12293

RECORDATION NO. ..... Filed 1425

OCT 14 1980 - 10 05 AM

INTERSTATE COMMERCE COMMISSION

0-238A014

No. 1

Date OCT 14 1980

Fee $ 50.00

ICC Washington, D. C.

Bank of the Southwest

Gregory A. Stuart
Assistant Vice President

October 9, 1980

OCT 14 9 59 AM '80
I.C.C.
FEE OPERATION BR.

Secretary of the Interstate
Commerce Commission
Washington, D.C. 20423

Dear Sir:

Enclosed are the original and two counterparts or certified true copies of a Security Agreement transmitted to you for recordation pursuant to 49 U.S.C. §11303 and 49 C.F.R. §1116 et seq.

Also enclosed is a cashier's check payable to your order for $50 to pay the required recordation fee.

The names and addresses of the parties to the transaction evidenced by the enclosed Security Agreement are as follows:

DEBTOR: Charles Allen Lanphere
303 Big Hollow Lane
Houston, Texas 77042

SECURED PARTY: Bank of the Southwest National
Association, Houston
910 Travis Street
Houston, Texas 77002

Attention: Mr. Gregory A. Stuart
Assistant Vice President

The collateral covered by the enclosed Security Agreement includes equipment which may be generally described as Railway Equipment, and any leases or other contracts in respect of such Railway Equipment. The Railway Equipment is more particularly described as follows:

Counterpart - Steve Wheelit

The name and address of the person to whom the enclosed original document should be returned is as follows:

Fulbright & Jaworski
1150 Connecticut Ave., N.W.
Washington, D.C. 20036

Attention: Frank T. Garcia

The undersigned is an executive officer of Bank of the Southwest National Association, Houston, with knowledge of the matters set forth in this letter of transmittal. If there are questions concerning the enclosed, do not hesitate to contact our attorneys, Fulbright & Jaworski, by letter to the above address or collect call to Mr. Frank T. Garcia at (713) 651-5151.

Yours very truly,

Gregory A. Stuart - Assistant Vice President

Interstate Commerce Commission

Washington, D.C. 20423

10/14/80

OFFICE OF THE SECRETARY

Gregory A. Stuart
Assist. Vice President
Bank Of The Southwest
910 Travis P.O.Box 2629
Houston,Texas 77001

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act,49 U.S.C. 11303, on 10/14/80 at 10:05am , and assigned re-recordation number(s). 12293 .

Sincerely yours,

Agatha L. Mergenovich

Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

12293
RECORDATION NO. ..... Filed 1425

OCT 14 1980 -10 05 AM

INTERSTATE COMMERCE COMMISSION

LOAN AGREEMENT AND SECURITY AGREEMENT

This LOAN AGREEMENT AND SECURITY AGREEMENT ("Agreement") by and between Charles Allen Lanphere whose street address is 303 Big Hollow Lane, Houston, Texas and whose mailing address is same, 77042 (the "Borrower") and BANK OF THE SOUTHWEST NATIONAL ASSOCIATION, HOUSTON, whose street address is 910 Travis Street, Houston, Texas 77002 and whose mailing address is P.O. Box 2629, Houston, Texas 77001 (the "Bank"),

W I T N E S S E T H:

For and in consideration of the mutual covenants and agreements herein contained, Borrower and Bank agree as follows:

SECTION 1. AMOUNT AND TERMS OF CREDIT

1.01. Loan. Upon and subject to the terms and conditions of this Agreement, Bank agrees to lend Borrower, on or after the date hereof a sum not in excess of SIXTY THOUSAND AND NO/100 DOLLARS ($60,000) ("Loan"). Any and all borrowings in connection with the Loan shall be payable in consecutive quarterly installments of principal and, in addition, accrued interest on the portion of the Loan from time to time remaining outstanding and unpaid, all in accordance with the provisions of the "Note" (as that term is hereinafter defined).

1.02. Note. The Loan will be evidenced by the promissory note (the "Note"), in form and substance satisfactory to Bank, duly executed by Borrower, in the original principal amount of SIXTY THOUSAND AND NO/100 DOLLARS ($60,000) payable to the order of Bank in consecutive quarterly installments consisting of principal and in addition, accrued interest on the portion of the Loan from time to time remaining outstanding and unpaid, the first nineteen (19) installments of principal being each in the amount of $1,500 and a final and twentieth installment of principal being in the amount of $31,500, such installments commencing on January 20, 1981, and continuing each April 20, July 20, October 20 and January 20 thereafter, until the Note is fully paid or until October 21, 1985, when in any event the Note shall fully mature and the final payment shall be payable in an amount equal to the entire principal then unpaid and all interest then accrued. All payments of quarterly installments on the Note shall be

applied first to the interest then accrued and the balance, if any, to principal.

In addition to the quarterly installment payments described above, an additional payment shall be due and payable on ~~April~~ 30 of each year equal to the amount, if any, of accrued interest remaining unpaid after application of the regularly scheduled quarterly installments, it being the intention and agreement of Borrower and Bank that all interest accrued and unpaid under the Note on each October 30 shall be paid in full on such date.

