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RECORDATION NO. 14400 Filed & Recorded

DEC 5 1986
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INTERSTATE COMMERCE COMMISSION

DEC 5 1986

Date

30:00

Washington, D. C.

December 5 1986

6-389A040

RECORDATION NO. 14400 Filed & Recorded

DEC 5 1986

INTERSTATE COMMERCE COMMISSION

Ms. Noreta R. McGee,
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Attention: Ms. Mildred Lee, Recordation Unit

RECORDATION NO. 14400 Filed & Recorded

Dear Ms. Secretary:

DEC 5 1986

We have enclosed an original and a counterpart of each of the documents described below, both being fully executed and acknowledged and both to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code:

1. Release and Discharge dated December 4, 1986 releasing the security interest created by a Loan, Mortgage and Security Agreement dated as of December 20, 1983, a primary document, filed with Interstate Commerce Commission on August 13, 1984 (Recordation No. 14400-A).
2. Amendment No. 2 dated as of November 1, 1986, a secondary document, to an Equipment Lease dated as of December 20, 1983, a primary document recorded under Recordation No. 14400.
3. Refunding Loan, Mortgage and Security Agreement, dated as of November 1, 1986, a primary document which refers to and concerns the equipment that is the subject of the aforementioned Equipment Lease.

*Counterpart -
Jennifer A. Gallani*

Ms. Noretta R. McGee
December 5, 1986
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The names and addresses of the parties to these documents are as follows:

1. The Release and Discharge is made by:

National Cooperative Services Corporation
1115 30th Street, N.W.
Washington, D.C. 20007

2. Lessor under the Equipment Lease and Borrower under the Refunding Loan, Mortgage and Security Agreement:

Cumberland Leasing Co.
8501 West Higgins Road
Chicago, Illinois 60631

3. Lessee under the Equipment Lease:

Seminole Electric Cooperative, Inc.
P.O. Box 272000
Tampa, Florida 33618

4. Permanent Lender under the Refunding Loan, Mortgage and Security Agreement:

Columbia Bank for Cooperatives
1401 Hampton Street
Columbia, South Carolina 29201

A description of the equipment leased, released from the security interest of the Loan Agreement dated as of December 20, 1983 pursuant to the Release and Discharge and subjected to the security interest created by the Refunding Loan, Mortgage and Security Agreement follows:

Ninety-eight (98), 100-ton nominal capacity gondola cars with single rotary dump features having an A.A.R. mechanical designation of G 092, having road numbers SEMX 84200 through SEMX 84297.

Two (2), 100-ton nominal capacity gondola cars with double rotary dump features having an A.A.R. mechanical designation of G 092, having road numbers SEMX 84904 and SEMX 84905.

Ms. Noreta R. McGee
December 5, 1986
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All the above cars bear the following inscription:

"Ownership subject to a Refunding Loan, Mortgage and Security Agreement between Cumberland Leasing Co., Owner; Columbia Bank for Cooperatives, Secured Party, filed under the Interstate Commerce Act."

A fee of \$30.00 is enclosed. Please return the original to us. We have served as counsel to the Lessee in this transaction.

A short summary of the documents to appear in the index follows:

1. Primary Document: Release and Discharge dated as of December 4, 1986, made by National Services Corporation, as Secured Party, to Cumberland Leasing Company, as secured party, releasing the security interest in the Equipment Lease dated as of December 20, 1983 (Recordation no. 14400) and the railroad cars subject to such Equipment Lease. See paragraph 2., below, for a description of such railroad cars. The address of the Secured Party executing the Release and Discharge is 1115 30th Street, N.W., Washington, D.C. 20007.
2. Secondary document: Amendment No. 2, dated as of November 1, 1986 to an Equipment Lease, dated as of December 20, 1983, between Cumberland Leasing Co., as Lessor, and Seminole Electric Cooperative, Inc., as Lessee, and amending the Equipment Lease dated as of December 20, 1983, a primary document, which Equipment Lease covers ninety-eight (98), 100-ton nominal capacity gondola cars with single rotary dump features, having road numbers SEMX 84200 through SEMX 84297 and two (2), 100-ton nominal capacity gondola cars with single rotary dump features, having road numbers SEMX 84904 and SEMX 84905. The address of the Lessor is 8501 West Higgins Road, Chicago, Illinois 60631. The address of the Lessee is P.O. Box 272000, Tampa, Florida 33618.

Ms. Noreta R. McGee
December 5, 1986
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3. Primary document: Refunding Loan, Mortgage and Security Agreement, dated as of December 20, 1983, between Cumberland Leasing Co., as Borrower, and Columbia Bank for Cooperatives, as Lender, and covering ninety-eight (98), 100-ton nominal capacity gondola cars with single rotary dump features, having road numbers SEMX 84200 through 84297 and two (2), 100-ton nominal capacity gondola cars with single rotary dump features, having road numbers SEMX 84904 and SEMX 84905. The address of the Borrower is 8501 West Higgins Road, Chicago, Illinois 60631. The address of the Permanent Lender is 1401 Hampton Street Columbia, South Carolina 29201.

Very truly yours,

Robert B. Michel

Counsel to Lessee

Enclosures

RECORDATION NO. 14400^E Filed & Recorded

DEC 5 1986 11 30 AM

INTERSTATE COMMERCE COMMISSION

REFUNDING LOAN, MORTGAGE AND SECURITY AGREEMENT

Dated as of November 1, 1986

between

**CUMBERLAND LEASING CO.,
as Borrower,**

and

**COLUMBIA BANK FOR COOPERATIVES,
as Permanent Lender**

**THIS AGREEMENT IMPOSES IN SECTION 7.1(B)
OBLIGATIONS ON THE BORROWER TO NOTIFY THE
PERMANENT LENDER OF CERTAIN CHANGES IN LOCATION OF
THE BORROWER'S OFFICES**

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REFUNDING LOAN, MORTGAGE AND SECURITY AGREEMENT

THIS REFUNDING LOAN, MORTGAGE AND SECURITY AGREEMENT dated as of November 1, 1986 between **CUMBERLAND LEASING CO.**, an Illinois corporation (the **Borrower**), and **COLUMBIA BANK FOR COOPERATIVES**, a corporation organized under the laws of the United States of America (the **Permanent Lender**).

WITNESSETH:

WHEREAS, the Borrower has purchased certain equipment and leased such equipment to Seminole Electric Cooperative, Inc. (the **Lessee**) pursuant to the Equipment Lease dated as of December 20, 1983, as amended by Amendments No. 1 and No. 2 thereto (the **Lease**);

WHEREAS, in order to finance a portion of the purchase price of the equipment, National Cooperative Services Corporation (the **Interim Lender**) made loans pursuant to the Participation Agreement which loans were evidenced by the certain non-recourse promissory notes (the **Interim Notes**);

WHEREAS, Section 6(b)(5)(i)(A) of the Participation Agreement contemplates the refinancing of the Interim Notes from the proceeds of New Obligations issued by the Borrower;

WHEREAS, the Lessee and the Borrower desire to refund the Interim Notes with the proceeds of Refunding Notes issued pursuant to the Participation Agreement and this Refunding Loan Agreement;

WHEREAS, the Borrower, pursuant to this Refunding Loan Agreement, agrees to make payments to the Permanent Lender in amounts sufficient to pay the principal of and premium, if any, and interest on the Refunding Notes, and to pay certain other amounts, the liability of the Borrower being limited to the income and proceeds from the Collateral (as hereinafter defined), except as hereinafter provided; and

WHEREAS, in order to secure the obligations specified in Section 2.1 hereof, the Borrower pursuant to this Refunding Loan Agreement grants to the Permanent Lender a security interest in the Collateral,

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

SECTION 1.1. Definitions. In this Refunding Loan Agreement, unless the context otherwise requires:

(a) The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or as the terms thereof are waived or modified in accordance herewith and therewith.

