

11396

RECORDATION NO. Filed 1425



THE DOW CHEMICAL COMPANY

JAN 21 1980 - 3 45 PM

INTERSTATE COMMERCE COMMISSION

MIDLAND, MICHIGAN 48640

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January 21, 1980

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Secretary of the Interstate Commerce Commission

Constitution and 12th Street, N. W.
Washington, D.C. 20423

Date JAN 21 1980

Fee \$ 100.00

ICC Washington

Dear Sir:

Pursuant to Part 1116 of the regulations of the Interstate Commerce Commission, 49 CFR Part 1116, I hereby request that you record under 49 U.S.C. Section 11303 the following documents:

1. Lease of Railroad Equipment dated as of January 14, 1980 between The Dow Chemical Company and Security Pacific Equipment Leasing, Inc.;
2. Conditional Sale Agreement dated as of January 14, 1980 between Security Pacific Equipment Leasing, Inc., ACF Industries, Incorporated and Richmond Tank Car Company;
3. Assignment of Lease and Agreement dated as of January 14, 1980 between Security Pacific Equipment Leasing, Inc. and The Prudential Insurance Company of America; and
4. Agreement and Assignment dated as of January 14, 1980 between ACF Industries, Incorporated, Richmond Tank Car Company, and The Prudential Insurance Company of America.

The original and one counterpart of each of the above-listed documents are enclosed herewith for filing purposes.

The parties to the subject transaction, and their addresses, are as follows:

Lessee

The Dow Chemical Company
2020 Dow Center
Midland, Michigan 48640
Attention: Dow Chemical U.S.A., Treasury Department

Lessor/Vendee

Security Pacific Equipment Leasing, Inc.
One Embarcadero Center, Suite 710
San Francisco, California 94111

A Belf...
Sum
C Counterpart

Vendors

ACF Industries, Incorporated
750 Third Avenue
New York, New York 10017

Richmond Tank Car Company
Suite 1500
1700 West Loop South
Houston, Texas 77027

The equipment covered by the aforesaid Lease and Conditional Sale Agreement is 502 tank cars. The A.A.R. mechanical designation of the equipment and the car numbers are set forth in Schedule A hereto.

The original and all extra copies of the enclosed documents should be returned to Mr. Donn Beloff of Schiff Hardin & Waite, 1101 Connecticut Avenue, N.W., Washington, D.C. 20036.

A \$100.00 check, payable to the Interstate Commerce Commission, also is enclosed to cover the required recordation fee.

I am an officer of The Dow Chemical Company and have knowledge of the matters set forth herein.

Very truly yours,

THE DOW CHEMICAL COMPANY

By ^{sdw} B. J. Williams

Dated: January 21, 1980.

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RECORDATION NO. Filed 1425

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INTERSTATE COMMERCE COMMISSION

ANNEX C
To
Conditional Sale
Agreement

LEASE OF RAILROAD EQUIPMENT

Dated as of January 14, 1980

between

THE DOW CHEMICAL COMPANY,
Lessee,

and

SECURITY PACIFIC EQUIPMENT LEASING, INC.,
Lessor.

[Filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on January __, 1980, at ____ .m., recordation number ____.]

TABLE OF CONTENTS

		<u>Page</u>
§ 1.	Net Lease	1
§ 2.	Delivery and Acceptance of Units	2
§ 3.	Rentals	3
§ 4.	Term of Lease	4
§ 5.	Identification Marks	4
§ 6.	Taxes	5
§ 7.	Maintenance, Casualty Occurrences, Insurance and Termination	7
§ 8.	Reports; Inspection	13
§ 9.	Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification....	13
§ 10.	Default	16
§ 11.	Return of Units upon Default	20
§ 12.	Assignment; Possession and Use	21
§ 13.	Renewal Option and Right of First Refusal	24
§ 14.	Return of Units upon Expiration of Term	25
§ 15.	Recording	26
§ 16.	Interest on Overdue Rentals	27
§ 17.	Notices	27
§ 18.	Severability; Effect and Modifica- tion of Lease	27
§ 19.	Execution	28
§ 20.	Law Governing	28
§ 21.	No Guarantee of CSA Indebtedness or Residual Value	28
§ 22.	Survival	28
Execution		30
SCHEDULE A	Schedule of Equipment	31
SCHEDULE B	Casualty Values	34
SCHEDULE C	Termination Values	36

LEASE OF RAILROAD EQUIPMENT dated as of January 14, 1980, between THE DOW CHEMICAL COMPANY, a Delaware corporation (the "Lessee"), and SECURITY PACIFIC EQUIPMENT LEASING, INC., a Delaware corporation (the "Lessor").

The Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with ACF INDUSTRIES, INCORPORATED, a New Jersey corporation, and RICHMOND TANK CAR COMPANY, a Delaware corporation (the "Builders"), by which the Builders have agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment").

The Prudential Life Insurance Company of America (the "Investor") is a party to the Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, the Lessor, and the Investor. As used herein, the term "Vendor" shall refer to the Investor.

The Builders are assigning their respective interests in the CSA pursuant to an Agreement and Assignment (the "CSA Assignment") to the Vendor.

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

The Lessor will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (the "Lease Assignment") and the Lessee will consent to the Lease Assignment pursuant to a Lessee's Consent and Agreement (the "Consent").

The Lessee will indemnify the Lessor against certain losses, liabilities and expenses pursuant to an indemnity agreement (the "Indemnity Agreement") substantially in the form of Exhibit C to the Participation Agreement.

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

§ 1. Net Lease. This Lease is a net lease, and the Lessee's obligation to pay all rental and other amounts payable hereunder shall be absolute and unconditional

under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the CSA, or against any Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the lawful prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease (provided, however, that neither party shall rely on same to terminate this Lease), any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease, or until the Equipment has been returned to the possession of the Lessor (for all purposes of this Lease any Unit shall not be deemed to have been returned to the Lessor's possession until all of the Lessee's obligations hereunder with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor or the Vendor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection

and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance"), in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee for all purposes of this Lease on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as hereinafter provided, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to Article 4(a) thereof shall be null and void and ineffective to subject such unit to this Lease. The inspection and acceptance by the Lessee of any Unit shall not in any way release any rights which the Lessee may have against the Builder thereof under any warranty relating to such Unit.

§ 3. Rentals. (a) The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 40 consecutive semi-annual payments payable January 1 and July 1 of each year, commencing on July 1, 1981, to and including January 1, 2001. The first 17 semi-annual rental payments shall be each in an amount equal to 4.526195% of the Purchase Price (as defined in the CSA) of each Unit then subject to this Lease and the last 23 semi-annual rental payments shall each be in an amount equal to 5.532016% of the Purchase Price of each Unit then subject to this Lease.

(b) If any of the rental payment dates referred to above is not a business day the semi-annual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, San Francisco, California, or Midland, Michigan, are authorized or obligated to remain closed.

(c) The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this

§3 and §7 hereof, at the principal office of the Lessor, for the respective accounts of the Lessor and the Vendor, with instructions to the Lessor first, to apply such payments to satisfy its obligations under the CSA to the Vendor, with any balance to be retained by the Lessor. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds to the Lessor by 12:00 noon, Central Standard Time, on the date such payment is due.

(d) All amounts earned in respect of the Units (including, without limitation, mileage charges) during the term of this Lease shall belong to the Lessee and, if received by the Lessor, shall be promptly turned over to the Lessee so long as the Lessee shall not be in default under this Lease.

§ 4. Term of Lease. (a) The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

(b) Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease or rescind its terms, all as provided therein; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment under § 12 hereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying road number set forth in Schedule A hereto, or in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending

this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Interest Filed with the Interstate Commerce Commission" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor and Vendor under this Lease and of the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until the required legend shall have been so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the identifying road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such filing, recordation and deposit has been duly made, and no other filing, recordation or deposit or the giving of notice of any kind to any other federal, state or local government or agency thereof is necessary to protect the interests of the Lessor and the Vendor in such Units from any adverse effect resulting from such change in identifying road numbers. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates or any permitted sublessee; but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. (a) All payments to be made by the Lessee hereunder will be free of expense to the Lessor and Vendor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, or Federal taxes other than the following: (i) any state franchise taxes or United States Federal net income tax payable by the Lessor in consequence of the receipt of payments provided for herein, and (ii) the aggregate of all state or local taxes measured by net income based on such receipts. Lessee shall also be responsible for all license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection

with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof. All such expenses, taxes, license fees, assessments, charges, fines and penalties shall be hereinafter called "Impositions". The Lessee will also pay before they become delinquent all Impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title or interest of the Lessor or Vendor or result in a lien upon any such Unit.