The due date of any quarterly payment may be extended, at Bank's option, whenever Bank has not received assigned quarterly lease rentals pursuant to the Management Agreement referred to in Section 1.03 hereof; provided, however, that in no case shall the due date of any quarterly payment be extended beyond fifteen (15) days, and that in no case shall the extension of the due date of one quarterly payment operate to extend the due dates of successive quarterly payments, or the maturity of the Loan or Note.

The Note shall bear interest on any and all principal amounts from time to time remaining outstanding and unpaid thereunder from the date thereof until maturity at a per-annum rate of interest equal to the lesser of (a) a rate equal to one percent (1%) above the rate charged by Bank for unsecured ninety-day loans to large responsible commercial or industrial borrowers ("Prime Rate"), which rate shall change when and as said Prime Rate shall change, or (b) the Maximum Lawful Rate (defined below) from time to time in effect. Any increase or decrease in interest rate resulting from a change in the Prime Rate or Maximum Lawful Rate shall be effective when such change becomes effective. The "Maximum Lawful Rate" as used herein is the maximum, lawful, non-usurious per-annum rate of interest that may be contracted for, charged, taken or received by Bank under laws applicable to this Loan and the Note (including the laws of the State of Texas and, to the extent controlling, federal laws), from time to time in effect, which rate shall be determined (and may change) from time to time. All past due principal and interest on the Note shall bear interest from maturity thereof until paid at the Maximum Lawful Rate.

1.03. Security. Borrower, for valuable considerations, receipt of which is hereby acknowledged, hereby assigns, transfers and sets over to Bank, and grants to Bank a security interest in the following property (hereinafter collectively referred to as the "Railway Equipment"):

One (1) 34,000 gallon nominal capacity, high pressure tank car, DOT 105A300W, non-coiled and insulated, 100 ton roller bearing trucks with identifying no. MAXX 3403.

and any and all additions, accessions and substitutions to or for the Railway Equipment, whether now owned or hereafter acquired and any accounts, notes, drafts, acceptances, instruments, chattel paper, leases or general intangibles in respect to the Railway Equipment, now or hereafter existing, and all rights of Debtor earned or yet to be earned under contracts to sell or lease, or render services in respect to, the Railway Equipment, including, but without limitation:

The Management Agreement by and between Maxx Leasing Company and Borrower, dated October 1, 1980.

(hereinafter the Management Agreement above referenced shall be referred to as the "Management Agreement") and all monies, income, rentals, revenues, profits, benefits, proceeds or products thereof and attributable or accruing to all of the above-described property, all hereinafter collectively referred to as the "Collateral."

The security interest granted and assignment made herein secures the performance of all obligations and agreements, and the payment of all indebtedness and liabilities, of Borrower to Bank (hereinafter called the "Obligations"), whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereafter arising, and all renewals, extensions and rearrangements of the above Obligations, and any of the same, including indebtedness, evidenced by the Note, including costs and expenses and attorney's fees and legal expenses, all in accordance with the terms of the Note, and other evidences of, and items included in, the Obligations and this Agreement. Unless otherwise agreed, all of the Obligations shall be payable at the offices of Bank in the City of Houston, Harris County, Texas.

Borrower agrees further to deliver the original executed copy of the Management Agreement to Bank and all leases executed thereunder coming into its possession within ten (10) days of execution of each agreement or lease. Borrower agrees to deliver to all other parties to the Management Agreement a Notice of Assignment and Security Interest in form and substance satisfactory to Bank, and to

notify such parties of Borrower's lease assignment and to direct them to remit all amounts payable under the Management Agreement directly to Bank. Payments pursuant to the Management Agreement received by Bank will be deposited in a segregated account subject to this Agreement. Payments will be applied by the Bank to payment to the Note in accordance with the provision herein; provided, however, that rental payments due October 30 of each year of the Loan in excess of accrued interest and principal then owing at the sole discretion of Bank may be remitted to Borrower, when Borrower shall so request, for use exclusively in satisfying Borrower's federal tax liability.

SECTION 2. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Bank that:

2.01. Financial Condition. Borrower has furnished Bank with his personal financial statement. Such financial statement is true and correct and has been prepared in accordance with generally accepted accounting principles, and fairly presents the financial condition of Borrower on its date. There have been no material adverse changes in the financial condition of Borrower since the date of such financial statement. As of the date of such financial statement there were no liabilities material to Borrower, direct or indirect, fixed or contingent, which were not reflected in the financial statement or the notes thereto.

2.02. Personal Obligations. All Obligations arising under this Agreement, the Note or any other agreement between Borrower and Bank, are the personal obligations of Borrower unless specifically and expressly released pursuant to a writing signed by Bank, and will not be affected by any security interest securing payment or performance of such Obligations. Borrower will continue to be liable in such event any deficiency results after the Collateral for such Obligations is sold upon default.

2.03. Collateral. The Collateral is bought or used and will be bought and used primarily for business use and has been acquired with the proceeds of the Note, which Bank may disburse directly to the seller of the Collateral or its agent.

2.04. Address. The first address shown for Borrower at the beginning of this Agreement is that of Borrower's only residence, and the second address shown for Borrower at the beginning of this Agreement is that of Borrower's only place of business.