(b) As used herein, the terms **Basic Rent, Basic Rent Dates, Casualty Value, Closing Date, Deemed Event of Loss, Equipment, Event of Loss, First Basic Rent Date, Lessor's Cost, Lessor's Liens, Liens, Loan Agreement, Rent, Supplemental Rent, Termination Date** and **Termination Value** shall have the respective meanings given or referred to in the Lease.

(c) As used herein, the terms **Business Day, Document Closing Date, Closing Date, Loan, Maximum Loan Commitment, Person, Purchase Documents** and **Refunding Date** shall have the respective meanings given or referred to in the Participation Agreement.

(d) The following terms shall have the respective meanings set forth below:

Affiliate of any specified Person shall mean any other Person directly or indirectly controlling such specified Person or controlled by or under common control with such specified Person.

Amount and Payment shall mean amounts and payments the right to receive which is part of the Collateral.

Authorized Officer shall mean the President, any Vice President or any other officer of the Borrower authorized by the Board of Directors or the Executive Committee or other appropriate Committee of the Board of Directors of the Borrower to perform the specific act or duty or to sign the specific document in question.

Collateral shall mean all of the properties, claims, rights and things subject to or intended to be subject to the Security Interest.

Control when used with respect to any specified Person shall mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise; the terms **controlling, controlled by and under common control with** shall have meanings relative to the foregoing.

Default shall mean an event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default.

Event of Default shall have the meaning set forth in Section 8.1 hereof.

Excepted Payments shall mean (i) any payment due to the Borrower pursuant to Section 7 (other than the last sentence thereof), 9 or 14 of the Lease, but excluding Casualty Value, Termination Value and payments made by the Lessee for the purpose of indemnifying the Permanent Lender and (ii) any insurance proceeds payable to the Borrower under insurance separately maintained by the Borrower or under liability insurance maintained by the Lessee for the benefit of the Borrower.

First Principal Payment Date shall mean January 30, 1987.

Guarantor shall mean Illinois Tool Works Inc., a Delaware corporation.

Last Principal Payment Date shall mean July 30, 2004.

Outstanding when used with respect to the Refunding Notes shall mean, as of the date of determination, all Refunding Notes theretofore issued and delivered pursuant to this Refunding Loan Agreement, except (a) Refunding Notes theretofore cancelled by the Borrower or delivered to the Borrower for cancellation pursuant to Section 4.1 hereof, and (b) Refunding Notes in lieu of which other Refunding Notes have been issued and delivered pursuant to Section 4.2 or 4.3 hereof.

Overdue Rate shall have the meaning set forth in the Refunding Notes.

Participation Agreement shall mean the Participation Agreement dated as of December 20, 1983 among the Borrower, the Guarantor, the Interim Lender and the Lessee as amended by Amendment No. 1 thereto dated as of November 1, 1986 among the Borrower, the Guarantor, the Interim Lender, the Permanent Lender and the Lessee, and as it may hereafter be supplemented or amended.

Principal Payment Dates shall mean January 30 and July 30 in each year commencing with the First Principal Payment Date and concluding with the last Principal Payment Date.

Refunding Loan Agreement shall mean this Refunding Loan, Mortgage and Security Agreement dated as of November 1, 1986 between Cumberland Leasing Co., as Borrower, and Columbia Bank for Cooperatives, as Permanent Lender.

Refunding Notes shall mean promissory notes executed and delivered pursuant to the Participation Agreement and this Refunding Loan Agreement, each of which shall be in substantially the form set forth in Exhibit A hereto.

Security Interest shall mean the security interest created by Section 2.1 hereof.

ARTICLE II

SECURITY

SECTION 2.1. Grant of Security Interest. As security for the due and punctual payment of the principal of and premium, if any, and interest on the Refunding Notes according to their terms and effect and the performance and observance by the Borrower of all the covenants made by it in this Refunding Loan Agreement or the Participation Agreement or in any agreement, document or certificate delivered by it in connection herewith or therewith and the performance and observance by the Guarantor of its obligations to the Permanent Lender pursuant to the Participation Agreement, the Borrower hereby grants to the Permanent Lender a security interest in

and hereby grants, pledges, mortgages, transfers and assigns to the Permanent Lender the following:

(a) All of the Borrower's right, title and interest in and to the Lease and the Purchase Documents, including, without limitation, the right to receive all payments (including, without limitation, Rent) due or to become due thereunder, to give all waivers and consents and to enter into any amendments relating thereto (except that, notwithstanding anything contained herein to the contrary, provided no Default or Event of Default shall have occurred and be continuing, the Borrower shall be entitled to give waivers and consents and enter into amendments to the extent permitted by Section 7.1(d) hereof, and the Permanent Lender shall not be entitled to give or enter into the same but shall be entitled only to grant or withhold its consent in the circumstances contemplated by such Section) and to enforce the provisions thereof, and all proceeds thereof, and

(b) All of the Borrower's right, title and interest in and to the Equipment, together with all accessories, equipment, parts and appurtenances appertaining or attached thereto whether now owned or hereafter acquired and all substitutions, renewals or replacements of and additions, improvements and accessions thereto except such thereof as remain or become the property of the Lessee pursuant to the terms of the Lease, and all proceeds thereof;

excluding, however, all Excepted Payments (and the right to sue to recover the same to the extent permitted hereby) and any Payments which have been distributed to the Borrower in accordance with the provisions of this Refunding Loan Agreement.

SECTION 2.2. Payments Under Lease. The Borrower in the Participation Agreement and the Lease has directed the Lessee to make all Payments to be made by it under the Lease directly to the Permanent Lender or in accordance with the Permanent Lender's instructions until such time as the obligations secured hereby have been discharged, except that so long as no Default or Event of Default shall have occurred and be continuing hereunder, all payments of Basic Rent, Casualty Value and Termination Value in excess of the amounts then due and owing in respect of the Refunding Notes may be made to the Borrower. The Borrower agrees that should it receive any such Payments directed to be made to the Permanent Lender or any proceeds of or with respect to the Collateral or as the result of the sale or other disposition thereof to which the Borrower is not entitled hereunder, it will promptly forward such Payments to the

Permanent Lender or in accordance with the Permanent Lender's instructions.

SECTION 2.3. Equipment to Remain Personal Property. The parties hereto understand and agree that all Equipment and every part thereof is severed and shall be and remain severed from any real property and, even if physically attached to any real property, shall retain the character of personal property, shall be removable, shall be treated as personal property with respect to the rights of all Persons whomsoever, shall not become a fixture or otherwise part of any real property and, finally, by virtue of its nature as personal property, shall not be affected in any way by any instrument dealing with any real property.

SECTION 2.4. Filing of Financing Statements and Continuation Statements. The Borrower will execute and file, if not already filed, such financing statements and other documents and such continuation statements with respect to financing statements previously filed relating to the Security Interest as may be specified from time to time in written instructions of the Permanent Lender (which instructions shall be accompanied by the form of such financing statement or such continuation statement so to be filed).

SECTION 2.5. Release of Security Interest in Equipment. Upon receipt from the Borrower of a notice in form and substance satisfactory to the Permanent Lender certifying that the Lease is to terminate as to specified Equipment pursuant to the provisions of Section 10(c) or 12 thereof, together with all amounts payable to the Permanent Lender in respect thereof pursuant to the Lease or hereto, the Permanent Lender shall execute and deliver to, or as directed by, the Borrower an appropriate instrument (in due form for recording) releasing such Equipment from the Security Interest.