(b) In the event that the Lessor shall become obligated to make any payment pursuant to Article 6 of the CSA to any Builder or the Vendor or otherwise pursuant to any correlative provision of the CSA, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

(c) The Lessee shall not be under any obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such Impositions and the nonpayment thereof does not, in the reasonable opinion of the Lessor and the Vendor, adversely affect the title, property or rights of the Lessor hereunder or the Lessor or the Vendor under the CSA, the CSA Assignment, and Lease Assignment. The Lessee agrees to give the Lessor and the Vendor notice of such contest at least 20 days (if possible) before institution thereof, and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest; provided, however, that the Lessee shall indemnify the Lessor for all reasonable costs and expenses, including attorneys' fees, in connection with such contest. If any Impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessor shall, upon its receipt thereof, have given the Lessee telephonic notice (to be promptly confirmed in writing) of such Imposition prior to such payment, and provided further that any such contest be with counsel reasonably satisfactory to Lessor.

(d) In the event any reports with regard to Impositions are required to be made, the Lessee will, where permitted so to do under applicable rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor and the Vendor as shall be reasonably satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Vendor.

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

(f) To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in the Lessor's own name and on the Lessor's behalf to perform such duties (but only with counsel reasonably satisfactory to the Lessor); provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

(g) The Lessee shall, whenever reasonably requested by the Lessor or the Vendor, submit to the Lessor or the Vendor copies of returns, statements, reports, billings, and remittances, or furnish other evidence satisfactory to the Lessor or the Vendor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor may reasonably require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

§ 7. Maintenance, Casualty Occurrences, Insurance and Termination. (a) The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and qualified for use in interchange.

(b) In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, returned to the Builder pursuant to the patent indemnity provisions of the CSA, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government (any such occurrence being hereinafter called a "Casualty Occurrence"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as defined in the next paragraph) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable under the circumstances on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale (after deduction of any selling and removal costs) to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to the Builder pursuant to the patent indemnity provisions of the CSA in an amount equal to any payment made by the Builder to the Lessor in respect thereof under the CSA.

(c) The Casualty Value of each Unit shall be an amount determined as of the payment date on which payment thereof is to be made as aforesaid (and not the date of the Casualty Occurrence) equal to that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such payment date. Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value

of such Unit, which shall be an amount equal to 41.0658% of the Purchase Price of such Unit.

(d) In the event of the requisition for use by the United States Government (the "Government") of any Unit during the term of this Lease or any renewal thereof all the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor. At Lessee's expense, Lessor will cooperate with Lessee in any action instituted by Lessee against the Government for loss or damage suffered by the Lessee as a result of such requisition, with any recovery resulting therefrom accruing in favor of the Lessee.

(e) Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder and continuing until payment of the Casualty Value and all rental installments and other sums due on and prior to the date of payment of such Casualty Value in respect of such Unit has been made, such Unit or the salvage thereof has been disposed of by the Lessee, and the title to such Unit or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Unit or the salvage thereof; provided, however, that Lessor shall promptly execute a bill of sale in favor of, or take all other steps required to dispose of its title to the Unit to, such person or entity as the Lessee shall designate (other than the Lessee or any Affiliate, as defined in §12(b) hereof).

(f) From the time any Unit is accepted by the Lessee to the end of the term of this Lease, Lessee shall:

- (i) at its option, either provide insurance coverage for, self insure, or self assume, in whole or in part, the risks of actual or constructive loss or damage to one or more of the Units up to the Casualty Value thereof, and
- (ii) provide adequate public liability insurance (in limits of at least \$50,000,000) for personal injuries, death, or property damage resulting from the ownership, maintenance, use or operation of the Units.

Each of the insurance policies providing said coverage shall:

- (i) name the Lessor and the Vendor as additional insureds, as their respective interests may appear; and
- (ii) as between Lessee and Lessor and Vendor all such insurance shall be primary insurance and not excess over any other coverage which Lessor or Vendor, or both, may have; provided, however, nothing herein shall be deemed to require Lessee's insurance carriers to provide coverage for, or otherwise indemnify Lessor or Vendor for, any losses caused respectively by Lessor's or Vendor's own actions or negligence; and
- (iii) provide that the policy may not be cancelled or materially altered without 30 days' prior written notice to the Lessor and the Vendor.

The Lessee shall provide the Lessor and the Vendor with a certificate or certificates evidencing the aforesaid coverage prior to the first Closing Date (as defined in the CSA).

(g) If the Lessor or the Vendor shall receive any insurance proceeds from insurance maintained by the Lessee pursuant hereto or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall,

subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value paid by the Lessee, and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor or the Vendor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon receipt of Lessee's written statement that any damage to such Unit in respect of which such proceeds were paid has been fully repaired; provided, however, that if the Lessee is in default in the payment of any other liability hereunder, such proceeds may be applied against such liability.