2.05. Security Interest. Except for the security interest granted and assignment made herein, Borrower is the owner and holder of all the Collateral free from any adverse claim, security interest, encumbrance, lien, charge or any other right, title or interest of any person other than Bank. Borrower has not heretofore signed any financing statement or security agreement (except in favor of Bank) which covers any of the Collateral, and no such financing statement or security agreement (except in favor of Bank) is now on file in any public office.

2.06. Authority. Borrower has full power and lawful authority to (i) execute this Agreement and take all actions and steps provided for herein, (ii) to sell, transfer and assign the Collateral to Bank and (iii) to grant to Bank a first, prior and valid security interest therein as herein provided; and the execution and delivery and the performance hereof are not in contravention of any indenture, agreement or undertaking to which Borrower is a party or by which Borrower or any of his property is bound.

2.07. Information Supplied to Bank. All information supplied and statements made by Borrower in any financial, credit or accounting statement or application for credit made or delivered to Bank by or on behalf of Borrower prior to, contemporaneously with or subsequent to the execution of this Agreement are and shall be true, correct, complete, valid and genuine.

SECTION 3. AFFIRMATIVE COVENANTS

So long as any indebtedness and obligation remains unpaid and unperformed by Borrower to Bank under this Agreement or any other agreement by and between Borrower and Bank, Borrower covenants and agrees that, unless Bank shall otherwise consent in writing, Borrower will:

3.01. Property. At all times maintain, preserve, defend and protect all of the Collateral subject to any security interests pursuant to this Agreement, and take all action necessary to keep the business carried on in connection therewith properly and advantageously conducted at all times, and, specifically, but without limitation, to keep (i) the Management Agreement in full force and effect while the Loan is outstanding and (ii) the Collateral and any portion thereof free and clear of any and all liens, security interests, assessments, encumbrances or claims of any kind except for the security interest and assignment in favor of Bank or such interest to which Bank shall consent in writing.

3.02. Financial Statements. Furnish to Bank on April 15 of each year, or any time Bank may request, a copy of Borrower's personal financial statement for such year, prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year, except as noted.

3.03. Payment of Bank's Expenses. Pay in full and on demand all out-of-pocket expenses, including without limitation attorneys' fees incurred by Bank in connection with the preparation, lending, administration, collection or enforcement of or under this Agreement or any instruments or agreements in connection with this Agreement.

3.04. Additional Collateral. If at any time or times Bank shall be of the opinion that the Collateral is not sufficient or has declined or may decline in value, or Bank shall deem payment of the Obligations to be insecure, then Bank, at its option, may call for additional collateral and security, satisfactory to Bank, to secure the payments of the Obligations, and Borrower covenants, promises and agrees to furnish such additional collateral forthwith. Further, Borrower covenants, promises and agrees to exectute any agreement, instruments or document, and take and permit to be taken all such steps and actions, as Bank, in its reasonable business judgement, may deem necessary to create and perfect any lien in any additional collateral. The call for additional collateral may be oral or by telegram or by United States Mail addressed to Borrower at the address specified in Section 8.01 hereof.

3.05. Security Interest; Collateral. (a) Take all actions necessary to maintain and preserve all security for the Collateral at all times as valid, subsisting and perfected as to all of the property affected and covered thereby and to maintain the priority and validity of the security for the Collateral as against the rights, claims and interests of all other persons and parties whomsoever; and if any account, chattel paper, instrument or general intangible included in the Collateral, or any part thereof, is secured by any good, chattel, motor vehicle or other property with respect which certificates of title or similar documents are, at any time and pursuant to the laws of any jurisdiction, issued or outstanding, Borrower will promptly advise Bank thereof and promptly cause the interest of Bank to be properly noted thereon, and Borrower will further promptly deliver to Bank any such certificate of title or similar document issued or outstanding at any time with respect to such goods, chattels, motor vehicles, or other

property; if any certificate of title or similar document is so issued and outstanding at the time this Agreement is executed by or in behalf of Borrower, then Borrower shall cause the interest of Bank so to have been properly noted at or before the time of such execution.

(b) Authorize and hereby does authorize Bank to file, in jurisdictions where this authorization will be given effect, this Agreement, a financing statement or any other document or agreement giving notice of the security interest hereunder, signed only by Bank covering the Collateral. At the request of Bank, Borrower will join Bank in executing such documents as Bank may determine, from time to time, to be necessary and desirable under the provisions of the Uniform Commercial Code or other pertinent statutes or regulations; without limiting the generality of the foregoing, Borrower agrees to join Bank, at Bank's request, in executing one or more financing statements or any document or agreement giving notice of the security interest hereunder, in form satisfactory to Bank, and Borrower will pay the cost of filing or recording the same, or of filing or recording this Agreement, in all public offices at any time and from time to time, whenever filing or recording of any such financing statement or of this Agreement is deemed by Bank to be necessary or desirable. In connection with the foregoing, it is agreed and understood between the parties hereto (and Bank is hereby authorized to carry out and implement the following agreements and understandings and Borrower hereby agrees to pay the costs thereof) that Bank may, at any time or times, file as a financing statement and any counterpart, copy or reproduction of this Agreement signed by Borrower if Bank shall elect so to file, and it is also agreed and understood that Bank may, if deemed necessary or desirable to file (or sign and file) as a financing statement any carbon copy of, or photographic or other reproduction of, this Agreement, or of any financing statement executed in connection with this Agreement.