SECTION 2.6. Release of Security Interest in Collateral. When all obligations secured hereby have been paid or performed,

(a) the Security Interest and all other rights granted by this Refunding Loan Agreement shall terminate without any other act or formality whatsoever, and

(b) the Permanent Lender shall, upon receiving evidence satisfactory to it of such payment or performance, at the request and at the expense of the Borrower, execute and deliver to the Borrower such termination statements or other instruments as shall be requisite to evidence the satisfaction and discharge of this Refunding Loan Agreement, the obligations secured hereby and the Security Interest, to release or reconvey to the Borrower all the Collateral, freed and discharged from the provisions herein contained, and to

release the Borrower from its covenants herein contained.

SECTION 2.7. Power of Attorney. The Borrower hereby appoints the Permanent Lender the Borrower's attorney, irrevocably, with full power of substitution, to collect all Payments, to enforce compliance by the Lessee with all the terms and provisions of the Lease (except as otherwise provided in Section 8.1 hereof), and to take any action (including the filing of financing statements or other documents without Borrower's signature thereto) or institute any proceedings which the Permanent Lender may deem to be necessary or appropriate to protect and preserve the interest of the Permanent Lender in the Collateral.

ARTICLE III

ISSUE AND EXECUTION OF REFUNDING NOTES

SECTION 3.1. Issuance of Refunding Notes. A Note in the aggregate principal amount equal to each Loan made by the Permanent Lender shall be executed by the Borrower and delivered to the Permanent Lender to evidence such Loan. No Note may be issued except in accordance with the provisions hereof and of the Participation Agreement.

SECTION 3.2. Dating of Refunding Notes. Except as otherwise provided herein, Refunding Notes shall be dated the date of their delivery.

SECTION 3.3. Execution of Refunding Notes. The Refunding Notes shall be executed on behalf of the Borrower by one of its Authorized Officers.

SECTION 3.4. Limitation on Source of Payments. The Permanent Lender agrees that it will look solely to the Collateral for payment of the obligations secured hereby and that, except in the case of its gross negligence or willful misconduct, the Borrower shall not be personally liable to the holder of any Refunding Note or to the Permanent Lender for any amounts payable under the Refunding Notes, or for any liability under this Refunding Loan Agreement or the Participation Agreement. Nothing in this Section 3.4 shall affect any liability of the Borrower with respect to the breach of the agreements set forth in Sections 2.2, 7.1(c) and (d) hereof or the representations, warranties or agreements of the Lessor set forth in the Participation Agreement.

SECTION 3.5. **Payment.** The principal of, premium, if any, and interest on each Refunding Note shall be payable to the Permanent Lender in immediately available funds in the manner set forth in the Refunding Notes, or in accordance with such other payment instructions as the Permanent Lender shall advise the Borrower in writing. Final payment of any Refunding Note shall be made only against surrender of such Refunding Note to the Borrower at the address of the Borrower set forth in Section 10.2 hereof.

SECTION 3.6. **Application of Payments.** Payments on the Refunding Notes shall be applied pro rata among the Refunding Notes Outstanding except as otherwise specified herein. Each payment in respect of each Refunding Note shall be applied by the holder thereof **first**, to the payment of accrued and unpaid interest on such Refunding Note (including interest on overdue principal), and **second**, to the payment of principal and premium, if any, then due on such Refunding Note.

ARTICLE IV

CANCELLATION, EXCHANGE AND REPLACEMENT OF REFUNDING NOTES

SECTION 4.1. **Cancellation of Refunding Notes.** All Refunding Notes surrendered to the Borrower for payment, prepayment, or exchange shall be cancelled by it; and no Refunding Notes shall be issued in lieu thereof except as expressly permitted by the provisions of this Refunding Loan Agreement. If the Borrower shall acquire any of the Refunding Notes, such acquisition shall not operate as a redemption of or the satisfaction of the indebtedness represented by such Refunding Notes unless and until the same shall be cancelled, but neither the Borrower nor any Affiliate thereof may exercise any rights or remedies hereunder.

SECTION 4.2. **Exchange of Refunding Notes.** The Permanent Lender may exchange any of the Outstanding Refunding Notes for new Refunding Notes by surrendering such Outstanding Refunding Notes at the address of the Borrower set forth in Section 10.2 hereof, together with the written request of the Permanent Lender for the issuance of a new Note or Refunding Notes, specifying the authorized denomination or denominations of the same. Promptly upon receipt by the Borrower of the foregoing, the Borrower shall execute and deliver such new Note or Refunding Notes, in the aggregate principal amount and dated the same date as the Outstanding Refunding Notes surrendered, in such denomination or denominations specified in the written request; **provided, however**, that, if more than one new Note is to be issued, the denominations of all but one of such new Refunding Notes

shall equal or exceed \$100,000; and provided further, that if an Outstanding Note is surrendered on or after the first Interest Payment Date and interest on such Outstanding Refunding Notes with respect to the first Interest Payment Date has been paid, then one or more new Refunding Notes may be issued in replacement thereof in the aggregate principal amount of the Outstanding Note surrendered and such new Note or Refunding Notes may be dated the date of the old Note. The Borrower shall make a notation on each new Note of the amount of all payments of principal and premium, if any, theretofore made, or the date to which such payments have been made, on the old Note or Refunding Notes in exchange for which such new Note has been issued and the date to which interest on such old Note or Refunding Notes has been paid.

SECTION 4.3. Mutilated, Destroyed, Lost or Stolen Refunding Notes. If any Refunding Note shall become mutilated or shall be destroyed, lost or stolen, the Borrower shall, upon the written request of the Permanent Lender, execute and deliver in replacement thereof a new Note, payable in the same original principal amount and dated the same date as the Note so mutilated, destroyed, lost or stolen. The Borrower shall make a notation on each new Note of the amount of all payments of principal and premium, if any, theretofore made, or the date to which such payments have been made, on the Note so mutilated, destroyed, lost or stolen and the date to which interest on such old Note has been paid. If the Refunding Note being replaced has been mutilated, such Refunding Note shall be delivered to the Borrower and shall be cancelled by it. If the Note being replaced has been destroyed, lost or stolen, the Permanent Lender shall furnish to the Borrower an agreement of the Permanent Lender to save the Borrower and the Collateral harmless from any loss, however remote, including claims for principal of, premium, if any, and interest on the purportedly destroyed, lost or stolen Refunding Note, together with the written statement, signed by a duly authorized officer of the Permanent Lender, advising as to the destruction, loss or theft of such Refunding Note.

ARTICLE V

PREPAYMENT OF REFUNDING NOTES

SECTION 5.1. Prepayment of Refunding Notes. Refunding Notes shall be subject to prepayment, in whole or in part, as and to the extent required by any provision of this Section 5.1, but not otherwise. The Refunding Notes shall be prepaid, in whole or in part, as a result of the occurrence of an Event of Loss at a price equal to the principal amount Outstanding (or portion thereof in the case of a partial prepayment) on the Refunding Notes plus accrued

interest on such principal amount prepaid to the date of prepayment. Refunding Notes shall be prepaid (i) in whole or in part, as a result of the occurrence of a Deemed Loss Event, (ii) in whole but not in part, upon the termination of the Lease pursuant to Section 16 of the Lease or Section 14(e) of the Participation Agreement or (iii) in whole or in part, upon the occurrence of an Event of Default and acceleration of the Notes, in each case at a price equal to the sum of (a) the principal amount Outstanding (or portion thereof in the case of a partial prepayment) on the Refunding Notes, (b) accrued interest on such principal amount prepaid to the date of prepayment and (c) premium determined in accordance with Section 5.2. In addition, Refunding Notes may be prepaid, in whole but not in part, at any time on or after January 1, 1991 at a price equal to the sum of (a) the principal amount Outstanding on the Refunding Notes, (b) accrued interest on such principal amount prepaid to the date of prepayment and (c) premium determined in accordance with Section 5.2. In the event of any partial prepayment of the principal amount of any Refunding Note pursuant to this Refunding Loan Agreement, the amount of each principal payment of such Refunding Note becoming due after application of such prepayment shall be reduced in the proportion that the principal amount of the prepayment bears to the unpaid principal amount of the Refunding Note immediately prior to the prepayment.

