RECORDATION NO. 12302 Filed 1425

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INTERSTATE COMMERCE COMMISSION

THIS LETTER ACCOMPANIES
BEIGE DOCUMENTS
12302
RECORDATION NO. Filed 1425

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INTERSTATE COMMERCE COMMISSION

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No. 1-288-A/114
Date OCT 14 1980
Fee $ 10.00
ICC Washington, D. C.

October 14, 1980

202 347-7170

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INTERSTATE COMMERCE COMMISSION

12302
RECORDATION NO. Filed 1425

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INTERSTATE COMMERCE COMMISSION

The Honorable Agatha Mergenovich
Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423

Re: Utility Fuels, Inc. Lease Financing Dated As Of October 1, 1980 12.75% Conditional Sale Indebtedness Due October 1, 1994.

Dear Madam Secretary:

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

(1)(a) A Lease of Railroad Equipment dated as of October 1, 1980 between Utility Fuels, Inc. and the Connecticut Bank and Trust Company as Trustee for Wells Fargo Equipment Leasing Corporation ("Wells Fargo");

(b) An Assignment Of Lease And Agreement dated as of October 1, 1980 between the Connecticut Bank and Trust Company as Trustee for Wells Fargo and the Mercantile Safe-Deposit and Trust Company as Agent ("Agent");

(2)(a) A Conditional Sale Agreement dated as of October 1, 1980 between the Connecticut Bank and Trust Company as Trustee for Wells Fargo and ACF Industries, Inc. ("ACF"); and

(b) An Agreement And Assignment dated as of October 1, 1980 between the Agent and ACF.

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

Trustee:

The Connecticut Bank and Trust Company
One Constitution Plaza
Hartford, Connecticut 06115
(Trustee for Vendee-Lessor)

Builder-Vendor:

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

Vendee-Lessor:

Wells Fargo Equipment Leasing Corporation
425 California Street
San Francisco, California 94104

Lessee:

Utility Fuels, Inc.
611 Walker Street
Houston, Texas 77002

Agent-Assignee:

The Mercantile Safe-Deposit and Trust Co.
Two Hopkins Plaza
Baltimore, Maryland 21203
(Assignee of Vendee-Lessor)

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

The equipment covered by the aforementioned Agreements consists of 305 105-ton, 4240 cu. ft. gondola-type coal cars, bearing the road numbers of the Lessee 13001-13110; 14001-14110; 15001-15110; 16001-16170; 17001-17110; inclusive; AAR mechanical designation: GTS.

Enclosed is our check in the amount of $100.00 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger, along with your fee receipt, addressed to the undersigned.

Thank you for your consideration in this matter.

Very truly yours,

C. Michael Loftus

C. Michael Loftus
As Agent for
Utility Fuels, Inc

CML:kal

Enclosure

See-D for #5

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RECORDATION NO. ..... Filed 1425

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INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 2483-135]

CONDITIONAL SALE AGREEMENT

(A)

Dated as of October 1, 1980

Between

THE CONNECTICUT BANK AND TRUST COMPANY,
not in its individual capacity but solely
as Trustee under a Trust Agreement
dated as of the date hereof
with
Wells Fargo Equipment Leasing Corporation

and

ACF INDUSTRIES, INCORPORATED

CONDITIONAL SALE AGREEMENT

Table of Contents*

	Page
PARTIES	C-1
PREAMBLES	C-1
ARTICLE 1. ASSIGNMENT; DEFINITIONS	C-1
1.1. Contemplated Sources of Purchase Price; Assignment	C-1
1.2. Lease Assignment	C-2
1.3. Meaning of "Builder" and "Vendor"	C-2
ARTICLE 2. CONSTRUCTION AND SALE	C-2
ARTICLE 3. INSPECTION AND DELIVERY	C-3
3.1. Place of Delivery	C-3
3.2. Force Majeure	C-4
3.3. Exclusion of Equipment	C-4
3.4. Inspection	C-5
3.5. Builder's Responsibilities After Delivery	C-5
ARTICLE 4. PURCHASE PRICE AND PAYMENT	C-6
4.1. Meaning of "Purchase Price"; Exclusion of Units	C-6
4.2. Settlement and Closing Dates	C-6
4.3. Indebtedness of Trustee to Vendor	C-7
4.4. CSA Indebtedness; Payment Dates; Interest	C-8
4.5. Calculation of Interest	C-9
4.6. Penalty Interest	C-9
4.7. Currency of Payment	C-9

* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of, this document.

		Page
4.8.	Liability of Trustee Limited to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments	C-9
ARTICLE 5.	SECURITY INTEREST IN THE EQUIPMENT ..	C-11
5.1.	Vendor To Retain Security Interest; Accessions Are Part of Equipment	C-11
5.2.	Obligations upon Payment of CSA Indebtedness	C-12
ARTICLE 6.	TAXES	C-13
6.1.	General Tax Indemnification	C-13
6.2.	Claims; Contests; Refunds	C-14
6.3.	Reports or Returns	C-15
6.4.	Survival	C-15
ARTICLE 7.	MAINTENANCE; TERMINATION, CASUALTY OCCURRENCES AND OPTIONAL PRE-PAYMENT	C-15
7.1.	Maintenance	C-15
7.2.	Termination; Casualty Occurrences	C-15
7.3.	Casualty Value	C-16
7.4.	Termination Value	C-16
7.5.	Obligations upon Payment of Casualty Value or Termination Value	C-16
7.6.	Optional Prepayment	C-17
ARTICLE 8.	INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS	C-18
ARTICLE 9.	REPORTS AND INSPECTIONS	C-18
ARTICLE 10.	MARKING OF EQUIPMENT	C-18
10.1.	Marking of Equipment	C-18
10.2.	No Designations of Ownership	C-19
ARTICLE 11.	COMPLIANCE WITH LAWS AND RULES	C-19