(c) At all times keep all Collateral insured pursuant to Article III, Section 9 of the Management Agreement, and in the event the Management Agreement is terminated by any of its parties for any reason, or in the event Bank deems the Collateral insufficiently insured, immediately (at Borrower's expense) provide and maintain at all times insurance with respect to the Collateral against risks of fire (including so-called extended coverage), theft, and such other risks as Bank may require, containing such terms, and such forms, for such periods, and written by such companies as may be satisfactory to Bank; such insurance shall

be payable to Bank and Borrower as their interest may appear and to no other person or persons without Bank's prior written consent; all policies of insurance will provide for ten (10) days' written minimum cancellation notice to Bank; Borrower will furnish Bank with certificates or other evidence satisfactory to Bank of compliance with the foregoing provisions concerning insurance and the payment of provisions; and Bank may act as attorney for Borrower in obtaining, adjusting, settling and cancelling such insurance and endorsing any drafts drawn by insurers of the Collateral but Bank shall not be obligated by this provision so to act; and if, at any time or times, Borrower shall fail to take out or maintain any insurance required under this Agreement or under this Subsection, Bank may (but should not be obligated to do so), without anywise waiving such default by Borrower, take out or maintain such insurance, and all premiums and other costs paid by Bank incident thereto shall, upon demand, be repayable by Borrower to Bank with interest thereon for the date expenditure is made by Bank until repaid at the rate of ten percent (10%) per annum and shall be and become a part of the Obligations secured hereby. Any funds or proceeds received by Borrower pursuant to policies of insurance required by this Agreement or otherwise obtained by Borrower with respect to the Collateral shall be received and held by Borrower in trust for Bank, shall be paid into a separate deposit account, shall not be commingled with any other funds or accounts, and shall not be dispersed without the prior written consent of Bank. At its option, Bank may use or may permit to be used any insurance proceeds received by Bank for the reconstruction or repair of the Collateral without anywise impairing or affecting its rights hereunder.

(d) Keep the Collateral free from any adverse lien, charge, security interest or encumbrance, whether voluntary or involuntary, and in good order and repair and will not waste, destroy, misuse or abuse the Collateral or any part thereof or allow any of the same to deteriorate except for normal wear and tear from its normal intended primary use.

(e) Promptly pay when due all taxes and assessments upon the Collateral or for its use or operation or upon this Agreement or upon any note or notes evidencing the Obligations.

SECTION 4. NEGATIVE COVENANTS

So long as any indebtedness and obligation remains unpaid and unperformed by Borrower to Bank under this Agree-

ment or any other agreement by and between Borrower and Bank, Borrower covenants and agrees that, unless Bank shall otherwise consent in writing, Borrower will not:

4.01. Alter or Change Information. Alter or change, allow to be altered to changed, or allow to become inaccurate in any manner, any of the information given in this Agreement without first notifying Bank in advance and in writing of any such change or alteration in any of the information given herein, including, but without limitation, the address of Borrower and the description applicable to said address.

4.02. Other Security Interests or Liens. Enter into or execute any security agreement, assignment or any financing statements that covers any of the Collateral, other than those security agreements, assignments and financing statements in favor of Bank hereunder, and further Borrower agrees that there will not be on file in any public office any financing statement or statements (or any document or papers filed as such) other than financing statements in favor of Bank hereunder, unless the specific prior written and approval of the Bank shall have been obtained.

4.03. Transfer; Encumbrance. Sell or offer to sell or otherwise transfer, encumber or dispose of the Collateral or any interest therein or any portion thereof, without the prior written consent of Bank.

4.04. Compliance with Laws. Use the Collateral or any interest therein or any portion thereof in violation of, or in any manner inconsistent with, any law, statute, ordinance, regulation, rule, writ or order.

4.05. Maintain Collateral. Release or surrender, at any time, any of the Collateral or interest therein or any portion thereof or any guaranty, suretyship agreement or other security therefor except incidental to payment in full thereof.

SECTION 5. SPECIAL PROVISIONS

5.01. Taxes and Insurance. At its option, Bank may at any time or times pay or discharge any taxes or assessments, liens or security interests or other encumbrances at any time levied or placed on the Collateral or any portion thereof and any cost, penalties or interest thereon, and shall be the sole judge as to the validity and effect thereof and as to the amount required to discharge

same, and may pay for insurance on the Collateral and for costs of maintenance, preservation or repair of the Collateral. In the event Bank shall pay any such taxes, assessments, interest, cost, penalties, insurance premiums or expenses pursuant to the foregoing authorization, Borrower, upon demand of Bank, shall pay to Bank the full amount thereof with interest at the rate of ten percent (10%) per annum from their respective dates of payment by Bank until repaid to Bank in full, and so long as Bank shall be entitled to any such payments, this Agreement operate as security therefor as fully and to the same extent as it operates its security for the payment of the other Obligations due from Borrower, and for the enforcement of such repayment Bank shall have every right and remedy provided for enforcement of payment of the Obligations hereunder.