SECTION 5.2. Computation of Prepayment Premium. Premium in connection with any prepayment for which Section 5.1 requires the payment of a premium shall be an amount determined as follows: the Permanent Lender shall determine the asking price of the bonds of the Federal Farm Credit System funding the Refunding Notes as quoted in the Wall Street Journal on a date within the 5 day period prior to the date of prepayment. In the event such asking price exceeds par, the amount payable, including principal and premium, shall be equal to the product obtained by multiplying (x) the principal amount of the Refunding Notes being prepaid by (y) 100 percent plus the percentage obtained by dividing (1) the excess of the asking price over par by (2) par. On or before the date of prepayment of the Refunding Notes pursuant to Section 5.1 hereof, the Permanent Lender shall provide to the Lessee and the Borrower written notice of the amount of the premium, so determined, which notice shall set forth the bases for the calculation thereof in accordance with this Section 5.2.

ARTICLE VI

PAYMENTS RECEIVED BY THE PERMANENT LENDER

SECTION 6.1. Basic Rent and Interest on Overdue Installments of Basic Rent. Except as otherwise provided in Section 6.3 or 6.6 hereof, each payment of Basic Rent, as well as any payment of Supplemental Rent representing interest on overdue installments of Basic Rent, received by the Permanent Lender at any time under the Lease, shall be applied by the Permanent Lender on the date such payment is received by the Permanent Lender in the following order of priority: **first**, so much of such payment as shall be required to pay any accrued but unpaid interest (as well as any interest on overdue principal) then due on all Refunding Notes shall be applied by the Permanent Lender to the payment of such interest; **second**, so much of such payment as shall be required to pay in full the aggregate amount of the payment or payments of principal and premium, if any, then due on all Refunding Notes shall be applied by the Permanent Lender to the payment of such principal and premium; **third**, the balance, if any, of such payment remaining thereafter shall be applied by the Permanent Lender to the payment of any other indebtedness at the time due and owing to the Permanent Lender and secured hereby; and **fourth**, the balance, if any, of such payment remaining thereafter shall be paid to the Borrower. The portion of each such payment distributed to the Permanent Lender shall be applied by the Permanent Lender in payment of Refunding Notes in respect of which such payment was received in accordance with the terms of Section 3.6 hereof.

SECTION 6.2. Payments Received as Result of Event of Loss, Deemed Event of Loss or Termination. Except as otherwise provided in Section 6.3 or 6.6 hereof, any Payments received and Amounts realized by the Permanent Lender pursuant to the Lease or the Participation Agreement as a result of either the occurrence of an Event of Loss or Deemed Event of Loss, with respect to any Item or Items of Equipment or the exercise by the Lessee of any of its rights to terminate the Lease pursuant to Section 16 of the Lease or Section 15(e) of the Participation Agreement shall in each case be applied forthwith upon receipt by the Permanent Lender in the following order of priority: **first**, in the manner provided in clause **first** of Section 6.3 hereof; **second**, so much of such Payment or Amounts as shall be required to pay any accrued but unpaid interest to the date of such application on the principal amount of the Refunding Notes to be prepaid by operation of clause **third** of this Section shall be applied by the Permanent Lender to the payment of such interest; **third**, so much of such Payment or Amounts as shall be required to prepay in full the principal of and (only in the case of a prepayment in respect of a termination of the Lease pursuant to Section 16 thereof or Section 14(e) of the Participation Agreement) premium, if any, on (i) all Refunding Notes Outstanding, or (ii) if such

prepayment is being made with respect to an Event of Loss or Deemed Event of Loss relating to less than all Items of Equipment, in the proportion that the Lessor's Cost of such Item or Items of Equipment bears to the total Lessor's Cost of all Items of Equipment (after giving effect to any reduction of the aggregate principal amount of Refunding Notes Outstanding resulting from the distribution of any payment of Basic Rent due on such date) shall be applied by the Permanent Lender thereto; **fourth**, the balance, if any, of such Payments or Amounts remaining thereafter shall be paid to the Borrower in the case of an Event of Loss or termination of the Lease pursuant to Section 16 thereof or Section 14(e) of the Participation Agreement or, in the case of a Deemed Event of Loss, so much of such Payment or Amounts as shall be required to pay an amount equal to the total amount payable by the Lessee pursuant to Section 12(a) of the Lease in respect of such Deemed Event of Loss, less the sum of (x) all amounts paid pursuant to clauses **second** and **third**, above, and (y) premium due and payable on all Refunding Notes prepaid pursuant to Section 5.1 in respect of such Deemed Event of Loss, shall be paid to the Borrower; **fifth** in the case of a Deemed Event of Loss, so much of such Payment or Amounts as shall be required to pay premium computed in accordance with Section 5.2 on the principal amount of Refunding Notes prepaid pursuant to clause **third**, above, shall be paid to the Permanent Lender; and **sixth** in the case of a Deemed Event of Loss, the balance, if any, of such Payments or Amounts remaining thereafter shall be paid to the Borrower.

SECTION 6.3. Payments Received After, or Held at Time of, Default or Event of Default. All Payments received and Amounts realized (including any Amounts realized by the Permanent Lender from the exercise of any remedies pursuant to the Lease or Article VIII hereof) as well as all Payments and Amounts then held by the Permanent Lender as part of the Collateral, shall after an Event of Default shall have occurred and be continuing hereunder and the outstanding principal of the Refunding Notes shall have become due and payable pursuant to Section 8.3 hereof be applied forthwith by the Permanent Lender in the following order of priority:

first, so much of such Payments or Amounts as shall be required to reimburse the Permanent Lender for any tax, loss or expense incurred or paid by it in connection with the collection or distribution of such Payments and Amounts shall be applied by the Permanent Lender thereto;

second, so much of such Payments or Amounts as shall be required to pay in full the aggregate unpaid principal amount of all Refunding Notes, plus the accrued but unpaid interest thereon to the date of distribution, shall be applied by the Permanent Lender to such amounts;

third, the balance, if any, of such Payments or Amounts remaining thereafter shall be applied by the Permanent Lender to the payment of any other amounts (other than premium on the Refunding Notes) at the time due and owing to the Permanent Lender and secured hereby;

fourth, the balance, if any, of such Payments or Amounts remaining thereafter up in an amount equal to the sum of the total amount payable by the Lessee pursuant to the second sentence of Section 20(a)(ii) of the Lease, less the sum of (x) all amounts paid pursuant to clause **second**, above, and (y) premium due and payable on all Refunding Notes prepaid pursuant to Section 5.1 in respect of such Event of Default, shall be paid to the Borrower;

fifth, the balance, if any of such Payments or Amounts remaining thereafter, up to an amount equal to premium computed in accordance with Section 5.2 hereof on the principal amount of Refunding Notes prepaid pursuant to clause **second**, above, shall be paid to the Permanent Lender; and

sixth, the balance, if any of such Payments or Amounts remaining thereafter shall be paid to the Borrower.

If the outstanding principal of all the Refunding Notes shall not have become due and payable pursuant to Section 8.3 hereof, then all Payments received and Amounts realized shall be applied by the Permanent Lender in the following order of priority: **first**, in the manner provided by clause **first** of this Section 6.3; **second**, in the manner provided by clause **first** of Section 6.1; **third**, in the manner provided by clause **second** of Section 6.1; **fourth**, in the manner provided by clause **third** of Section 6.1; and **fifth**, the balance, if any, shall be paid to the Borrower.