		Page
ARTICLE 12.	POSSESSION AND USE	C-19
12.1.	Possession and Use of Equipment by Trustee	C-19
12.2.	Lease Permitted; Lease Subordinate; No Amendment or Termination	C-19
12.3.	Other Leases of Equipment	C-20
ARTICLE 13.	PROHIBITION AGAINST LIENS	C-20
13.1.	Trustee To Discharge Liens	C-20
13.2.	No Breach for Certain Liens	C-21
13.3.	Article 13 Subject to Paragraph 4.8 and Article 23 Except in Certain Instances	C-21
ARTICLE 14.	INDEMNITIES AND WARRANTIES	C-22
14.1.	Indemnification	C-22
14.2.	Survival; No Subrogation	C-23
14.3.	Trustee Not Released if Equipment Damaged or Lost	C-23
14.4.	Warranties of Builder; Patent Indemnities	C-23
ARTICLE 15.	ASSIGNMENTS	C-24
15.1.	Assignment by Trustee	C-24
15.2.	Assignment by Vendor	C-24
15.3.	Notice of Assignment by Vendor	C-24
15.4.	No Setoff Against CSA Indebtedness upon Assignment	C-25
ARTICLE 16.	DEFAULTS	C-25
16.1.	Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness	C-25
16.2.	Waiver of Defaults	C-28
16.3.	Prepayment	C-29

		Page
ARTICLE 17.	REMEDIES	C-29
17.1.	Vendor May Take Possession of Equipment	C-29
17.2.	Assembling of Equipment for Vendor	C-29
17.3.	Vendor May Dispose of or Retain Equipment	C-30
17.4.	Vendor May Sell Equipment; Trustee's Right of Redemption	C-31
17.5.	Sale of Equipment by Vendor	C-32
17.6.	Effect of Remedies and Powers and Exercise Thereof	C-33
17.7.	Deficiencies	C-33
17.8.	Expenses	C-34
17.9.	Remedies Subject to Mandatory Legal Requirements	C-34
ARTICLE 18.	APPLICABLE STATE LAWS	C-34
18.1.	Conflicts with State Laws	C-34
18.2.	Waiver of Notices	C-34
ARTICLE 19.	RECORDING	C-35
ARTICLE 20.	REPRESENTATIONS AND WARRANTIES OF BUILDER	C-35
ARTICLE 21.	ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT	C-35
21.1.	Article and Paragraph Headings for Convenience Only	C-35
21.2.	Effect and Modification of Agreement	C-36
ARTICLE 22.	NOTICE	C-36
ARTICLE 23.	IMMUNITIES; SATISFACTION OF UNDERTAKINGS	C-37
23.1.	No Recourse Against Certain Persons	C-37
23.2.	Satisfaction of Certain Covenants	C-37
23.3.	No Personal Liability of Trustee	C-37
ARTICLE 24.	LAW GOVERNING	C-38
ARTICLE 25.	EXECUTION	C-39

	Page
TESTIMONIUM	C-39
SIGNATURES	C-39
ACKNOWLEDGMENTS	C-41
Schedule I	C-42
Schedule II	C-43
Annex A--Miscellaneous	C-44
Annex B--Specifications	C-47

CONDITIONAL SALE AGREEMENT dated as of October 1, 1980, between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, acting not in its individual capacity but solely as Trustee (the "Trustee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with Wells Fargo Equipment Leasing Corporation, a California corporation (the "Owner").

WHEREAS the Builder has agreed to construct, sell and deliver to the Trustee, and the Trustee agrees to purchase, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (the "Equipment" as more specifically described in Paragraph 4.2 hereof);

WHEREAS the Trustee is entering into a lease with UTILITY FUELS, INC., a Texas corporation (the "Lessee"), in substantially the form annexed hereto as Annex C (the "Lease"); and

WHEREAS MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY (the "Assignee") is acting as agent for certain investors pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, the Assignee, the Trustee, the Owner and the parties named in Appendix I thereto (the "Investors");

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1

ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; Assignment. The parties hereto contemplate that the

Trustee will furnish 38.5404% of the Purchase Price (as defined in Paragraph 4.1 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") between the Builder and the Assignee.

1.2. Lease Assignment. The Trustee will assign to the Vendor (as defined in Paragraph 1.3 hereof), as security for the payment and performance of all the Trustee's obligations hereunder, all right, title, and interest of the Trustee in and to the Lease, pursuant to an Assignment of Lease and Agreement in substantially the form of Annex D hereto (the "Lease Assignment") and the Lessee shall consent thereto pursuant to a Consent and Agreement in substantially the form attached to Annex D (the "Consent").

1.3. Meaning of "Builder" and "Vendor". The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the party hereto which has manufactured the Equipment to be constructed and sold hereunder and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement, means, before any such assignment, the Builder, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights, as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Any reference herein to this Agreement or any other agreement shall mean said agreement and all amendments and supplements hereto or thereto then in effect.

ARTICLE 2

CONSTRUCTION AND SALE

Pursuant to this Agreement, the Builder shall construct the Equipment at its plant described in Annex B hereto, and will sell and deliver the Equipment to the Trustee, and the Trustee will (as hereinafter provided) purchase from the Builder and accept delivery of and pay for the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in

Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Trustee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The Builder represents and warrants that (i) the design, quality and component parts of each unit of the Equipment to be delivered by the Builder under this Agreement shall conform, on the date of delivery and acceptance thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of each such unit of Equipment; (ii) none of such component parts will be used components; and (iii) none of such units will have been used so as to preclude the "original use" thereof by the Trustee within the meaning of Sections 48(b) and 167(c)(2) of the Internal Revenue Code, as amended.

ARTICLE 3

INSPECTION AND DELIVERY

3.1. Place of Delivery. The Builder will deliver the units of the Equipment to the Trustee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Trustee), freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) or (d) of Paragraph 16.1 hereof or subsequent to the occurrence of any event of default (as described in Paragraph 16.1 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default. The Builder agrees not to deliver any unit of its Equipment hereunder (a) following receipt of written notice from the Trustee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as

aforesaid, until such time as such written notice may be canceled by a further written notice and (b) until it receives notice (i) from the Assignee that the conditions contained in Paragraph 8 of the Participation Agreement have been met and (ii) from the Trustee that the conditions contained in Paragraph 9 of the Participation Agreement have been met.