(h) In the event that the Lessee shall, in its reasonable judgment, determine that any Group (as hereinafter defined) of Units has become economically obsolete in the Lessee's business, the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Lessor, to terminate (a "Termination") this Lease as to such Group as of any succeeding rent payment date specified in such notice (the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than January 1, 1988, (ii) no Event of Default or other event which after the lapse of time or notice, or both, would become an Event of Default shall have occurred and be continuing and (iii) on the Termination Date each Unit in such Group shall be in the same condition as if being returned pursuant to § 14 hereof. For this purpose, the term "Group of Units" shall mean all Units with the same Builder's Specifications (as set forth in Schedule A hereto) subject to this Lease at the Termination Date.

(i) During the period from the 90th day after the giving of notice pursuant to paragraph (h) above until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of all Units in such Group, and the Lessee shall at least five business days prior to such Termination Date certify to the Lessor and the Vendor the amount of each such bid and the name and address of the party (which shall not be a corporation or individual affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date the Lessor shall sell all Units in such Group for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at each such sale shall be applied to the prepayment of the CSA Indebtedness in accordance with Article 7 of the CSA and any balance shall be retained by the Lessor.

(j) On a Termination Date, the Lessee shall pay to the Lessor (i) an amount equal to the prepayment premium, if any, payable pursuant to Article 7 of the CSA on such date in respect of the CSA Indebtedness to be prepaid by the Lessor on such date, (ii) the excess, if any, of the Termination Value for each such Unit computed as of such date over the sale price of such Unit after the deduction of all expenses incurred by the Lessor in connection with such sale, and (iii) the rental payment due on such Termination Date. The Termination Value of each such Unit as of the payment date on which payment is to be made shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule C hereto opposite such date. In no event shall the aggregate amount retained by the Lessor and received by the Lessor as aforesaid be less than the Termination Value (as defined in the CSA) as of such date.

(k) If no sale shall occur on the date scheduled therefor as provided above, this Lease shall continue in full force and effect without change unless and until the Lessee pays to the Lessor the Termination Value of each Unit subject to the Termination and returns each such Unit to the Lessor pursuant to § 14 hereof, and thereupon this Lease shall terminate as to such Units; provided, however, that this Lease shall not terminate as to any such Unit unless the CSA Indebtedness in respect of such Unit is prepaid on the Termination Date pursuant to Article 7 of the CSA.

(l) In the event of any such sale pursuant to paragraph (i) above and the receipt by the Lessor of the amounts described in paragraph (j) above, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Unit on each rental payment date shall continue to and including the Termination Date but shall then terminate. Neither the Vendor nor the Lessor shall be under any duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all the Lessor's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Lessor's acts.

(m) If the Lessee shall exercise its option to terminate as to any Unit, the Lessor may, notwithstanding

such election by the Lessee, by written notice to the Lessee given 90 days after the termination notice is given to the Lessor, elect to retain such Unit, in which case the Lessee shall not be obligated to pay the Termination Value to the Lessor; provided, however, that this Lease shall not terminate as to such Unit unless the CSA Indebtedness in respect of such Unit is prepaid on the Termination Date pursuant to Article 7 of the CSA. In the event the Lessor shall so elect to retain such Unit, the Lessee shall deliver such Unit to the Lessor in accordance with the provisions of § 14 hereof.

§ 8. Reports; Inspection. On or before March 31 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Vendor an accurate statement (i) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the CSA have been preserved or replaced. The Lessor and the Vendor, at their sole cost and expense, shall have the right by their respective agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as each may request during the continuance of this Lease, subject to Lessee's safety and security regulations.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. (a) THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of

this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor or the Lessee, or both, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against any Builder under the provisions of Items 3 and 4 of Annex A of the CSA and any proceeds received by the Lessor in respect thereof shall be immediately paid over to the Lessee; provided, however, that if at anytime an Event of Default shall have occurred and be continuing, the Lessor may upon written notice to the Lessee assert and enforce, at the Lessee's sole cost and expense, such claims and rights and receive the benefits of any such proceeds. Neither the Lessor nor the Vendor shall have any responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