Anything herein to the contrary notwithstanding, any Payment or Amount received or realized by the Permanent Lender shall be held by it as part of the Collateral so long as a Default shall have occurred and be continuing.

SECTION 6.4. Related Payments Received for Which Provision Is Made in Lease. Except as otherwise provided in Section 6.3 or 6.6 hereof, any Payments received by the Permanent Lender for which provision as to the application thereof is made in the Lease shall be applied forthwith to the purpose for which such Payment was made in accordance with the terms of the Lease.

SECTION 6.5. Payments Received for Which No Provision is Made. Any Payments received and any Amounts realized by the Permanent Lender for which no provision as to the application thereof is made in the Lease or elsewhere in this Article, and all Payments received and Amounts realized by the Permanent Lender under the Lease or otherwise with respect to the Collateral to the extent received or realized at any time after payment in full of the principal of and premium, if any, and interest on all the Refunding Notes and the payment or performance of all other obligations secured hereby as well as any other amounts remaining as part of the Collateral after payment in full of the principal of and premium, if any, and interest on all such Refunding Notes and the payment or performance of all other obligations secured hereby, shall be applied forthwith by the Permanent Lender in the manner provided in clause fourth of Section 6.3 hereof.

SECTION 6.6. Excepted Payments. Anything in this Article to the contrary notwithstanding, any Excepted Payment received at any time by the Permanent Lender shall be distributed immediately to the Person entitled thereto.

ARTICLE VII

COVENANTS OF BORROWER

SECTION 7.1. Covenants of Borrower. The Borrower hereby covenants as follows:

(a) the Borrower will duly and punctually pay the principal of, premium, if any, and interest on the Refunding Notes in accordance with the terms of such Refunding Notes and this Refunding Loan Agreement (notwithstanding the foregoing, it is understood and agreed that except for the payment of Interim Interest, the Borrower shall not be personally liable to the Permanent Lender for the payment of such amounts);

(b) the Borrower will fulfill all its obligations under the Lease and this Refunding Loan Agreement in accordance with their terms;

(c) the Borrower will not directly or indirectly create, incur, assume or suffer to exist any lien, encumbrance, lease, exercise of rights or security interest in or with respect to any of the properties or assets included in the Collateral resulting from (i) the acts of the Borrower, (ii) claims against the

Borrower arising out of events or conditions not related to its ownership of the Collateral or to the transactions contemplated hereby, by the Participation Agreement or by the Lease or (iii) the nonpayment of any taxes based on or measured by the income of the Borrower, except any lien, encumbrance, lease, exercise of rights or security interest permitted or created by this Refunding Loan Agreement or the Lease (other than Lessor's Liens) or resulting from the nonpayment of any such tax which the Lessee has agreed in the Lease to pay or reimburse;

(d) the Borrower will not, except with the prior consent of the Permanent Lender, agree to any amendment to, or any waiver, discharge or termination of, any term or provision of the Lease or give any consent thereunder or exercise any rights or remedies thereunder except as provided in or permitted by Section 8.1 hereof, and will not make the election referred to in the last sentence of Section 16(a) of the Lease; **provided, however,** that without the necessity of the consent of the Permanent Lender (i) any indemnities to the extent in favor of the Borrower may be modified, amended or changed in such manner as shall be agreed to by the Borrower and the Lessee; (ii) the Borrower and the Lessee may agree to a reduction in the amount of the (a) Casualty Value for the Equipment from that set forth in the Lease, so long as such Casualty Value, as so reduced, shall not be less than the aggregate principal amount of, and premium, if any, and accrued interest on, the Refunding Notes Outstanding on any date on which such Casualty Value shall be payable and (b) the Termination Value for the Equipment from that set forth in the Lease, so long as such Termination Value, as so reduced, shall not be less than the aggregate principal amount of, and premium, if any, and accrued interest on, the Refunding Notes Outstanding on any date on which such Termination Value shall be payable; (iii) the Borrower and the Lessee may agree to an increase in the Basic Rent for the Equipment pursuant to any provision of the Lease providing for such increase;

(e) without the prior consent of the Permanent Lender, the Borrower will not relocate its chief executive office, its chief place of business or the office where it keeps its records concerning the Lease or the Purchase Documents (as such terms are used in Article 9 of the Uniform Commercial Code) without (if such relocation could impair the continued perfection of the

Security Interest in any Collateral) giving the Permanent Lender notice thereof at least 60 days before the date when such perfection would lapse (but notice will not in any event be required more than 30 days before such relocation), and will file any financing statements required in the opinion of counsel to the Permanent Lender to be filed in connection therewith and furnish copies thereof to the Permanent Lender together with evidence of the filing thereof;

(f) if the Borrower shall have actual knowledge of any Default or Event of Default hereunder or any Default or Event of Default under the Lease, it shall promptly give notice thereof to the Permanent Lender;

(g) from time to time the Borrower will do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Permanent Lender to do or execute for the purpose of fully carrying out and effectuating this Refunding Loan Agreement and the intent hereof;

(h) except as provided in Section 8.1 hereof, the Borrower shall not seek recovery of any payments under the Lease other than Excepted Payments, shall not exercise any remedies with respect to any part of the Collateral and shall promptly forward any such payments to which the Permanent Lender is entitled pursuant hereto to the Permanent Lender or in accordance with the Permanent Lender's instructions if any such payments shall be inadvertently received by the Borrower; and

(i) the Borrower will not assign or otherwise transfer its interests in this Refunding Loan Agreement, the Participation Agreement or the Lease except in accordance with Section 15(c) of the Lease.

ARTICLE VIII

EVENTS OF DEFAULT; REMEDIES OF PERMANENT LENDER

SECTION 8.1. Event of Default. The term **Event of Default**, wherever used herein, shall mean any of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or come about or be effected by operation

of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) any **Event of Default** as defined in the Lease (other than the failure of the Lessee to pay any amount which shall constitute an Excepted Payment); or

(b) the Borrower shall fail to make any payment of principal of or premium, if any, or interest on the Refunding Notes within five Business Days after the same shall become due, whether at the due date thereof, at the date fixed for prepayment by acceleration or otherwise; or

(c) the Borrower shall fail to perform its obligations under Section 7.1(d) hereof; or

(d) the Borrower or the Guarantor shall fail to observe or perform any other covenant to be performed by it under this Refunding Loan Agreement, the Refunding Notes, the Participation Agreement or the Lease or in any agreement, document or certificate delivered in connection herewith or therewith and continuance of such failure for a period of 30 days after notice thereof by registered or certified mail shall have been given to the Lessee and the Borrower by the Permanent Lender, specifying such failure and requiring it to be remedied; **provided, however,** that if such failure is other than the failure to pay money and is of such a nature that it can be corrected by the Borrower or the Guarantor but cannot be corrected in a 30-day period, such failure shall not constitute an Event of Default so long as the Borrower or the Guarantor institutes curative action within such period and diligently pursues such action; or

(e) any representation or warranty made by the Borrower or the Guarantor in this Refunding Loan Agreement, the Lease, the Participation Agreement or any agreement, document or certificate delivered by either of them in connection herewith or therewith or pursuant hereto or thereto shall prove to have been incorrect in any material respect when any such representation or warranty was made or given and shall remain material and incorrect at the time in question; or