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

3.3. Exclusion of Equipment. Notwithstanding the provisions of Paragraph 3.2 hereof, any Equipment not delivered pursuant to Paragraph 3.1 hereof and any Equipment not delivered and accepted hereunder on or before December 31, 1980, shall be excluded from this Agreement, and the Trustee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions of this Paragraph 3.3 or pursuant to Paragraph 4.1 hereof, or in the event the Trustee is relieved of its obligation hereunder to accept or pay for any or all units of Equipment in accordance with the terms and conditions hereof for any reason whatsoever, the Lessee will be obligated pursuant to Paragraph 1 of the Participation Agreement to accept all such units completed and delivered by the Builder and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with such Builder relating to the Equipment (the "Purchase Order"), and the Trustee will reassign, transfer and set over without representation or warranty (except that any such units shall be free and clear of any encumbrances created by the Trustee) to the Builder and the Lessee, as their respective interests shall appear, all the right, title and interest of the Trustee in and to the units so excluded and the Purchase Order to the

extent relating thereto. The delivery to and acceptance by or on behalf of the Trustee of any unit of Equipment excluded from this Agreement shall be ineffective, ab initio, to create in or transfer to the Trustee any legal or beneficial right or interest in such unit or to impose on the Trustee any liability, obligation or responsibility (except as specifically set forth above) with respect thereto.

3.4. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Trustee (who may be employees or agents of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon or after completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications and requirements and standards applicable thereto, such inspector or an authorized representative of the Trustee (who may be an employee or agent of the Lessee) shall execute and deliver to the Builder (with a copy to the Vendor) a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Trustee and are marked in accordance with Paragraph 10.1 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties or patent indemnification obligations referred to in Paragraph 14.4 hereof. By § 2 of the Lease, the Trustee is appointing the Lessee its agent to inspect and accept delivery of the Equipment hereunder. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit by the Trustee.

3.5. Builder's Responsibilities After Delivery. On delivery by the Builder hereunder of units of Equipment and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranties or patent indemnification obligations referred to in Paragraph 14.4 hereof.

ARTICLE 4

PURCHASE PRICE AND PAYMENT

4.1. Meaning of "Purchase Price"; Exclusion of Units. The estimated price or prices per unit of the Equipment are set forth in Annex B hereto. Such estimated price or prices are subject to such increase or decrease as are provided for in the Purchase Order or as otherwise may be agreed to by the Builder, the Trustee and the Lessee and shall include therein storage, switching and freight charges. The term "Purchase Price" as used herein shall mean the estimated price or prices as so increased or decreased as set forth in the invoice of the Builder delivered to the Trustee and, if the Purchase Price is other than the estimated price or prices set forth in said Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Trustee (such invoice or invoices being hereinafter called the "Invoices"). If on any Closing Date the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as to which the Trustee and the Lessee may have agreed prior to the delivery of the Equipment being settled for on such Closing Date), the Builder (and any assignee of the Builder) will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Trustee and the Lessee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than said Maximum Purchase Price (or such higher amount as aforesaid) and the Trustee shall have no further obligation or liability in respect of units so excluded.

4.2. Closing Dates and Settlement. The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Trustee as is provided in Item 2 of Annex A hereto. The term "Closing Date" with respect to any Group (as hereinafter defined) shall be such date as is specified in Item 2 of Annex A hereto or such other date as may be specified by the Lessee by six days' written notice thereof with the concurrence of the Trustee, the Assignee and the Builder, but in no event shall such Closing Date be later than

January 31, 1981. Such notice shall specify the aggregate Purchase Price of such Group and a copy thereof shall be sent by the Lessee to the Builder, the Assignee and the Trustee. The term "Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date. The place of each closing shall be determined by mutual agreement among the parties hereto. At least five business days prior to the Closing Date with respect to a Group of Equipment, the Builder shall present to the Trustee, the Agent, the Owner and the Lessee the Invoices for the Equipment to be settled for. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Hartford, Connecticut, New York, New York, or Baltimore, Maryland, Houston, Texas, or the principal place of business of the Owner, are authorized or obligated to remain closed.

4.3. Indebtedness of Trustee to Vendor. Subject to the terms of this Agreement, the Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay (or in the case of Paragraph 4.3(a) hereof, to pay to the Agent, who will then pay) in cash or immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group (i) an amount equal to 38.5404% of the aggregate Purchase Price of the units of Equipment in such Group plus, if the Trustee and the Lessee agree to a higher amount pursuant to the last sentence of Paragraph 4.1 hereof, (ii) the amount, if any, by which (x) 61.4596% of the Purchase Price of the Equipment for which settlement has theretofore and is then being made, as set forth in the Invoice or Invoices therefor (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the Maximum CSA Indebtedness specified in Item 6 of Annex A and any amount or amounts previously paid or payable by the Trustee with respect to the Invoiced Purchase Prices pursuant to this clause (ii); and

(b) in 27 semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid

or payable with respect thereto pursuant to subparagraph (a) of this paragraph (said portion of the Purchase Price payable in installments under this subparagraph (b) being hereinafter called the "CSA Indebtedness").

4.4. CSA Indebtedness; Payment Dates; Interest. (1) The installments of the CSA Indebtedness shall be payable semiannually on April 1 and October 1 in each year, commencing October 1, 1981, to and including October 1, 1994, each such date being hereinafter called a "Payment Date". The unpaid balance of the CSA Indebtedness shall bear interest from and including the Closing Date in respect of which such indebtedness was incurred to and including March 31, 1981, at a rate equal to the lower of (x) the Floating Prime Rate (as defined below) or (y) 11% per annum, and commencing on the Take-Out Date at the rate of 12.75% per annum. Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued on April 1, 1981, and on each Payment Date thereafter. The amounts of CSA Indebtedness payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal shall completely amortize the CSA Indebtedness at maturity. The Trustee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

(2) The term "Floating Prime Rate" shall mean the prime commercial rate of First City National Bank of Houston from time to time in effect, except that any change in such rate five business days before any calculation shall be disregarded. Anything herein to the contrary notwithstanding, the obligations herein shall be subject to the limitation that payment of interest shall not be required to the extent that the receipt of such payments by the Interim Investor would be contrary to the provisions of law applicable to the Interim Investor which limited the maximum rate of interest which may be charged or collected by First City National Bank of Houston.

