTHERN PETROCHEMICAL COMPANY,

by _____

[Corporate Seal]

Attest:

_____

SECURITY PACIFIC EQUIPMENT LEASING, INC.,

by _____

[Corporate Seal]

Attest:

_____
Assistant Secretary

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

On this th day of 1982, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an of NORTHERN PETROCHEMICAL COMPANY, a Delaware corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF CALIFORNIA, )
) ss.:
COUNTY OF SAN FRANCISCO,)

On this th day of 1982, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a of SECURITY PACIFIC EQUIPMENT LEASING, INC., 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.

Notary Public

[Notarial Seal]

My Commission Expires

## Units of Railroad Equipment

| Type | AAR Mechanical Designation | Quantity | Lessee's Identification Numbers (inclusive) |
|---|---|---|---|
| 100 Ton CF 5251 Steel Center Flow Hopper Cars and related linings | LO L254 | 400 | NPCX 7150-7549 |

Annex D
to the Conditional Sale Agreement
[CS&M Ref. 4876--031]

ASSIGNMENT OF LEASE AND AGREEMENT dated as of February 1, 1982, ("Assignment"), by and between SECURITY PACIFIC EQUIPMENT LEASING, INC. ("Owner"), and THE CONNECTICUT BANK AND TRUST COMPANY ("Agent") as Agent for the investors ("Investors") under a Participation Agreement dated as of the date hereof ("Participation Agreement").

The Owner is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with ACF Industries, Incorporated ("Builder"), providing for the sale to the Owner of such units of railroad equipment ("Units") described in Annex B thereto as are delivered to and accepted by the Owner thereunder.

The Owner and Northern Petrochemical Company ("Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the leasing by the Owner to the Lessee of the Units.

InterNorth, Inc. ("Guarantor"), has executed and delivered a Guarantee dated as of the date hereof ("Guarantee") pursuant to which the Guarantor has guaranteed unconditionally the payment by the Lessee of all its obligations under the Lease, the Participation Agreement and the Indemnity Agreement referred to therein.

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Owner hereby assigns, transfers and sets over unto the Agent, as collateral security for the payment and performance of the obligations of the Owner under the CSA, all the right, title and interest, powers, privileges, and other benefits of the Owner under (i) the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner from the Lessee whether as rent, casualty payment, termination payment, indemnity, liquidated damages or otherwise (except Excluded Payments, as hereinafter defined), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the

Lease, and to do any and all other things whatsoever which the Owner is or may become entitled to do under the Lease, and (ii) the Guarantee, including, without limitation, all amounts paid or payable to the Owner thereunder (except Excluded Payments, as hereinafter defined) and all rights of the Owner to enforce payment of any such amounts thereunder or performance of any duty, agreement, covenant or obligation thereunder. Moneys paid or payable to or receivable by the Owner under the Lease or the Guarantee, except Excluded Payments, are hereinafter collectively called the "Payments". The Owner does not assign to the Agent, and the Agent shall have no right or interest in and to, any Excluded Payments. As used herein, the term "Excluded Payments" shall mean (i) payments by the Lessee to the Owner for its own account pursuant to §§ 6 and 9.5 of the Lease, (ii) payments by the Guarantor to the Owner for its own account under the Guarantee as it relates to the Lessee's obligations pursuant to §§ 6 and 9.5 of the Lease, (iii) payments by the Guarantor to the Owner under the Guarantee as it relates to the Indemnity Agreement, and (iv) any proceeds payable under liability insurance policies to or for the benefit of the Owner for its own account. In furtherance of the foregoing assignment and subject to Section 11 hereof, the Owner hereby irrevocably authorizes and empowers the Agent in its own name, or in the name of its nominee, or in the name of the Owner or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Owner is or may become entitled to under the Lease or the Guarantee, and to enforce compliance by the Lessee or the Guarantor, as the case may be, with all the terms and provisions thereof.

The Agent agrees to accept any Payments made by the Lessee for the account of the Owner pursuant to the Lease or by the Guarantor pursuant to the Guarantee. To the extent received, the Agent will apply such Payments to satisfy the obligations of the Owner under the CSA, and to provide for the payments required to be made by the Owner pursuant to §§ 2.5 and 10.1 of the Participation Agreement, and, so long as no event of default shall have occurred and be continuing under the CSA, any balance shall be paid to the Owner on the same date such Payment is applied to satisfy such obligations of the Owner, by check mailed to the Owner on such date or, upon written request of the Owner, by bank wire to the Owner at such address as may be specified to the Agent in writing. If the Agent shall not receive any rental payment under § 3 of the Lease when due, the Agent shall notify the Owner at the address set forth in the Lease; provided, however, that the failure of the Agent so to notify the Owner shall not affect the obligations of the Owner hereunder or under the CSA.

Any Excluded Payment received by the Agent shall be immediately paid to the Owner.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify the liability of the Owner under, the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment all obligations of the Owner to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns against, and only against, the Owner or persons other than the Agent.

3. The Owner will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed by the Owner; without the written consent of the Agent, subject to Section 11 hereof, the Owner will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein, or enter into any agreement amending, modifying or terminating the Lease, and the Owner agrees that any amendment, modification or termination thereof without such consent shall be void.