5.02. Accounts, Instruments and Chattel Paper. All accounts, instruments and chattel paper included in the Collateral will meet the following requirements continuously until they are collected in full:

(a) Said account, instrument or chattel paper and all papers and documents relating thereto are genuine and in all respects what they purport to be, and are valid and subsisting and arose from the performance of services by Borrower which have been fully and completely performed or from the bona fide sale or lease of goods by Borrower in which Borrower is the sole and complete ownership, and such goods have been shipped or delivered to and accepted by the purchaser or lessee; and

(b) Said account, instrument or chattel paper arose or was acquired by Borrower in the ordinary course of its business and is owned by Borrower free and clear of all liens, encumbrances or security interest and assignment of any nature other than the security interest of Bank hereunder, and no notice of bankruptcy, insolvency or financial embarrassment of the party indebted thereon has been received by Borrower.

5.03. Collection. Bank shall never be under any obligation to collect, attempt to collect, protect or enforce the Collateral or any security therefor or any portion thereof, which Borrower agrees and undertakes to do so at Borrower's expense; but Bank may do so in its discretion at

any time or times, and Bank shall have the right to take any steps by judicial process or otherwise it may deem proper from time to time to affect the collection of all or any portion of the Collateral or to protect or enforce the Collateral or any security therefor. All expenses (including, without limitation, attorney's fees and legal expenses) incurred or paid by Bank in connection with or incident to any such collection or attempt to collect the Collateral or actions to protect or enforce the Collateral or any security therefor shall be borne by Borrower or reimbursed by Borrower to Bank upon demand. The proceeds of collection of the Collateral shall be held by Bank without liability for interest thereon and may be applied by Bank as Bank may deem appropriate toward payment of any of the Obligations secured hereby, whether or not then due, in such order or manner as Bank may elect.

5.04. Accounts Receivable.

(a) The term "account," "accounts" or "accounts receivable" as used herein includes all accounts, notes, drafts, acceptances, instruments and chattel paper in which at any time or from time to time, Bank has or is intended to have a security interest under or pursuant hereto pertaining to or in respect of the Collateral.

(b) Bank shall have the privilege at any time upon request of inspecting during reasonable business hours any of the business locations or premises of Borrower and the books and records of Borrower relating to said accounts or the collection thereof as well as those relating to Borrower's general business and financial condition; and Borrower will make such books and records available for such inspection and reasonably assist Bank in its inspection of same. Borrower further agrees from time to time to furnish such other reports, data and financial statements, including, if any, audits by independent public accountants, in respect of its business and financial condition as Bank may reasonably require. With respect to the Collateral, Bank shall have the right, exercisable at any time, whether before or after default by Borrower, to notify any and all account debtors, lessees, or obligors to make payment on any and all accounts, leases or obligations directly to Bank; and Borrower will upon request of Bank, likewise notify all such account debtors, lessees or obligors to make payment directly to Bank; but to the extent Bank does not so elect, Borrower shall continue to collect the accounts, lease payments and obligations. All proceeds or collections on accounts received by Borrower shall be held in trust by

Borrower for the account of Bank and shall be forthwith accounted for and transmitted to Bank in the form as received by Borrower and shall not be commingled with any other funds or properties of Borrower, all as provided herein. Proceeds of accounts transmitted to Bank from Borrower or received by Bank may be handled and administered by Bank, in its discretion, in and through a Remittance or similar special account, but Borrower acknowledges that the maintenance of such an account by Bank is solely for its convenience in facilitating its own operations and that Borrower does not and shall not have any right, title or interest in said account or in the amounts at any time to the credit thereof. Except to the extent Bank may from time to time in its discretion release proceeds to Borrower for use in its business, all proceeds of Collateral received by Bank shall be applied on the Obligations secured hereby, whether or not such indebtedness shall have by its terms matured, such application to be made at such intervals, and first to interest then accrued and then to principal or exclusively to principal (the interest from time to time accruing to be charged to the general account of Borrower or to be paid separately by Borrower) as Bank may determine, except that Bank need not apply or give credit for any item included in such proceeds until Bank has received final payment thereof at its office in cash or solvent credits accepted as such by Bank.

(c) Bank shall have the right in its own name or in the name of Borrower to demand, collect, receive, receipt for, sue for, compound and give acquittance for, any and all amounts due or to become due on the accounts and to endorse the name of Borrower on all commercial paper given in payment or part payment thereof, and in its discretion to file any claim or take any other action or proceedings which Bank may deem necessary or appropriate to protect and preserve and realize upon the security interest and assignment of Bank in the accounts and the proceeds thereof and security therefor.

(d) Borrower will from time to time execute such further instruments and do such further acts and things as Bank may reasonably require by way of further assurance to Bank of the matters and things herein provided for or intended so to be. Without limiting the foregoing Borrower agrees to execute and deliver to Bank an assignment or other form of identification in the form required by Bank of all accounts included in the Collateral, together with such other evidence of the existence and identity of such accounts as Bank may reasonably require; and Borrower will mark its books and records to reflect the specific assignment of such accounts.