(3) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next succeeding business day.

4.5. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months except that interest payable on April 1, 1981, shall be computed on an actual elapsed day, 365-day year, basis.

4.6. Penalty Interest. The Trustee will pay interest, to the extent legally enforceable, at the rate of 13.75% per annum (the "Penalty Rate") upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. Currency of Payment. All payments provided for in this Agreement shall be made 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. Except as provided in Articles 7 and 16 hereof, the Trustee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

4.8. Liability of Trustee Limited to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments. Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof, except as set forth in this Paragraph 4.8), but not limiting the effect of Article 23 hereof, it is understood and agreed by the Vendor that the liability of the Trustee or any assignee of the Trustee for all payments to be made by it under and pursuant to this Agreement, and for all performance obligations, with the exception only of the payments to be made pursuant to subparagraph (a) of Paragraph 4.3 hereof and the proviso to Paragraph 13.3 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Trustee only to the extent that the Trustee or any assignee of the Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Vendor agrees that the Trustee

shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Trustee or any assignee of the Trustee. In addition, the Vendor agrees that the Trustee:

(i) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease, insofar as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder, and

(ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease and the Lease Assignment against the Lessee and the Equipment.

As used herein the term "income and proceeds from the Equipment" shall mean:

(i) if one of the events of default specified in Paragraph 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Trustee or any assignee of the Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of a Termination and/or Casualty Occurrences (as defined in Paragraph 7.2 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 13 or any other provision of the Lease (except any indemnity paid or payable to the Trustee or the Owner pursuant to § 6, § 12 or § 20 of the Lease) and all such amounts paid by the Guarantor under the Guarantee and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and

(b) (not including amounts paid by the Lessee to the Trustee as reimbursement of sums paid by the Trustee on account of prior defaults under subparagraph A of § 13.1 of the Lease) as are indefeasibly received by the Trustee or any assignee of the Trustee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Terminations, Casualty Occurrences or Redemptions) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Trustee or any assignee of the Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Terminations or Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Trustee or any assignee of the Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease or this Agreement. Nothing contained herein limiting the liability of the Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Trustee for an amount in excess of the amounts payable by the Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

ARTICLE 5

SECURITY INTEREST IN THE EQUIPMENT

5.1. Vendor To Retain Security Interest; Acces-

sories Are Part of Equipment. The Vendor shall and hereby does retain a security interest in the Equipment until the Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Trustee and the Lessee as provided in this Agreement and the Lease. Such retention of security interest is solely to secure performance by the Trustee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Trustee), and, subject thereto, ownership of the Equipment shall be and remain in the Trustee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads and/or the Interstate Commerce Commission, the United States Department of Transportation or any other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.2. Obligations upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Trustee at that time, will (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Trustee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make

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

ARTICLE 6

TAXES

6.1. General Tax Indemnification. Whether or not any of the transactions contemplated hereby are consummated, the Trustee assumes responsibility for and agrees to pay, and agrees to protect, save, keep harmless and indemnify on an after-tax basis the Vendor (but not including the Builder), the Investors and their successors and assigns (the "Indemnified Persons") against, all Taxes (as defined in § 6 of the Lease) imposed on, incurred by or asserted against any Indemnified Person or any Unit in whole or in part on account of, or with respect to, this Agreement or the Lease or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Units or any portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, transfer of title, operation, maintenance, repair, condition, sale, return, or other disposition of the Units or any portion thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom, excluding, however: (i) Taxes of the United States or any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, to the extent imposed on or measured by the net income, excess profits or items of tax preference of such Indemnified Person, other than Taxes arising out of or imposed in respect of the

receipt of indemnification payments pursuant to this Agreement, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its worldwide income without regard to the transactions contemplated by this Agreement shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; and (iii) Taxes which are imposed on or measured solely by the net income of the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Trustee has not agreed to pay or indemnify against pursuant to this Article 6; provided, however, that the Trustee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in Paragraph 6.2 hereof.

6.2. Claims; Contests; Refunds. If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Trustee. If reasonably requested by the Trustee in writing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor, which consent shall not be unreasonably withheld. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Trustee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Trustee the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in Paragraph 16.1 hereof

and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Trustee under or arising out of this Article 6, the Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Trustee.

6.4. Survival. All of the obligations of the Trustee under this Article 6 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person.

ARTICLE 7

MAINTENANCE; TERMINATION, CASUALTY OCCURRENCES AND OPTIONAL PREPAYMENT

7.1. Maintenance. The Trustee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear excepted.

7.2. Termination; Casualty Occurrences. In the event that the Lease is terminated pursuant to § 7.9 of the Lease (a "Termination") or any unit of Equipment shall suffer a Casualty Occurrence (as defined in § 7.1 of the Lease) during the term of this Agreement, the Trustee shall, promptly after it shall have received notice from the Lessee or has otherwise been informed of a Termination or that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the Casualty Payment Date (as defined in § 7.1 of the Lease) in the case of a Casualty Occurrence (or, in the event of a Casualty Occurrence during the period in which any unit of

Equipment is being returned pursuant to § 14 or § 17 of the Lease, on a date 30 days after such Casualty Occurrence), or on the Termination Date (as defined in § 7.9 of the Lease) in the case of a Termination (each such date hereinafter called a "Settlement Date"), the Trustee shall pay to the Vendor (i) in the case of a Casualty Occurrence, a sum equal to the Casualty Value (as defined in Paragraph 7.3 hereof) of such unit suffering a Casualty Occurrence as of such Settlement Date, and (ii) in the case of a Termination, a sum equal to the Termination Value (as defined in Paragraph 7.4 hereof). On any such Settlement Date, the Trustee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or the Termination Value, as the case may be. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date of such payment to prepay, without penalty or premium, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. The Trustee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in Paragraph 4.4 hereof.

7.3. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof referred to in Paragraph 4.3(b) hereof remaining unpaid on the Settlement Date (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), together with interest accrued thereon but unpaid as of the Settlement Date. For the purpose of this paragraph and Paragraph 7.4 hereof, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

7.4. Termination Value. The Termination Value shall be equal to the aggregate of the Casualty Values of the units of Equipment subject to the Lease as determined pursuant to Paragraph 7.3 hereof.