(f) (i) the Borrower or the Guarantor shall fail to pay, on the due date for payment thereof (whether at

maturity, upon acceleration or otherwise) after the expiration of any grace period, any obligation with respect to any borrowed monies or advances for borrowed monies in the unpaid principal amount of \$1,000,000 or more (including any obligation with respect to any borrowed monies or advances directly or indirectly guaranteed by the Borrower or the Guarantor or in respect of which the Borrower or the Guarantor is contingently liable); or (ii) the Borrower or the Guarantor shall fail to observe or perform any term, covenant or agreement contained in any indenture, contract, agreement or other instrument by which it is bound evidencing or securing borrowed monies or advances, or pursuant to which the Borrower or the Guarantor has given its guarantee, in each case in the unpaid principal amount of \$1,000,000 or more, if the effect of such failure referred to in this clause (ii) is to accelerate the maturity thereof or of any such obligations; or

(g) the Borrower or the Guarantor shall (1) be adjudicated a bankrupt or become subject to an order for relief under any federal bankruptcy law, (2) not pay, or admit in writing its inability to pay, its debts generally as they become due, (3) make an assignment for the benefit of creditors, (4) apply for, seek, consent to, or acquiesce in the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property, (5) institute any proceedings seeking an order for relief or to adjudicate it a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (6) take any action to authorize or effect any of the foregoing actions, or (7) fail to contest in good faith any appointment or proceeding described in Section 8.1(h) hereof; or

(h) without the application, approval or consent of the Borrower or the Guarantor, a receiver, trustee, examiner, liquidator or similar official shall be appointed for the Borrower or the Guarantor or any part of its property, or a proceeding described in Section 8.1(g) shall be instituted against the Borrower or the Guarantor and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty consecutive days; or

(i) final judgment for the payment of money in excess of \$1,000,000 shall be rendered by a court of record against the Borrower or the Guarantor and the Borrower or the Guarantor shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereon within 90 days from the entry thereof, and within said period of 90 days, or such longer period during which execution on such judgment shall have been stayed, appeal therefrom and cause the execution thereon to be stayed during such appeal, and except for any such final judgment which the Borrower or the Guarantor is contesting in good faith by appropriate proceedings and for which the Borrower or the Guarantor has established adequate reserves and/or possesses adequate insurance coverage.

An Event of Default hereunder (whether or not pursuant to Section 8.1(a) hereof) will be deemed cured if such Event of Default is directly attributable to

(A) non-payment of Basic Rent under the Lease due on a Basic Rent Date, and the Borrower (notwithstanding the limitation of the Borrower's obligation set forth in Section 3.4 hereof) shall have paid to the lender an amount equal to the principal of and the premium, if any, and interest then due and payable on the Refunding Notes within five Business Days after the Borrower receives notice or a responsible person of the Borrower receives actual knowledge of such non-payment, or

(B) non-payment of a specific item of Supplemental Rent under the Lease due on demand or on the date or dates specified in the Lease, and the Borrower (notwithstanding the limitation of the Borrower's obligation set forth in Section 3.4 hereof) shall have paid so much of such defaulted Supplemental Rent as shall not constitute an Excepted Payment within five Business Days after the Borrower receives notice or a responsible person of the Borrower receives actual knowledge of such non-payment, or

(C) a failure of the Lessee to perform or observe any covenant, condition or agreement to be performed or observed by the Lessee under the Lease or the Participation Agreement other than the covenants or agreements to pay Rent and to maintain the Equipment, and the Borrower (notwithstanding the provisions of the Lease) shall have performed or observed any such covenant, condition or agreement on behalf of the

Lessee within 10 days after the occurrence of such Event of Default, as defined in the Lease,

provided, however, that the Borrower may not exercise such right to cure more than two consecutive Basic Rent defaults or rights to cure hereunder more than a total of four times. Upon any such cure, the Borrower and the Permanent Lender will be restored to their former positions and rights hereunder. Anything herein to the contrary notwithstanding, the Permanent Lender will not exercise any remedies hereunder with respect to any Event of Default which may be cured under this paragraph until the period in which such cure may be effected shall have expired.

Any provisions of the Lease or this Refunding Loan Agreement to the contrary notwithstanding:

(1) If an Event of Default shall have occurred and is continuing, the Borrower during the cure period referred to above and thereafter for so long as the Permanent Lender shall not have exercised remedies in respect thereof shall have the right to purchase the Outstanding Refunding Notes by paying to the Permanent Lender the principal advanced and unpaid under the Refunding Notes plus interest accrued to the date of purchase on the Refunding Notes Outstanding plus premium, if any, and all other sums then due and payable to the Permanent Lender hereunder or under the Participation Agreement.

(2) Upon any payment or performance or compliance by the Borrower, the Borrower shall be subrogated to the rights of the Permanent Lender in respect of the Rent as to which such payment shall have been made and so long as no Default or Event of Default shall have occurred and be continuing hereunder shall be entitled to receive the amount of such payment and the expenses incurred in connection with such payment and performance and compliance together with interest thereon at the Overdue Rate from the Lessee or, if paid to the Permanent Lender, from the Permanent Lender.

(3) If the Lessee shall fail to pay any Excepted Payment to any Person, such Person shall have the right, to the exclusion of the Permanent Lender, to enforce performance by the Lessee, but only by means of lawsuit and not by exercise of other remedies under the Lease, of any covenants of the Lessee to pay any such amount directly to such Person or to recover damages for the breach of the applicable indemnity provisions of the Lease or otherwise.

SECTION 8.2. Enforcement of Remedies. Subject to Section 8.1 hereof, after an Event of Default shall have occurred and be continuing hereunder, then and in every such case the Permanent Lender may exercise any or all of the rights and powers and pursue, subject to the rights of the Lessee under the Lease, any and all of the remedies available pursuant to this Article, and in the event such Event of Default is an Event of Default referred to in paragraph (a) of Section 8.1 hereof, any and all of the remedies available pursuant to the Lease.

SECTION 8.3. Acceleration of Refunding Notes. Upon the occurrence of an Event of Default pursuant to Section 8.1(g) or (h) hereof relating to the Borrower, the principal amount of and premium, if any, and accrued interest on all Outstanding Refunding Notes shall immediately become due and payable without further act or notice of any kind. Subject to Section 8.1 hereof, upon the occurrence and during the continuance of any other Event of Default hereunder, the Permanent Lender in its discretion may by notice to the Borrower declare the unpaid principal amount of all Outstanding Refunding Notes with premium, if any, and accrued interest thereon to be immediately due and payable, upon which declaration such principal amount and premium and such accrued interest shall immediately become due and payable without further act or notice of any kind.

SECTION 8.4. Specific Remedies; Enforcement of Claims without Possession of Refunding Notes. Subject to Section 8.1 hereof, upon the occurrence and during the continuance of an Event of Default hereunder:

(a) At the request of the Permanent Lender, the Borrower shall promptly execute and deliver to the Permanent Lender such instruments and other documents as the Permanent Lender may deem necessary or advisable to enable the Permanent Lender or an agent or representative designated by the Permanent Lender, at such time or times and place or places as the Permanent Lender may specify, to obtain possession of all or any part of the Collateral. The Permanent Lender may (1) obtain a judgment conferring on the Permanent Lender the right to such possession and requiring the Borrower to deliver such instruments and documents to the Permanent Lender, to the entry of which judgment the Borrower hereby specifically consents, and (2) pursue all or part of such Collateral wherever it may be found and may enter the premises of the Borrower wherever such Collateral may be or is supposed to be and search for such Collateral and, to the extent permitted by applicable law, take possession of and remove such Collateral, and may exclude the Borrower and the Lessee and all persons claiming under them wholly or partly

therefrom. Upon every such taking of possession, the Permanent Lender may, from time to time, at the expense of such Collateral, make all such expenditures for maintenance, insurance, repairs, alterations, additions and improvements to and of such Collateral, as it may reasonably deem necessary and proper. In each such case, the Permanent Lender shall have the right, to the extent permitted by applicable law, to maintain, use, operate, store, lease, control or manage such Collateral and to carry on the business and to exercise all rights and powers of the Borrower relating to such Collateral, as the Permanent Lender shall deem necessary, including the right to enter into any and all such agreements with respect to the maintenance, use, operation, storage, leasing, control or management of such Collateral or any part thereof as the Permanent Lender may reasonably determine; and the Permanent Lender shall be entitled to collect and receive all tolls, rents, revenues, issues, income, products and profits of such Collateral and every part thereof, without prejudice, however, to the right of the Permanent Lender under any provision of this Refunding Loan Agreement to collect and receive all cash held by, or required to be deposited with, the Permanent Lender hereunder. Such tolls, rents, revenues, issues, income, products and profits shall be applied to pay the expense of holding and operating such Collateral and of conducting the business thereof, and of all maintenance, repairs, alterations, additions and improvements, and to make all payments which the Permanent Lender may be required or may reasonably elect to make, if any, for taxes, assessments, insurance or other proper charges upon such Collateral or any part thereof (including the employment of engineers and accountants to examine, inspect and make reports upon the properties and books and records of the Borrower as such), and all other payments which the Permanent Lender may be required or authorized to make under any provision of this Refunding Loan Agreement.