(e) Returned or repossessed goods arising from or related to any accounts shall, unless otherwise agreed in writing by Bank, be held separate and apart from any other property of Borrower, and such returned or repossessed goods shall constitute and remain part of the Collateral hereunder. Borrower shall as often as requested by Bank, report to Bank the appropriate identifying information with respect to such returned or repossessed goods relating to accounts. Borrower shall forthwith pay to Bank an amount equal to the unpaid balance of all accounts included in every such report, and upon receipt of such payment Bank shall apply the same against the Obligations in such order and in such manner as Bank may elect; provided however, that Borrower may substitute other accounts, satisfactory to Bank, as part of the Collateral hereunder in lien of making such payments.

SECTION 6. EVENTS OF DEFAULT

Borrower shall be in default under this Agreement and the Note immediately upon the occurrence or happening of any of the following:

(1) any installment is not paid on the Note, as and when due and payable, default in the payment when due of any of the Obligations, or upon any other default on the Note; or

(2) default shall be made with respect to any indebtedness (other than the Note), of Borrower (whether or not such indebtedness is owed to Bank) for which waivers or consents have not been obtained, if the effect of such default is to accelerate the maturity of such indebtedness or to permit the holder thereof or cause such indebtedness to become due prior to its stated maturity or any such indebtedness shall not be paid when due; or

(3) proceedings are brought against Borrower under or pursuant to any federal or state bankruptcy law or similar law, or Borrower dies, or Borrower is adjudged non compos mentis; or

(4) final judgment for the payment of money shall be rendered against Borrower, and the same shall remain undischarged for a period of ten (10) days during which execution shall not be effectively stayed; or

(5) Borrower shall (i) admit in writing his inability to pay his debts as they mature; (ii) make a general assignment for the benefit of creditors, or (iii) file a voluntary petition in bankruptcy;, or

(6) any representation or warranty made herein shall prove to be false or misleading in any material respect; or

(7) any report, certificate, financial statement or other instrument furnished in connection with this Agreement or the borrowings hereunder shall prove to be false or misleading in any material respect; or

(8) failure or refusal of Borrower to perform or observe any covenant, duty, condition or agreement on the part of Borrower to be observed or performed pursuant to the terms of this Agremeent or any other agreement executed in connection herewith;

(9) default under or in the performance of any agreement or obligation of Borrower to Bank, whether or not in connection with this Agreement;

(10) notwithstanding any of the provisions contained herein, Bank believes, in good faith, that the prospect of the payment of the Note is impaired;

(11) any of the security for the Loan is sold, encumbered (unless in favor of the Bank), or seized;

(12) any deterioration or impairment of the Collateral or any part thereof or any decline or depreciation in the market value thereof (whether actual or reasonably anticipated) which, in the judgment of Bank, causes the Collateral to become unsatisfactory as to value or character, including, without limitation, termination of the Management Agreement; or

(13) loss, theft, substantial damage, destruction, sale or encumbrance of or to any of the Collateral or the levy of any attachment, execution or other process against Borrower or any of the Collateral.

SECTION 7. REMEDIES

In the event of default in the payment of any of the Obligations or any principal, interest or other amount payable thereunder, when due, or upon the happening of any of the events of default specified above, and at any time thereafter, (i) any right of Borrower to borrow, or any obligation of Bank to lend, any portion of the Loan then yet to be advanced shall automatically terminate upon the occurrence of any such event, and (ii) at the option of the holder thereof, any or all of the Obligations shall become immediately due and payable without presentment or demand or any notice to Borrower or any other person obligated thereon, and Bank shall have and may exercise with reference to the Collateral and Obligations and any other collateral or security, or both, securing the performance or payment, or both, of any and all of the Obligations, any or all of the rights and remedies of a secured party under the Uniform Commercial Code as adopted and as amended in the State of Texas, and as otherwise granted herein or under any other applicable law or under any other agreement executed by Borrower, including, without limitation, the right and power to sell, at public or private sale or sales, or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner authorized or permitted under said Uniform Commercial Code after default by a debtor, and to apply the proceeds thereof toward payment of any costs and expenses and attorneys' fees and legal expenses thereby incurred by Bank and toward payment of the Obligations in such order or manner as Bank may elect. Among the rights of Bank in the event of default, and without limitation, Bank shall have the right to take possession of all or any part of the Collateral or any securities therefore and of all books, records, papers and documents of Borrower or in Borrower's possession or control relating to the Collateral and for such purpose may enter upon any premises where any of the Collateral or security therefor or any of said books, records, papers and documents may be situated for such purpose without being deemed guilty of trespass and without liability for damages thereby occasioned, and to take any action deemed necessary or appropriate or desirable by Bank, at its option and in its discretion, to repair, refurbish or otherwise prepare the Collateral for sale, lease or other use or disposition as herein authorized. To the extent permitted by law, Borrower expressly waives any notice of sale or other disposition of the Collateral and any other rights or remedies of Borrower or formalities prescribed by law relative to sale or disposition of the Collateral or exercise of any other right or remedy of Bank existing after default hereunder; and to the extent any such notice is

required and cannot be waived, Borrower agrees that if such notice is mailed, postage prepaid, to Borrower at the address specified for Borrower at Section 8.01 hereof at least ten (10) days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving of said notice.