7.5. Obligations upon Payment of Casualty Value or Termination Value. Upon payment by the Trustee to the

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

7.6. Optional Prepayment. The Trustee shall have the option, with the prior written consent of the Lessee, to prepay the CSA Indebtedness, or any portion thereof (any such prepayment being hereinafter called a "Redemption"), on the next succeeding date for the payment of an installment on the CSA Indebtedness (such date being hereinafter called a "Redemption Date"). On such Redemption Date the Trustee shall pay to the Vendor (i) that portion of the outstanding CSA Indebtedness with respect to which the Trustee shall have given 90 days' prior written notice to the Vendor of its election to prepay, (ii) a prepayment premium equal to the product of that portion of the CSA Indebtedness being prepaid multiplied by the applicable percentage set forth in Schedule II hereto and (iii) the interest payment due on such Redemption Date on the CSA Indebtedness being prepaid; provided, however, that prior to April 1, 1991, no such prepayment shall be made in connection with or in anticipation of any refinancing involving directly or indirectly the borrowing of money by any person at an effective interest cost (calculated in accordance with accepted financial practice) equal to or less than 12.75% per annum or on terms which provide for an average maturity shorter than the then average maturity of the outstanding CSA Indebtedness or which permit optional prepayment on terms more favorable than the provisions hereof relating to optional prepayment (average maturities being calculated in accordance with accepted financial practice). The Trustee's notice of election to exercise its option to prepay shall be accompanied by a certificate of an officer in the Corporate Trust Department of the Trustee and of the Lessee stating that such prepayment will comply with the proviso of the preceding sentence.

ARTICLE 8

INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of any unit suffering a Casualty Occurrence or involved in a Termination, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Trustee; provided, however, that no event of default shall have occurred and be continuing hereunder and the Trustee shall have made payment (i) of the Casualty Value of such unit and/or (ii) of the Termination Value of such unit, together with accrued interest thereon to the Vendor. All insurance proceeds received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Trustee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 9

REPORTS AND INSPECTIONS

On or before April 30 in each year, commencing with the year 1981, the Trustee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10

MARKING OF EQUIPMENT

10.1. Marking of Equipment. The Trustee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Trustee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Trustee in all public offices where this Agreement

shall have been filed, recorded and deposited.

10.2. No Designations of Ownership. Except as provided in Paragraph 10.1 hereof, the Trustee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

ARTICLE 11

COMPLIANCE WITH LAWS AND RULES

During the term of this Agreement, the Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all material respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in § 10.1 of the Lease), and in the event that such Applicable Laws require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Trustee will or will cause the Lessee to conform therewith at no expense to the Vendor; provided, however, that the Trustee or the Lessee may, in good faith, contest the validity or application of any such Applicable Laws in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 12

POSSESSION AND USE

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

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Trustee simultaneously is

leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement and under the Consent (as defined in the Lease); provided, however, that, so long as (i) no Event of Default exists under the Lease, (ii) the Lessee and the Guarantor are complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 of the Lease. The Lease shall not be amended in any material respect or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

12.3. Other Leases of Equipment. Subject to the rights of the Lessee under the Lease, the Trustee may also lease the Equipment to any other entity, but only with the prior written consent of the Vendor, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States and (iii) such lease shall be assigned to the Vendor as security on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

ARTICLE 13

PROHIBITION AGAINST LIENS

13.1. Trustee To Discharge Liens. The Trustee will pay or discharge any and all sums claimed by any party from, through or under the Trustee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the income and proceeds from such Equipment, as defined in Article 4 hereof, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security

interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. The foregoing covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

13.3. Article 13 Subject to Paragraph 4.8 and Article 23 Except in Certain Instances. The obligations of the Trustee under this Article 13 are subject to the limitations contained in Paragraph 4.8 and Article 23 hereof; provided, however, that the Trustee in its individual capacity will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Trustee or its successors or assigns, and to the extent it receives funds sufficient for such purpose from the Owner, from, through or under the Owner and its successors and assigns, not arising out of the transactions contemplated hereby or in other documents mentioned herein (but, to the extent that it receives funds sufficient for such purpose from the Owner, including taxes arising out of the receipt of rentals and other payments under the Lease and any other proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or the Trustee's interest in the Lease and the payments to be made thereunder, but the Trustee shall not be required to pay or discharge any such tax, claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment, its interest in the income and proceeds from the Equipment or otherwise under this Agreement.

ARTICLE 14

INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Trustee shall pay, and shall protect, indemnify and hold the Vendor, the Investors and any assignee thereof, and their respective successors, assigns, agents and servants ("Indemnified Persons"), harmless from and against any and all Indemnified Matters (as defined in § 12.1 of the Lease) which may be imposed on, incurred by or asserted against any Indemnified Person; except that the Trustee shall not be liable to the Builder in respect of any Indemnified Matter to the extent liability in respect thereof arises out of any tort by the Builder or out of any breach of warranty or failure to perform any covenant hereunder by the Builder or is covered by the Builder's warranty of material and workmanship or patent indemnification referred to in Paragraph 14.4 hereof. The Trustee shall be obligated under this Article 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Trustee may, at the Trustee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Trustee and approved by such Indemnified Person (which approval shall not be unreasonably withheld) and, in the event of any failure by the Trustee to do so, the Trustee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding; provided that the Trustee shall not be liable for any settlement of any action, suit or proceeding effected without its consent. In the event the Trustee is required to make any payment under this Article 14, the Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense

indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Trustee agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Article 14 by the Trustee, and provided that no event of default described in Paragraph 16.1 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than the Trustee) with respect to any Indemnified Matter shall be paid over to the Trustee to the extent necessary to reimburse the Trustee for Indemnification payments previously made in respect of such matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

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

14.4. Warranties of Builder; Patent Indemnities. The agreement of the parties relating to the Builder's warranties of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto. The Builder represents and warrants that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, the Builder will have good and marketable

title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights created by this Agreement, the CSA Assignment and the Lease.