(b) The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units; provided, however, that the Lessee may at its own expense upon written notice thereof to the Lessor and the Vendor, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA. Lessee shall notify Lessor and Vendor and shall, at its sole cost and expense, make or provide

all improvements, alterations, modifications, additions or attachments (hereinafter collectively called "change(s)") deemed necessary or desirable for health, safety or environmental purposes by any federal, state or local governmental body or agency. In the event such change(s) are readily removable without causing material damage to the Equipment, any such governmentally required improvements shall be and remain the property of Lessee. To the extent such governmentally required change(s) are not physically or economically removable, the same shall immediately be and become the property of Lessor and subject to the terms of this Lease. So long as Lessee is not in default hereunder, Lessee may, at its sole cost and expense, make other nonremovable nongovernmentally required change(s) upon notification to Lessor provided that (1) the value of the Equipment is not reduced thereby, (2) such change(s) will not cause the Equipment to become limited use property, or materially alter or reduce its general usefulness, (3) such change(s) will not increase the productivity or capacity of the Equipment in excess of 25%, and (4) the cumulative deflated cost (as defined in Rev. Proc. 79-48) of such nonseverable nongovernmentally required change(s) does not exceed 10% of the Purchase Price of the Equipment. So long as Lessee is not in default hereunder, Lessee may, at its sole cost and expense, upon notice to Lessor, make readily removable change(s) to the Equipment provided that such change(s) do not cause material damage to the Equipment or reduce its value or general usefulness. Any such removable change(s) shall remain the property of Lessee and be removed by Lessee prior to surrender of the Equipment pursuant to § 22 hereof, and if not removed by Lessee prior to surrender, may be removed by Lessor without liability to Lessee therefor. Any and all costs of removal and repair shall be for Lessee's account. Lessor is hereby granted a security interest in and to any such removable change(s). Lessee shall not alter, remove, deface, destroy or permanently cover any manufacturer's distinguishing number or make on the Equipment. Nothing herein shall be deemed to preclude Lessor and Lessee from negotiating the lease financing hereunder for any proposed changes.

(c) The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, (including, without limitation, strict liability in tort or imposed by statute) claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance

of, or the occurrence of a default, an event of default or an Event of Default under, the CSA, the Participation Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, leasing, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease or the transfer of title to the Equipment by the Vendor pursuant to any provision of the CSA. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all other obligations under this Lease or the expiration or termination of the term of this Lease. To the extent the Lessee is required to provide protection or indemnification hereunder, the Lessee may select counsel (which will be reasonably acceptable to the Lessor and the Vendor) and direct counsel's actions in respect thereof.

(d) The indemnities contained in paragraph (c) above shall not extend to any loss, damage, injury, liability, claim, demand, cost, charge or expense incurred by any indemnified party (i) caused by the wilful misconduct or gross negligence of such indemnified party, (ii) resulting from acts or events with respect to any Unit which commence after such Unit has been returned to the Lessor in accordance with § 14 hereof, (iii) caused by the violation by such indemnified party of any banking, investment, insurance or securities law, rule or regulation applicable to it (unless such violation shall be the result of any written misrepresentation, violation or act of the Lessee), (iv) arising from the breach of an express duty, obligation, representation or warranty of such indemnified party made herein or in any of the documents related to the transactions contemplated hereby, or (v) which is related to the lien, charge, security interest or other encumbrance which the Lessee is not required by § 12 hereof to discharge or in any of the other documents related to the transactions contemplated hereby to be borne by such indemnified party.

(e) Upon request by the Lessor, the Lessee will prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns except as required by the provisions of § 6 hereof) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing thereof to the Lessee.

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

A. default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for 10 days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of any of the Units;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement or in the Indemnity Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. any representation or warranty made by the Lessee herein or in the Participation Agreement or in the Indemnity Agreement or in any certificate or statement furnished to the Lessor pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

E. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to

a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

F. an event of default set forth in Article 15 of the CSA shall have occurred as a result of any default by the Lessee in performing any of its obligations hereunder or under the Consent;

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

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

(ii) by notice in writing to the Lessee (specifically identifying the Event of Default) terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction but applying any proceeds (net of expenses as determined by the Lessor) arising therefrom against the liabilities of the Lessee herein; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days

less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 5% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

(b) In addition to the amounts set forth above, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the remedies with respect

thereto, including all costs and expenses incurred in connection with the return of any Unit.

(c) The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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

(e) The Lessee agrees to furnish the Lessor and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof and indicating the intention or expectation of the Lessee as to the disposition thereof. For the purposes of this paragraph, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

(f) Should the Lessor breach or otherwise default in any of its obligations to Lessee hereunder, the Lessee shall be entitled to independently proceed against the Lessor and recover from the Lessor any damages (other than consequential or incidental damages) resulting from any such breach or default.