(b) The Permanent Lender may proceed to enforce its rights hereunder by directing payment to it of all monies payable under any agreement or undertaking constituting part of the Collateral, by proceedings in any court of competent jurisdiction for the appointment of a receiver or for sale of all or any part of the Collateral possession to which the Permanent Lender shall at the time be entitled hereunder or for foreclosure of such Collateral, and by any other action, suit, remedy or proceeding authorized or

permitted by this Refunding Loan Agreement or by law or by equity, and may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have its claims asserted or upheld in any bankruptcy, receivership or other judicial proceedings.

(c) Without limiting the foregoing, the Permanent Lender shall have as to such of the Collateral as is subject to the Uniform Commercial Code or similar law in each relevant jurisdiction all the remedies of a secured party under the Uniform Commercial Code or similar law in such jurisdiction and such further remedies as from time to time may hereafter be provided in such jurisdiction for a secured party. In exercising its power of sale, the Permanent Lender shall be entitled to add to the indebtedness evidenced by the Outstanding Refunding Notes any and all reasonable expenses incurred in such exercise. In exercising its power of sale under this Refunding Loan Agreement the Permanent Lender may sell the Collateral or any part thereof, either as one unit or in separate units, all as the Permanent Lender may in its reasonable discretion elect; and the Permanent Lender may so sell the aforesaid properties, rights and interests or any part thereof either separately from or together with the whole or any part of other property which may constitute security for any obligation with respect to the Outstanding Refunding Notes, also as the Permanent Lender may in its reasonable discretion elect. The parties agree that ten days will be reasonable notice to the Borrower of any sale hereunder. The Permanent Lender may purchase at any sale hereunder and may apply indebtedness owing to it hereunder against the purchase price thereat.

(d) Notwithstanding the foregoing, so long as no Default or Event of Default under Section 8.1(a) hereof shall have occurred and be continuing, the rights of the Permanent Lender in and to the Equipment shall be subject and subordinate to the rights of the Lessee under the Lease insofar as the remedies provided in this Section conflict with such rights of the Lessee.

SECTION 8.5. Rights and Remedies Cumulative. Each and every right, power and remedy herein specifically given to the Permanent Lender under this Refunding Loan Agreement shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy

whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Permanent Lender, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Permanent Lender in the exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Borrower or the Lessee or to be an acquiescence therein. The Borrower will not take advantage of any stay or extension law or any law providing for the valuation of Collateral before, or its redemption after, sale.

SECTION 8.6. Restoration of Rights and Remedies. In case the Permanent Lender shall have proceeded to enforce any right, power or remedy under this Refunding Loan Agreement by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Permanent Lender, then and in every such case the Borrower, the Permanent Lender and the Lessee shall be restored to their former positions and rights hereunder with respect to the Collateral.

SECTION 8.7. Waiver of Past Defaults. Any past Default hereunder and its consequences may be waived by the Permanent Lender. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Refunding Loan Agreement; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

SECTION 8.8. Rescission and Annulment. If at any time after the principal of the Outstanding Refunding Notes shall have become so due and payable by declaration by the Permanent Lender, and before any judgment or decree for the payment of the money so due, or any thereof, shall be entered, all arrears of interest upon the Outstanding Refunding Notes and all other sums payable under the Outstanding Refunding Notes (except the principal of and premium, if any, on the Outstanding Refunding Notes which by such declaration shall have become payable) shall have been duly paid, and every other Default and Event of Default hereunder shall have been made good or cured, then and in every such case the Permanent Lender's declaration and its consequences may be rescinded and annulled by the Permanent Lender; but no such rescission or annulment shall extend to or affect any subsequent Default or Event of Default hereunder or impair any right consequent thereon.

ARTICLE IX

CONCERNING THE BORROWER

SECTION 9.1. **Restrictions on Dealing with Collateral.** The Borrower agrees not to manage, control, use, sell, operate, store, lease, dispose of or otherwise deal with the Equipment or any other part of the Collateral, except (i) as required by the terms of the Lease, or (ii) in accordance with the express terms hereof and of the Lease.

SECTION 9.2. **No Duties of Maintenance, Etc.** Except as specifically provided in this Refunding Loan Agreement or the Participation Agreement, the Borrower shall have no duty (i) to see to any recording or filing of the Lease, this Refunding Loan Agreement, any instrument or document described in this Refunding Loan Agreement or any security interest or to see to the maintenance of any such documentation, recording or filing, (ii) to maintain the Equipment or perform any other obligation of the Lessee under the Lease, or to see to any insurance on the Equipment or any other part of the Collateral or to effect or maintain any such insurance, whether or not the Lessee shall be in default with respect to the Lease, other than to receive and hold any policies, cover notes or binders furnished by such Lessee pursuant to the Lease, (iii) to see to the payment or discharge of any tax, assessment or other governmental charge or any security interest of any kind owing with respect to, assessed or levied against, any part of the Collateral or to make or file any reports or returns related thereto, (iv) to confirm, verify or inquire into the failure of the Lessee to send any reports or financial statements of the Lessee or (v) to inspect the Equipment or any other part of the Collateral at any time or ascertain or inquire as to the performance or observance of any of the Lessee's covenants under the Lease.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. **Governing Law.** This Loan Agreement has been negotiated in the State of New York and shall be governed by, and be construed in accordance with, the laws of the State of New York.

SECTION 10.2. **Notices.** Unless otherwise expressly specified or permitted by the terms hereof, all communications, notices and consents provided for herein shall be in writing and shall become effective when received, and if mailed shall be deposited in the

United States mail with proper postage for first-class mail, prepaid, addressed as follows: (i) if to the Borrower, at 8501 West Higgins Road, Chicago, Illinois 60631, Attention: Vice President and General Counsel (with copies to the Guarantor at the same address, and to GATX Leasing Corporation, Four Embarcadero Center, San Francisco, California 94111, Attention: Contracts Administration), (ii) if to the Lessee, at its address set forth in the Lease (with a copy to the Southeast Area - REA, at its address set forth in the Lease), and (iii) if to the Permanent Lender, at 1401 Hampton Street, P.O. Box 1499, Columbia, South Carolina 29202, Attention: BC Credit; or to such other address as the Borrower, the Permanent Lender or the Lessee, or its successors or assigns, may from time to time designate by notice duly given in accordance with this Section 10.2 to each other party.

SECTION 10.3. Payments to Borrower. All payments to the Borrower pursuant to this Refunding Loan Agreement shall be made in accordance with such payment instructions as the Borrower shall advise the Permanent Lender in writing, and in immediately available funds.