ARTICLE 15

ASSIGNMENTS

15.1. Assignment by Trustee. Except as provided in Article VII of the Trust Agreement and except as provided in Article 12 hereof, the Trustee will not (a) transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement.

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

15.3. Notice of Assignment by Vendor. Upon any such assignment, the assignor shall give written notice to the Trustee and the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Trustee of the notification of any such assignment, all payments thereafter to be made by the Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

15.4. No Setoff Against CSA Indebtedness upon Assignment. The Trustee recognizes that this Agreement will be assigned to the Assignee as provided in the CSA Assignment. The Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the assignee to the entire unpaid CSA Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Trustee arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Trustee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Trustee against and only against the Builder.

ARTICLE 16

DEFAULTS

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

(a) the Trustee shall fail to pay or cause to be paid in full any sum payable by the Trustee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Trustee) and such default shall continue for 10 business days after the date such payment is due and payable; or

(b) the Trustee or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply

with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Trustee), or of the Lease, the CSA Assignment, the Lease Assignment or the Consent or any covenant, agreement, term or provision of the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance, unless the Trustee or the Lessee, as the case may be, shall be diligently, to the reasonable satisfaction of the Vendor, attempting to comply with any such covenant, agreement, term or provision; or

(c) any proceeding shall be commenced by or against the Trustee, the Owner, the Lessee or the Guarantor for any relief 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 proceeding which does not permit any readjustment of the obligations hereunder or under the Lease, the Lease Assignment, the Consent or the Participation Agreement or the Trust Agreement of the Trustee, in such capacity, or such Owner or the Guarantee of the Guarantor, as the case may be) and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not be 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 Trustee, in such capacity, such Owner, such Lessee or such Guarantor, as the case may be, or for its or any or all of their property in connection with any such proceeding in such manner that such obligations have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(d) the Trustee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the

right to possession of any unit of the Equipment and the Trustee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Trustee of such Agreement, interest or right; or

(e) any Event of Default (as defined in the Lease) shall have occurred and be continuing under the Lease unless the Trustee shall have cured such Event of Default and the corresponding event of default hereunder (after giving effect to any applicable grace periods) within five days after the Vendor shall have given notice to the Trustee pursuant to the last paragraph of Paragraph 1 of the Lease Assignment (as defined in the Participation Agreement); provided, however, that if more than four Events of Default or more than two consecutive Events of Default shall have occurred under clause (A) of § 13.1 of the Lease within 12 calendar months, any such Event of Default shall be an event of default hereunder whether or not the corresponding event of default hereunder is cured;

(it being understood, however, that any event described in clauses (a) and (b) above, to the extent that it also constitutes an Event of Default under the Lease, shall not be deemed an event of default hereunder unless and until (i) the five-day period, if any, during which, in accordance with the provisions of clause (e) above, the Trustee may cure such Event of Default under the Lease and the corresponding event hereunder shall have expired and (ii) the Trustee shall not, during such period, have effected such cure) then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Trustee, the Owner and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare (a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. In addition, if the Trustee does not pay the entire unpaid CSA Indebtedness, together with the Interest thereon accrued and unpaid to the date of payment within 15 days of such notice of Declaration of Default, the Vendor may cause the term of the Lease immediately to terminate

(and the Trustee acknowledges the right of the Vendor to terminate the term of the Lease); provided, however, that such termination shall not be in derogation of or impair the rights of the Trustee or the Vendor (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under § 13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Trustee or the Vendor (under the assignment thereof), as the case may be, to sue for and recover damages provided for in § 13 of the Lease upon the occurrence of an event of default under the Lease; and provided further, however, that, so long as (i) no Event of Default exists under the Lease, (ii) the Lessee is complying with the provisions of the Consent (as defined in the Lease) and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 of the Lease. Upon a Declaration of Default, subject to Articles 4 and 23 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Trustee, subject to the provisions of Articles 4 and 23 hereof and the second proviso in the preceding sentence, wherever situated. The Trustee shall promptly notify the Vendor of any event of which an officer or employee in the Corporate Trust Department of the Trustee has knowledge which constituted, constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under this Agreement.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Trustee that time is of the essence of this Agreement and that no such waiver, rescis-

sion or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

16.3. Prepayment. If an event of default shall have occurred and be continuing hereunder by virtue of an Event of Default under the Lease, and a Declaration of Default has not been made by the Vendor for at least 30 days after the Vendor was entitled to make such a Declaration, the Trustee may prepay the entire CSA Indebtedness together with interest thereon then accrued and unpaid, without premium or penalty.

ARTICLE 17

REMEDIES

17.1. Vendor May Take Possession of Equipment. Except as hereinafter in this Article 17 expressly provided, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Trustee any sums theretofore paid and free from all claims whatsoever, and may remove the same from possession and use of the Trustee, the Lessee or any other person and for such purpose may enter upon the premises of the Trustee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Trustee shall, subject to the provisions of Article 4 and Article 23 hereof, at its own expense and risk:

(a) 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 to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) place such units upon such storage tracks as the Vendor reasonably may designate;

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

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

During any storage period, the Lessee has agreed pursuant to § 14.1 of the Lease, at its own cost and expense, to insure, maintain and keep each such unit in good order and repair and to permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of this Agreement between the parties, and the Trustee acknowledges that upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled under the Lease as assignee of the rights of the Trustee thereunder to a decree against the Lessee requiring specific performance hereof. The Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

17.3. Vendor May Dispose of or Retain Equipment. At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as provided in Paragraph 17.1 hereof) may, at its election, retain the Equipment in satisfaction of the entire CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Trustee and the Lessee by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such

Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Trustee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee; provided further that if the Trustee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Lessee is not in default under the Lease, the right of the Vendor to lease the Equipment to a third party or parties hereunder is subject to the right of the Lessee to lease, within 30 days after written notice of the proposed lease terms and conditions, the Equipment for the same term and rent as the proposed lessee upon terms and conditions found to be mutually acceptable to the Vendor and the Lessee. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Trustee's Right of Redemption. At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Trustee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Trustee, the Lessee or any other party claiming from, through or under the Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the

Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Trustee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee. The proceeds of such sale or other disposition, less the attorneys' fee and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited against the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder shall be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Trustee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Trustee and the Lessee shall be given written notice of such sale not less than ten business days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Trustee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Trustee (except to the extent of surplus money

received as provided in Paragraph 17.7 hereof), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

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

17.7. Deficiencies. If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Trustee shall, subject to the limitations of Paragraph 4.8 hereof and Article 23 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate, and, if the Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of Paragraph 4.8 hereof and Article 23 hereof, be entitled to recover a judgment therefor against the Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Trustee. The foregoing provisions of this paragraph are subject to the provisions of Paragraph 18 of the Participation Agreement.