§ 11. Return of Units upon Default. (a) If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the

same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and meet the standards then in effect of the Interchange Rules of the Association of American Railroads or the applicable rules of any governmental agency or other organization with jurisdiction, or both. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(i) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee or any of its affiliates or, at the expense of the Lessee, on any other storage tracks, as the Lessor reasonably may designate;

(ii) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(iii) transport the same to any place on any lines of a railroad or to any connecting carrier for shipment, all as directed by the Lessor.

(b) The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Equipment in good order and repair and will permit the Lessor, the Vendor, or any person designated by them, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect at reasonable times the same, subject to Lessee's security and safety regulations. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the

Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .0335122% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

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

§ 12. Assignment; Possession and Use. (a) This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor, other than the Vendor, except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9 and 10 and the rights to receive the rentals and all other sums payable under this Lease) shall inure to the benefit of the Lessor's assigns including the Vendor, except as may be limited in any assignment thereof. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee, the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (ii) said assignee, shall, if an Event of Default, or any event which with

the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor, but in no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said assignee and the Lessor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (iii) all obligations of the Lessor to the Lessee under this Lease shall be enforceable by the Lessee against, and only against, the Lessor.

(b) So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, neither of which shall be unreasonably withheld, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except, and then only so long as the Lessee shall not then be in default under this Lease (and subject to this Lease and to the rights of the Lessor hereunder, and without releasing the Lessee from its obligations hereunder), to an Affiliate, or under a written sublease to a railroad classified by the Interstate Commerce Commission as a Class I railroad or to a responsible company, as determined by the Lessee, subject in each case to the written consent of the Lessor and the Vendor, neither of which shall be unreasonably withheld; provided, however, that the Lessee may sublease any of the Units under a written sublease to an aforesaid railroad or company without the prior written approval of the Lessor and the Vendor if such sublease is for a term of one year or less, prohibits regular use and maintenance of the Units outside the United States of America, and is subject to this Lease and to the rights of the Lessor hereunder; and the Lessee shall not, without such written consent, except as provided in this § 12 part with the possession of, or suffer or allow to pass out of its possession or control, any of the Units. For the purpose of this § 12, "Affiliate" shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, the Lessee. For the purposes of this definition, "control (including controlled by and under common control with)", as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct

or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise. Every such sublease shall expressly subject the rights of the sublessee under such sublease to the rights of the Lessor in respect of the Units covered by such sublease in the event of the happening of an Event of Default. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted herein.

(c) So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any Affiliate upon lines of railroad owned or operated by it or any such Affiliate or upon lines over which the Lessee or any such Affiliate has or obtains trackage or other operating rights or over which railroad equipment of the Lessee or any such Affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any obligation or liability hereunder which shall be and remain those of a principal and not a surety.

(d) Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have

duly assumed the obligations of the Lessee hereunder and under the Participation Agreement and the Consent (as defined in the CSA)) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Renewal Option and Right of First Refusal.

(a) Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 60 days prior to the end of the original term elect to extend the term of this Lease in respect of all (but not fewer than all) the Units in any Group of Units (as defined in § 7 hereof) then covered by this Lease, for one additional five-year period commencing on the scheduled expiration of the original term at a semi-annual rental of 2.55227% of the Purchase Price of each Unit then subject to this Lease, payable in semi-annual payments on each January 1 and July 1, commencing July 1, 2001.

(b) Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Lessor elects to sell any Units to third parties within a period of one year after the expiration of the original term or the expiration of any extended term of this Lease, the Lessee shall be given 60 days' prior written notice of such intention prior to the expiration of such period. In the event that during such one-year period the Lessor shall receive a bona fide offer from another party unrelated to the Lessee to purchase the Units and the Lessor elects to sell the Units pursuant to such offer, the Lessor shall give prompt written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party to the Lessor. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which the Units are proposed to be sold or under the other terms and conditions of payment offered by the other party. The Lessee may exercise such purchase right by delivery to the Lessor of a written notice within 15 days of receipt of notice of the proposed sale from the Lessor specifying a date of purchase, which date shall not be later than 20 days after the date of delivery of such notice by the Lessee to the Lessor.

§ 14. Return of Units upon Expiration of Term.