SECTION 10.4. Amendments. Neither this Refunding Loan Agreement nor any of the provisions of the Refunding Notes may be amended, waived, discharged or terminated orally, but only by an agreement in writing signed by the Borrower and the Permanent Lender.

SECTION 10.5. Limitation as to Enforcement of Rights, Remedies and Claims. Nothing in this Refunding Loan Agreement, whether express or implied, shall be construed to give to any Person other than the Borrower and the Permanent Lender any legal or equitable right, remedy or claim under or in respect of this Refunding Loan Agreement or any Refunding Note .

SECTION 10.6. Severability of Invalid Provisions. Any provision of this Refunding Loan Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.7. Benefit of Parties, Successors and Assigns; Entire Agreement. All representations, warranties, covenants and agreements contained herein or delivered in connection herewith shall be binding upon, and inure to the benefit of, the Borrower and its successors and, to the extent permitted hereby, assigns and the Permanent Lender and its successors and assigns.

SECTION 10.8. Survival of Representations and Warranties. All representations and warranties made with respect to any Refunding Notes shall survive the execution and delivery of this Refunding Loan Agreement and the issue, sale and delivery of such Refunding Notes and shall continue in effect so long as any such Refunding Note issued hereunder is Outstanding and unpaid.

SECTION 10.9. Counterpart Execution. This Loan Agreement and any amendment to this Refunding Loan Agreement may be executed in any number of counterparts and by the respective parties hereto and thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument. Fully executed sets of counterparts shall be delivered to, and retained by, the Borrower and the Permanent Lender.

SECTION 10.10. Dating of Agreement. Although this Refunding Loan Agreement is dated for convenience and for the purpose of reference as of the date mentioned, the actual date or dates of execution by the parties hereto are the respective dates set forth under their signatures, and this Refunding Loan Agreement shall be effective on the later of such dates.

IN WITNESS WHEREOF, the parties hereto have each caused this Refunding Loan Agreement to be duly executed by their respective officers thereunto duly authorized as of the date set forth below.

CUMBERLAND LEASING CO.,

By 
Title: **David B. Smith**
Vice President

Dated: *December 3*, 1986

COLUMBIA BANK FOR COOPERATIVES,

By _____
Title:

Dated: _____, 1986

IN WITNESS WHEREOF, the parties hereto have each caused this Refunding Loan Agreement to be duly executed by their respective officers thereunto duly authorized as of the date set forth below.

CUMBERLAND LEASING CO.,

By _____
Title:

Dated: _____, 1986

COLUMBIA BANK FOR COOPERATIVES,

By W. D. Horcut
Title: Vice President

Dated: December 5, 1986

EXHIBIT A
to Refunding Loan, Mortgage and Security Agreement

[FORM OF REFUNDING NOTE]

THIS REFUNDING NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MUST BE HELD INDEFINITELY UNLESS SO REGISTERED OR TRANSFERRED IN A TRANSACTION EXEMPT FROM REGISTRATION.

No. 1

\$2,365,641.63

REFUNDING PROMISSORY NOTE

(Secured by Lease Obligations of Seminole Electric Cooperative, Inc.)

CUMBERLAND LEASING CO., an Illinois corporation (the **Borrower**), for value received, hereby promises to pay to the order of **COLUMBIA BANK FOR COOPERATIVES** or assigns (the **Permanent Lender**), but only from the funds designated below, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, the principal sum of \$2,365,641.63 and to pay interest on the unpaid principal balance thereof from and including the date hereof to but excluding the maturity date of this Note at a rate of interest from time to time equal to ___% per annum computed on the basis of a 365- or 366-day year and actual days elapsed. Principal payments hereunder shall be made in installments, and accrued and unpaid interest shall be paid, on January 30 and July 30 in each year commencing January 30, 1987 and ending July 30, 2004, except that the last such payment shall be in an amount sufficient to discharge all the unpaid principal of and accrued interest on this Refunding Note in full. If the 30th day of any such month is not a business day, payments due hereunder on the 30th day shall be due on the next succeeding business day. The term "business day" means any day, other than a Saturday, Sunday or other day on which banks in Chicago, Illinois, Tampa, Florida, San Francisco, California or Columbia, South Carolina are authorized to close. The amount of each such installment of principal and interest shall be as set forth on the Loan Schedule attached hereto.

Payments of principal and interest hereunder shall be made in such coin or currency of the United States of America as at the time of such payment shall be legal tender for the payment of public or private debts.

All overdue payments hereunder shall bear interest at a rate equal to the greater of (i) two above the then current rate hereunder or (ii) the "Prime Rate" published from time to time in the Wall

Street Journal (but not greater than the maximum rate permitted by law) (the "Overdue Rate").

So long as Columbia Bank for Cooperatives shall be the holder of this Refunding Note, all amounts due hereunder shall be payable in immediately available funds by transferring such amount by wire to such bank as the Permanent Lender shall specify to the Borrower in writing, for the account of Columbia Bank for Cooperatives maintained at such bank, without presentment or surrender of this Note. Final payment of this Note shall be made only against surrender of this Note to the Borrower.

All payments of principal, premium, if any, and interest to be made by the Borrower on the Refunding Notes of which this Note is one shall, except as provided in Section 3.4 of the Refunding Loan, Mortgage and Security Agreement, dated as of November 1, 1986 between the Borrower and the Permanent Lender (the "Refunding Loan Agreement") be made only from the Collateral (as defined in the Refunding Loan Agreement) and the owner or other holder hereof, by its acceptance of this Note, agrees that it will look solely to the income and proceeds from such Collateral to the extent available for distribution as above provided and that the Borrower shall not be personally liable to the owner or other holder hereof for any amounts payable under this Note or for any liability under the Refunding Loan Agreement or the Participation Agreement referred to therein, but nothing in this paragraph shall affect any liability of the Borrower with respect to the matters set forth in Section 3.4 of the Refunding Loan Agreement to the extent provided therein.

This Refunding Note is one of the Refunding Notes which have been or are to be issued by the Borrower pursuant to the terms of the Refunding Loan Agreement. Reference is hereby made to the Refunding Loan Agreement for a statement of the rights of the owners or other holders of, and the nature and extent of the security for, this Note and the other Refunding Notes issued under the Refunding Loan Agreement, to all of which terms and conditions each owner or other holder hereof agrees by its acceptance of this Note.

This Refunding Note is subject to prepayment in whole or in part as, and to the extent, provided in Section 5.1 of the Refunding Loan Agreement. In certain circumstances, as provided in Sections 5.1 and 5.2 of the Refunding Loan Agreement, the prepayment of this Refunding Note will require premium on prepayment.

In case an Event of Default (as defined in the Refunding Loan Agreement) shall occur and be continuing, the unpaid principal of this Note, together with accrued interest and premium hereon, may become or be declared due and payable in the manner, with the effect and subject to the conditions provided in the Refunding Loan Agreement.

Each payment on this Note shall be applied in the manner set forth in Section 3.6 and Article VI of the Refunding Loan Agreement.

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized, as of the date hereof.

Dated:

CUMBERLAND LEASING CO.

By _____
Title:

[FORM OF LOAN SCHEDULE REFERRED TO IN FORM OF REFUNDING NOTE]

LOAN SCHEDULE

Payment Date

Principal Repayment
(per \$1,000,000 of
principal amount of
Refunding Note)

LOAN SCHEDULE

Payment Date

Principal Repayment
(per \$1,000,000 of
principal amount of
Refunding Note)

State of Illinois)
) ss:
County of Cook)

On this *3rd* day of *December*, 1986, before me personally appeared DAVID B. Smith, to me personally known, who being by me duly sworn, says that he is the Vice President of Cumberland Leasing Co., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]



Notary Public

My commission expires:

March 31, 1987