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

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto and are further subject to the condition that, so long as (i) no Event of Default exists under the Lease, (ii) the Lessee is complying with the provisions of the Consent (as defined in the Lease) and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 of the Lease.

ARTICLE 18

APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

enforcement of the Vendor's rights and any and all rights of redemption.

ARTICLE 19

RECORDING

Subject to the provisions of Paragraph 4.8 and Article 23 hereof, the Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Trustee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Trustee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20

REPRESENTATIONS AND WARRANTIES OF BUILDER

The Builder hereby represents and warrants to the Trustee, its successors and assigns, that this Agreement is duly authorized by it and lawfully executed and delivered by it for a valid consideration, and that, assuming due authorization, execution and delivery by the Trustee, this Agreement is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon and enforceable against the Builder in accordance with its terms.

ARTICLE 21

ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. Article and Paragraph Headings for Convenience Only. All article and paragraph headings are

inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21.2. Effect and Modification of Agreement. Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Trustee.

ARTICLE 22

NOTICE

Any notice required or permitted to be given by any party hereto to any other party or parties shall be mailed, registered or certified mail, postage prepaid, return receipt requested, shall be effective on the date of receipt as shown on the return receipt, and shall be addressed as follows:

(a) to the Trustee, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department, with copies to the Owner at its address set forth below,

(b) to the Builder, at the address specified in Item 1 of Annex A hereto,

(c) to any assignee of the Vendor, or of the Trustee, at such address as may have been furnished in writing to the Trustee, or the Vendor, as the case may be, by such assignee, and

(d) to the Owner at its address set forth below:

Wells Fargo Equipment Leasing Corporation
425 California Street
San Francisco, California 94104

Attention of Contract Administration,

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

ARTICLE 23

IMMUNITIES; SATISFACTION OF UNDERTAKINGS

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

23.2. Satisfaction of Certain Covenants. The obligations of the Trustee under Paragraphs 7.1, 7.2, 17.2, 17.7 and 17.8 hereof, and under Articles 3, 6, 9, 10, 11, 13, 14 and 19 hereof and any and all obligations at any time arising thereunder shall be deemed satisfied in full in all respects (except as set forth in Paragraph 13.3 hereof), and be of no further force or effect insofar as they involve personal liability for money or performance or otherwise of the Trustee, other than out of "income and proceeds from the Equipment" (as defined in Paragraph 4.8 hereof), by the Lessee's execution and delivery of the Lease. The Trustee shall not have any responsibility for the Lessee's failure to perform such obligations; but if the same shall not be performed, they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor; provided, however, that the Vendor shall consent to any agreement in writing between the Lessee and the Trustee increasing or decreasing the rentals, casualty values or termination values payable pursuant to §§ 3 and 7 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Trustee hereunder, such consent to be given by the Vendor within 30 days of delivery of a copy of any such agreement to the Vendor.

23.3. No Personal Liability of Trustee. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties and

agreements herein made on the part of the financial institution acting as Trustee hereunder are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution, including its successors and assigns, or for the purpose or with the intention of binding said financial institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by said financial institution solely in the exercise of the powers expressly conferred upon said financial institution as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution (except as provided in Paragraph 13.3 hereof) or the Owner hereunder, on account of any representation, warranty or agreement of the Trustee (except as aforesaid), or the Owner hereunder, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Nothing contained in this Paragraph 23.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Trustee (provided that neither the Trustee in its fiduciary or individual capacity nor the Owner shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of the Trustee or the Owner) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease.

The Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

ARTICLE 24

LAW GOVERNING

The terms of this Agreement and all rights and

obligations hereunder shall be governed by the laws of the State of Connecticut; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights, if any, arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

ARTICLE 25

EXECUTION

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, 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. This Agreement shall be effective when executed counterparts hereof have been delivered to Cravath, Swaine & Moore at their offices in New York, New York.

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

THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity, but solely as Trustee as aforesaid,

by _____
Authorized Officer

[Seal]

Attest:

_____
Authorized Officer

ACF INDUSTRIES, INCORPORATED,

by _____
Vice President

[Corporate Seal]

Attest:

_____
Secretary

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

On this 10th day of October 1980, before me personally appeared ~~October~~ DONALD E. SMITH to me personally known, who, being by me duly sworn, says that he is an ~~of~~ ASST VICE PRESIDENT of THE CONNECTICUT BANK AND TRUST COMPANY, 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.

Barbara S. Kacich
Notary Public

BARBARA S. KACICH
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1982

[Notarial Seal]