4. Subject to Section 11 hereof, the Owner does hereby constitute the Agent the true and lawful attorney of the Owner, irrevocably, with full power (in the name of the Owner, or otherwise), to ask, require, demand, receive and compound any and all Payments due and to become due under or arising out of the Lease or the Guarantee to which the Owner is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease and by the Guarantor with all the terms and provisions of the Guarantee, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Agent may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Owner under the CSA, this Assignment and all rights herein assigned to the Agent shall terminate, and all estate, right, title and interest of the Agent in and to the Lease and the Guarantee shall revert to the Owner.

6. The Owner will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Owner, its successors and assigns (other than the Agent) which result from claims not related to the ownership of the Equipment or any other transaction contemplated by its Documents (as defined in the Participation Agreement), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or the Owner's interest in the Lease and the payments to be made thereunder, but the Owner shall not be required to pay or discharge any such tax, claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not in the reasonable opinion of the Agent adversely affect the security interest of the Agent in the Equipment or the Lease or its interest in the income and proceeds from the Equipment or the Lease.

7. The Owner will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Agent in order to confirm or further assure the interest of the Agent hereunder.

8. The Agent may assign all or any of the rights assigned to it hereby or arising under the Lease or the Guarantee, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

9. This Assignment shall be governed by the laws of the State of , but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

10. The Owner shall cause copies of all notices received in connection with the Lease, and all payments hereunder, to be promptly delivered or made to the Agent at its address set forth in Article 21 of the CSA, or at such other address as the Agent shall designate.

11. The Agent hereby agrees with the Owner that the Agent will not, so long as no Event of Default under the Lease, or event of default under the CSA, has occurred and is

continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Owner to the Agent by this Assignment, except the right to receive and apply the Payments as provided in Section 1 hereof, and that, subject to the terms of the Lease and the CSA, the Owner may, so long as no event of default under the CSA or Event of Default under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, such rights, powers, privileges, authorizations or benefits.

Unless and until an Event of Default under the Lease, or an event of default under the CSA, has occurred and is continuing, the Owner shall have the right, without the concurrence of the Agent, to adjust the rentals, Casualty Values and Termination Values pursuant to § 3 of the Lease and to exercise the rights of the Lessor under §§ 7.7, 13 and 14 of the Lease; at all times the Owner may, without the concurrence of the Agent, receive all notices, certificates, opinions of counsel and other documents and information to be furnished to the Owner under the Lease; at all times the Owner shall have the right to proceed by appropriate court action either at law or in equity to enforce the performance by the Lessee or the Guarantor of its obligations with respect to Excluded Payments or to recover damages for the breach thereof as provided in § 10.1(aa) of the Lease but may not declare an Event of Default under or terminate the Lease. The Agent may not at any time, without the concurrence of the Owner, amend, modify or supplement or give or accept any waiver or consent with respect to the Lease so as to increase the liabilities or diminish the immunities of the Owner or reduce the amount or extend the time of payment of any Excluded Payment then due and payable or change any of the circumstances under which Excluded Payments are payable.

12. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual

dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

SECURITY PACIFIC EQUIPMENT LEASING, INC.

by

_____

[Corporate Seal]

Attest:

_____
Authorized Officer

THE CONNECTICUT BANK AND TRUST COMPANY, as Agent,

by

_____
Authorized Officer

[Corporate Seal]

Attest:

_____
Authorized Officer

STATE OF CALIFORNIA, )
) ss.:
COUNTY OF SAN FRANCISCO,)

On this day of 1982, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a of SECURITY PACIFIC EQUIPMENT LEASING, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal] _____ Notary Public

My Commission expires

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

On this day of 1982, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a of THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal] _____ Notary Public

My Commission expires

CONSENT AND AGREEMENT

The undersigned, NORTHERN PETROCHEMICAL COMPANY ("Lessee"), the Lessee named in the Lease of Railroad Equipment ("Lease") referred to in the foregoing Assignment of Lease and Agreement ("Lease Assignment") and INTERNORTH, INC. ("Guarantor"), the guarantor pursuant to the Guarantee ("Guarantee") referred to in the Lease Assignment, hereby (a) acknowledge receipt of a copy of the Lease Assignment and (b) consent to all the terms and conditions of the Lease Assignment and agree that:

(1) in the case of the Lessee, it will pay or cause to be paid all rentals, casualty payments, termination payments, liquidated damages, indemnities (except for Excluded Payments as defined in the Lease Assignment) and other moneys provided for in the Lease due and to become due under the Lease or otherwise in respect of the Units leased thereunder, and, in the case of the Guarantor, it will pay or cause to be paid all amounts payable under the Guarantee (except for Excluded Payments) directly to THE CONNECTICUT BANK AND TRUST COMPANY, as Agent ("Agent"), the assignee named in the Lease Assignment, One Constitution Plaza, Hartford, Connecticut 06115 , Attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Agent);

(2) the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease and by the Guarantor under the Guarantee as though the Agent were named therein as the Owner;

(3) the Agent shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) neither the Lease nor the Guarantee shall, without the prior written consent of the Agent, be terminated (except in accordance with their terms) or modified, nor shall any action be taken or omitted by the Lessee or the Guarantor the taking or omission of which might result in an alteration or impairment of the Lease or the Guarantee or the Lease Assignment or

this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Agent by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of and, for all purposes, shall be construed in accordance with the laws of said state.

NORTHERN PETROCHEMICAL COMPANY,

by

[Corporate Seal] _____

Attest:

_____

INTERNORTH, INC.,

by

[Corporate Seal] _____

Attest:

_____

The foregoing Consent and Agreement is hereby accepted, as of February 1, 1982.

THE CONNECTICUT BANK AND TRUST COMPANY, as Agent,

by

_____