Bank is expressly granted the right, at its option, to transfer at any time to itself or to its nominee the Collateral, or any part thereof, and to receive the monies, income, proceeds or benefits attributable or accruing thereto and to hold the same as security for the Obligations or to apply it on the principal and interest or other amounts owing on any of the Obligations, whether or not then due, in such order or manner as Bank may elect. Bank is further expressly granted the rights, exercisable at its option at any time, whether before or after default, to take control of any proceeds payments, collections, monies, income, or benefits, and to notify account debtors, lessees, obligors on any instruments, or other obligors to make all payments directly to Bank on any and all accounts, leases, instruments, or obligations, income, monies, proceeds or other benefits, constituting, at any time or from time to time, a part of the Collateral, and to hold any payments, collections, monies, income, proceeds or benefits as security for the Obligations or to apply it on the principal and interest or other amounts owing thereon, whether or not then due and in such order or manner as Bank may elect; and Borrower will, upon request of Bank, so notify all such account debtors, lessees or obligors.

All rights to marshalling of assets of Borrower, including any such right with respect to the Collateral, are hereby waived by Borrower.

All recitals in any instrument of assignment or any other instrument executed by Bank incident to sale, transfer, assignment, lease or other disposition or utilization of the Collateral or any part thereof hereunder shall be full proof of the matters stated therein and no other proof shall be requisite to establish full legal propriety of the sale or other action taken by Bank or of any fact, condition or thing incident thereto and all prerequisites of such sale or other action or of any fact, condition or thing incident thereto shall be presumed conclusively to have been performed or to have occurred.

Bank may require Borrower to assemble, and to take all actions and steps necessary to assemble, the Collateral

and make it available to Bank at a place to be designated by Bank that is reasonably convenient to both parties. All expenses of retaking, holding, preparing for sale, lease or other use or disposition, selling, leasing or otherwise using or disposing of the Collateral and the like which are incurred or paid by Bank as authorized or permitted hereunder, including also all attorney's fees, legal expenses and costs, shall be added to the Obligations and Borrower shall be liable therefor.

The right of Bank to take possession or control of the Collateral upon the happening of any of the events or conditions constituting a default may be exercised without resort to any court proceeding or judicial process whatever and without any hearing whatever thereon; and, in this connection, BORROWER EXPRESSLY WAIVES ANY CONSTITUTIONAL RIGHTS OF BOR CESS OR ANY HEARING PRIOR TO THE EXERCISE OF THE RIGHT OF BANK TO TAKE THE HAPPENING OF ANY OF THE EVENTS OR CONDITIONS CONSTITUTING A DEFAULT.

SECTION 8. MISCELLANEOUS

8.01. Notice. Any notice shall be conclusively deemed to have been received by a party hereto and be effective on the day on which delivered to such party at the address set forth below (or at such other address as such party shall specify to the other party in writing) or if sent by registered mail, on the third business day after the day on which mailed, addressed to such party at said address:

(a) If to Bank, at:

Bank of the Southwest National
Association, Houston
910 Travis
Houston, Texas 77002

Attention: Mr. Gregory A. Stuart - Assistant
Vice President

(b) If to Borrower, at:

Mr. Charles Allen Lanphere
303 Big Hollow Lane
Houston, Texas 77042

But actual notice to Borrower, however given or received, shall always be effective.

8.02. Survival of Representations, Successors and Assigns, Etc. All covenants, agreements, representations and warranties made herein shall survive the making by Bank of the loans herein contemplated and the execution and delivery to Bank of the Note evidencing such loans and shall continue in full force and effect so long as the Note, or any renewal, rearrangement or extension thereof, is outstanding and unpaid. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of Borrower which are contained in this Agreement shall inure to the benefit of the successors and assigns of Bank.

8.03. Governing Law. This Agreement and the Note shall be construed in accordance with, and governed by the laws of, the United States of America and the State of Texas.

8.04. Waiver, Remedies, Etc. No failure nor any delay or omission on the part of Bank in exercising any right, power or privilege hereunder or under any agreement executed by and between Borrower and Bank shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. A waiver on any one or more occasions shall not be construed as a bar to or waiver of any right or remedy on any future occasion. The remedies herein provided are cumulative and not exclusive of any remedies provided by law or otherwise.

8.05. Setoff. Any deposit, deposit account, certificate of indebtedness, certificate of deposit or other sums at any time credited by or due from the holder of the Obligations to Borrower or any endorser, guarantor or surety of any of the Obligations and any securities or other property of Borrower or any endorser, guarantor or surety of any of the Obligations in the possession of the holder of the Obligations may at all times be held and treated as additional and cumulative collateral security for the payment of the Obligations, and Borrower grants Bank a security interest in all such deposits, deposit accounts, certificates of indebtedness or deposit, sums, securities and other properties as additional and cumulative security for payment of the obligations. The holder of the Obligations may apply or set-off such deposits, deposit accounts, certificates of indebtedness or deposit, sums, securities or other properties against the Obligations at any time in the case of Borrower but only with respect to matured liabilities in

case of the endorsers, guarantors, or sureties of any of the Obligations.