As soon as practicable but not longer than 60 days after the expiration of the original or extended term of this Lease, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of each Unit to the Lessor upon such storage tracks of the Lessee (at not more than three locations) as the Lessee may designate and permit the Lessor to store such Unit on such tracks for a period not exceeding 90 days and transport the same, at any time within such 90-day period, to the nearest railroad interconnection, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will, at its own cost and expense, insure, maintain and keep each Unit in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same at reasonable times, subject to Lessee's safety and security regulations; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards in effect upon the expiration of this Lease under the Interchange Rules of the Association of American Railroads or the applicable rules of any governmental agency or other organization with jurisdiction, or both. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and

will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and Lessor. The Lessee will pay all costs, charges, and expenses incident to any such filing, refile, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action. This Lease and the CSA shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any non-payment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, interest on all such amounts at an amount equal to the greater of (a) 11-1/2% per annum or (b) the rate per annum equal to the fluctuating base rate charged by The Security Pacific Bank for 90-day loans to substantial and responsible commercial borrowers as such base rate shall change from time to time, each change in such rate to become effective on the effective date of each change in such base rate as announced by such Bank.

§ 17. Notices. Any notice required or permitted to be given by any party hereunder shall be in writing, shall be delivered by hand or sent by certified mail, telex or telegram, shall be deemed delivered on the second business day following the day of transmission (or on the day of actual receipt, whichever is earlier), and shall be addressed as follows:

(a) if to the Lessor, at One Embarcadero Center, Suite 710, San Francisco, California 94111, Attention of Leveraged Leasing Department;

(b) if to the Lessee, at Dow Chemical U.S.A., Treasury Department, 2020 Dow Center, Midland, Michigan 48640;

(c) if to the Vendor, at Suite 1910, Central Trust Center, Cincinnati, Ohio 45202, Attention of General Manager, Corporate Finance Department.

or such other address as such party shall hereafter furnish in accordance with the terms of this § 17.

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

(b) Except for the Participation Agreement and the Indemnity Agreement, this Lease exclusively and completely states the rights and obligations of the Lessor and the Lessee with respect to the leasing of the Units and supercedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor, the Lessee, and the Vendor.

§ 19. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Investor pursuant to the Lease Assignment shall be deemed to be the original, and all other counterparts shall be deemed duplicates thereof. This Lease is dated as of the date first set forth above, and the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

§ 21. No Guarantee of CSA Indebtedness or Residual Value. Nothing in this Agreement is intended or shall be construed to constitute a guarantee by the Lessee of the CSA Indebtedness of the Vendee under the CSA or a guarantee of the residual value of any Unit.

§22. Survival. All warranties, representations and covenants made by the Lessee herein or in any certificate or other instrument delivered by the Lessee or on behalf of the Lessee under this Lease shall survive the consummation of the transactions contemplated hereby.

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

THE DOW CHEMICAL COMPANY,

[Corporate Seal]

Attest:

L. J. Hoerlein
Secretary

L. J. HOERLEIN, Assistant Secretary

By G. J. Williams
by Emery Z. Stora
his Attorney in Fact

SECURITY PACIFIC EQUIPMENT
LEASING, INC.,

[Corporate Seal]

Attest:

Marc L. Mather
Asst Secretary

EXECUTIVE VICE PRESIDENT,

STATE OF MICHIGAN,)
) ss.:
COUNTY OF MIDLAND,)

On this 17th day of January, 1980 before me personally appeared Emery L. Starks, to me personally known, who, being by me duly sworn, says that he is the Assistant Vice President of THE DOW CHEMICAL COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledge that the execution of the foregoing instrument was the free act and deed of said corporation.

Evelyn R. Bailey
Notary Public

[Notarial Seal]
My Commission expires:

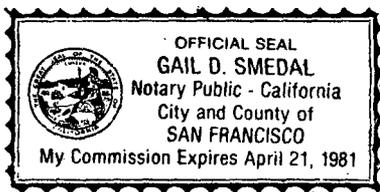
EVELYN R. BAILEY
Notary Public, Midland County, Mich,
My Commission Expires Feb. 28, 1981
STATE OF CALIFORNIA,)

) ss.:
COUNTY OF SAN FRANCISCO,)

On this 14th day of January, 1980 before me personally appeared CHARLES D. PRANCE, to me personally known, who, being by me duly sworn, says that he is the EXECUTIVE VICE PRESIDENT of SECURITY PACIFIC EQUIPMENT LEASING, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Gail D. Smedal
Notary Public

[Notarial Seal]
My Commission expires: 4/21/81



SCHEDULE A TO LEASE

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
<u>ACF</u>						
Chlorine Tank Cars nominal 17,300 gallon capacity	T	17.3 PR-1 DOT105A500W	Milton, PA.	105	DOWX8000- 8104	January - March, 1980, at Milton, PA.
Muriatic Acid Tank Cars 20,800 gallon nominal capacity	T	20.ORL-1 DOT111A-100W1	Milton, PA.	61	DOWX6939- 6999	February-July, 1980, at Milton, PA.
Mag. Chloride Tank Cars 23,500 gallon nominal capacity	T	23.6CS-1 DOT11A-100W1	Milton, PA.	28	DOWX6566- 6593	July-September, 1980, at Milton, PA.
Solvents Tank Cars 23,500 gallon nominal capacity	T	23.6CS-2 DOT111A-100W1	Milton, PA.	56	DOWX6705- 6760	March-April 1980 at Milton, PA.