8.06. Compliance with Applicable Laws. It is the intent of Bank and Borrower in the execution of this Agreement and all other instruments executed in connection herewith to remain in strict compliance with all applicable laws from time to time in effect. In furtherance thereof, Bank and Borrower specifically intend to contractually limit the amount of interest payable on the Loan to the maximum lawful amount permitted under applicable laws (including the laws of the State of Texas and, to the extent controlling, federal laws) from time to time in effect. In furtherance thereof, none of the terms of this Agreement, the Note or any other instruments pertaining to or securing payment of the Loan shall ever be construed to create a contract to pay interest in excess of the Maximum Lawful Rate. Neither Borrower nor any other party liable for the payment of the Note shall ever be liable for interest in excess of the Maximum Lawful Rate and the provisions of this paragraph shall control over all other provisions of this Agreement, the Note or of any other instruments pertaining to or securing payment of the Loan. If any amount of interest taken or received by Bank shall be in excess of that calculated at the Maximum Lawful Rate, then any such excess shall be deemed to have been the result of a mathematical error by the parties hereto and shall be refunded immediately to Borrower or, at the option of Bank, applied against the unpaid principal balance of the Loan.

If maturity of the Obligations shall be accelerated for any reason, the full amount of any interest then unearned which has been collected theretofore by or for Bank shall thereupon be credited against the Obligations. Notwithstanding any other provision in this Agreement or in the Obligations or any of them, Borrower shall never be liable for unearned interest on the Obligations, or on any of them, and shall further never be required to pay interest on the Obligations, or on any of them, at a rate in excess of the Maximum Lawful Rate. The provisions of this paragraph shall have no application to a premium or bonus payable upon any voluntary anticipation of payment by Borrower on the Obligations or any part thereof. The intent of the parties being to conform and comply fully with all laws concerning usury applicable hereto or to the Obligations or any of them, any agreement concerning interest in any of the foregoing shall be subject to reduction to the amount allowed under the applicable laws with respect to usury, as now or hereafter construed by the courts with jurisdiction thereof,

and any interest collected in excess of the amount authorized and permitted by such laws shall be refunded to the person paying the same, or credited against the Obligations.

8.07. Modifications; Counterparts. No modification, amendment or waiver of any provision of this Agreement or the Note, nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by Bank, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in the same, similar or other circumstances. This Agreement may be executed in multiple original counterparts.

8.08. Security Interest. The execution and delivery of this Agreement in no manner shall impair or affect any other security (by endorsement or otherwise) for the payment of the Obligations and no security taken heretofore, now or hereafter as security for payment of any part or all of the Obligations shall impair in any manner or affect this Agreement, all such present and future additional security to be considered as cumulative security. Any of the Collateral may be released from this Agreement without altering, varying, or diminishing in any way the force, effect, lien, security interest, or charge of this Agreement as to the Collateral not expressly released, and this Agreement shall continue as a first lien, security interest and charge on all of the Collateral not expressly released until all sums and indebtedness secured hereby has been paid in full. Any future assignment or attempted assignment or transfer of the interest of Borrower in and to any of the Collateral shall not deprive Bank of the right to sell or otherwise dispose of or utilize all of the Collateral as above provided or necessitate the sale or disposition thereof in parcels or in severalty. This Agreement shall not be construed as relieving Borrower from full personal liability of the Obligations and any and all future and other indebtedness secured hereby and for any deficiency thereon.

In protecting, exercising or assuring its interests, rights and remedies under this Agreement, Bank may receive, open and dispose of mail addressed to Borrower and execute, sign and endorse negotiable and other instruments for the payment of money, documents of title and other evidences of payment, shipment or storage for any form of Collateral or proceeds on behalf of and in the name of Borrower.

Bank is hereby subrogated to all of Borrower's interests, rights and remedies in respect to the Collateral and all security now or hereafter existing with respect thereto and all guaranties and endorsements thereof and with respect thereto.

Bank may, at its option, whether or not the Obligations are due, demand, sue for, collect or make any compromise or settlement it deems desirable with reference to the Collateral. Bank shall not be obligated to take any steps necessary to preserve any rights in the Collateral against other parties, which Borrower hereby assumes to do.

As used in this Agreement and when required by the context, each number (singular and plural) shall include all numbers, and each gender shall include all genders; and unless the context otherwise requires, the word "person" shall include "corporation, firm or association."

8.09. Severability. To the extent permitted by applicable law, the unenforceability or invalidity, as determined by a court of competent jurisdiction, of any provision of this Agreement, shall not render unenforceable or invalid any other provision or provisions thereof.

IN WITNESS WHEREOF, Borrower and Bank have entered into this Agreement as of the 9th day of October, 1980.

Charles Allen Lanphere

BANK OF THE SOUTHWEST NATIONAL ASSOCIATION, HOUSTON

By

Gregory A. Stuart - Assistant Vice President

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Charles Allen Lanphere known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office this 9th day of October, 1980.

Joanie Byrne
Notary Public in and for
Harris County, Texas

JOANIE BYRNE
Notary Public, Harris Co. for State of Texas
My Commission Expires 6-20 19 84

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Gregory A. Stuart, Assistant Vice President of Bank of the Southwest National Association, Houston, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of Bank of the Southwest National Association, Houston.

GIVEN under my hand and seal of office this 9th day of October, 1980.

Joanie Byrne
Notary Public in and for
Harris County, Texas

JOANIE BYRNE
Notary Public, Harris Co. for State of Texas
My Commission Expires 6-20 19 84