* See Note on page 33.

SCHEDULE A TO LEASE
(continued)

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
<u>ACF</u>						
TDI Tank Cars nominal 17,300 gallon capacity	T	17.3 PR-2 DOT105A-500W	Milton, PA.	14	DOWX3586- 3599	February, 1980 at Milton, PA.
<u>Richmond Tank</u>						
Methyl Chloride Tank Cars 25,000 gallon nominal capacity	T	25.0PR-1 DOT105A-300W	Sheldon, TX.	64	DOWX8105- 8168	February-March, 1980, at Sheldon, TX.
Calcium Bromide Tank Cars 16,000 gallon nominal capacity	T	16.OCS-1 DOT111A-100W1	Sheldon, TX.	63	DOWX6503- 6565	January-March, 1980, at Sheldon, TX.
Mag. Chloride Tank Cars 23,500 gallon nominal capacity	T	23.6CS-1 DOT111A-100W1	Sheldon, TX.	61	DOWX6594- 6654	April, 1980 at Sheldon, TX.

* See Note on page 33.

SCHEDULE A TO LEASE
(continued)

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
<u>Richmond Tank</u>						
Solvents Tank Cars 23,600 gallon nominal capacity	T	23,6CS-2 DOT111A-100W1	Sheldon, TX.	50	DOWX6655- 6704	January-March, 1980 at Sheldon, TX.

NOTE: If and to the extent that any Units of Equipment are excluded pursuant to Article 3 of the CSA, this Schedule A will be appropriately amended to show only those Units of Equipment which are covered by this Lease.

SCHEDULE B TO LEASE

Casualty Values

<u>Payment Date</u>	<u>Percentage</u>
7/1/1980- 7/1/1981	112.1583
1/1/1982 7/1/1982	112.4627 111.9429
1/1/1983 7/1/1983	115.5013 114.7247
1/1/1984 7/1/1984	117.4835 116.6216
1/1/1985 7/1/1985	118.6374 117.6761
1/1/1986 7/1/1986	119.0008 117.9271
1/1/1987 7/1/1987	118.6150 117.4186
1/1/1988 7/1/1988	117.5263 116.1995
1/1/1989 7/1/1989	115.7869 114.3249
1/1/1990 7/1/1990	113.4547 111.8564
1/1/1991 7/1/1991	109.5895 106.8347
1/1/1992 7/1/1992	104.2309 101.3508
1/1/1993 7/1/1993	98.4957 95.4852

Casualty Values

<u>Payment Date</u>	<u>Percentage</u>
1/1/1994	92.4370
7/1/1994	89.2801
1/1/1995	86.0623
7/1/1995	82.7437
1/1/1996	79.3511
7/1/1996	75.8615
1/1/1997	72.2896
7/1/1997	68.6194
1/1/1998	64.8610
7/1/1998	61.0023
1/1/1999	57.0906
7/1/1999	53.1312
1/1/2000	49.1395
7/1/2000	45.1126
1/1/2001	41.0658

SCHEDULE C TO LEASE

Termination Values

<u>Payment Date</u>	<u>Percentage</u>
1/1/86	119.0008
7/1/86	117.9271
1/1/87	118.6150
7/1/87	117.4186
1/1/1988	117.5263
7/1/1988	116.1995
1/1/1989	115.7869
7/1/1989	114.3249
1/1/1990	113.4547
7/1/1990	111.8564
1/1/1991	109.5895
7/1/1991	106.8347
1/1/1992	104.2309
7/1/1992	101.3508
1/1/1993	98.4957
7/1/1993	95.4852
1/1/1994	92.4370
7/1/1994	89.2801
1/1/1995	86.0623
7/1/1995	82.7437
1/1/1996	79.3511
7/1/1996	75.8615
1/1/1997	72.2896
7/1/1997	68.6194
1/1/1998	64.8610
7/1/1998	61.0023
1/1/1999	57.0906
7/1/1999	53.1312
1/1/2000	49.1395
7/1/2000	45.1126
1/1/2001	41.0658