My Commission expires

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

On this day of October 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE I

Allocation Schedule of Each $1,000,000 of
12.75% CSA Indebtedness

Due Date	Installment No.	Total Payment	Interest Payment	Principal Recovery	Ending Principal
4/1981	—	*	*	—	$1,000,000
10/1981	1	$ 78,559.07	$ 63,750.00	$ 14,809.07	$985,190.93
4/1982	2	78,559.07	62,805.92	15,753.15	969,437.78
10/1982	3	78,559.07	61,801.66	16,757.41	952,680.37
4/1983	4	78,559.07	60,733.37	17,825.70	934,854.67
10/1983	5	78,559.07	59,596.99	18,962.08	915,892.59
4/1984	6	78,559.07	58,388.15	20,170.92	895,721.67
10/1984	7	78,559.07	57,102.26	21,456.81	874,264.86
4/1985	8	78,559.07	55,734.38	22,824.69	851,440.17
10/1985	9	78,559.07	54,279.31	24,279.76	827,160.41
4/1986	10	78,559.07	52,731.48	25,827.59	801,332.82
10/1986	11	78,559.07	51,084.97	27,474.10	773,858.72
4/1987	12	78,559.07	49,333.49	29,225.58	744,633.14
10/1987	13	78,559.07	47,470.36	31,088.71	713,544.43
4/1988	14	78,559.07	45,488.46	33,070.61	680,473.82
10/1988	15	78,559.07	43,380.21	35,178.86	645,294.96
4/1989	16	78,559.07	41,137.55	37,421.52	607,873.44
10/1989	17	78,559.07	38,751.93	39,807.14	568,066.30
4/1990	18	78,559.07	36,214.23	42,344.84	525,721.46
10/1990	19	78,559.07	33,514.74	45,044.33	480,677.13
4/1991	20	78,559.07	30,643.17	47,915.90	432,761.23
10/1991	21	78,559.07	27,588.53	50,970.54	381,790.69
4/1992	22	78,559.07	24,339.~~14~~16	54,219.91	327,570.78
10/1992	23	78,559.07	20,882.64	57,676.43	269,894.35
4/1993	24	78,559.07	17,205.76	61,353.31	208,541.04
10/1993	25	78,559.07	13,394.49	65,264.58	143,276.46
4/1994	26	78,559.07	9,133.87	69,425.20	73,851.26
10/1994	27	78,559.~~19~~28	4,708.02	73,851.26	0.00
		121,095.10	121,095.10		
		$2,~~167,937.09~~	$1,~~167~~,937.19	$1,000,000.00	0.00

* Interest on the CSA Indebtedness shall be paid to the extent accrued on this date at the lower of 11% per annum or the Floating Prime Rate per annum.

SCHEDULE II

Schedule of Redemption Premiums

Redemption Date	Premium
Prior to April 2, 1982	12.750%
April 2, 1982-April 1, 1983	11.839
April 2, 1983-April 1, 1984	10.929
April 2, 1984-April 1, 1985	10.018
April 2, 1985-April 1, 1986	9.107
April 2, 1986-April 1, 1987	8.196
April 2, 1987-April 1, 1988	7.286
April 2, 1988-April 1, 1989	6.375
April 2, 1989-April 1, 1990	5.464
April 2, 1990-April 1, 1991	4.554
April 2, 1991-April 1, 1992	3.643
April 2, 1992-April 1, 1993	2.732
April 2, 1993-April 1, 1994	1.821
April 2, 1994-September 30, 1994	0.911
On October 1, 1994	0.000

Annex A
to
Conditional Sale Agreement

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

Item 2: Unless the parties shall otherwise agree, the Equipment shall be settled for in no more than six Groups. Each Group shall consist of an even number of cars and of at least 100 cars and the Closing Date therefor shall be held within 10 business days after the Builder has delivered the requisite invoice and closing documents.

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

WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, LIABILITY FOR LOST PROFIT OR FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR COMMERCIAL LOSSES, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES, AND THE BUILDER DOES NOT ASSUME OR AUTHORIZE ANY PERSON TO ASSUME CONSTRUCTION AND DELIVERY OF THE EQUIPMENT EXCEPT AS AFORESAID. IT IS FURTHER UNDERSTOOD AND AGREED THAT IN NO EVENT SHALL THE BUILDER BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND.

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

Item 4: The Builder agrees to indemnify, protect and hold harmless the Trustee (in both its individual and fiduciary capacities) and the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Trustee or the Lessee because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right, except any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Trustee or the Lessee because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination specified by the Lessee and not developed or purported to be developed by the Builder or any article or material specified by the Lessee and not manufactured by the Builder. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or

hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment, on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

Item 5: The Maximum Purchase Price referred to in Article 4 of the CSA to which this Annex A is attached is $13,174,305.56.

Item 6: The Maximum CSA Indebtedness referred to in Article 4 of the CSA to which this Annex A is attached is $8,096,875.50.

Annex B
to
Conditional Sale Agreement

Type	AAR Mechanical Designation	Builder's Specifications	Builder's Plant	Quantity†	Lessee's Identification Numbers (Each Set of Which is Inclusive)†	Estimated Unit Price*	Estimated Total Price†*	Estimated Time and Place of Delivery
105-ton 4240 cu. ft. gondola coal car	GTS	Per Purchase Order UFI-00108 dated August 3, 1979	St. Louis, Missouri	610	13001-13110 14001-14110 15001-15110 16001-16170 17001-17110	$42,260	$25,778,600	Oct.-Dec., 1980, F.O.B. Builder's plant with shipment to Jacobs Junction, Wyoming or Spring Creek Mine, Montana.

† This Annex B sets forth the description of the units of Equipment which are scheduled for delivery both under this Conditional Sale Agreement (A) (the "CSA-(A)") and under a Conditional Sale Agreement (B) dated as of October 1, 1980, between the Builder and another owner, U B Leasing, Inc., (the "CSA-(B)") under which deliveries cannot be accepted after December 31, 1980. It is expected that some of these units of Equipment will be delivered in time for acceptance under CSA-(B) and that an equal number of these units will be delivered in time for acceptance hereunder. After delivery of all the units of Equipment covered by both Agreements, this Annex B will be appropriately amended to describe only those units of Equipment covered by this CSA-(A).

* Includes prepaid freight to Jacobs Junction, Wyoming or Spring Creek Mine, Montana, as the case may be.

ANNEX C
to
Conditional Sale Agreement (A)

[CS&M Ref. 2483-135]

LEASE OF RAILROAD EQUIPMENT

(A)

Dated as of October 1, 1980

Between

UTILITY FUELS, INC.,

as Lessee,

and

THE CONNECTICUT BANK AND TRUST COMPANY,
not in its individual capacity
but solely as Trustee under a Trust Agreement
dated as of the date hereof
with Wells Fargo Equipment Leasing Corporation,
as Lessor.

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of Mercantile-Safe Deposit and Trust Company, as Agent for certain institutional investors. The original of this Lease is held by said Agent.

LEASE OF RAILROAD EQUIPMENT

TABLE OF CONTENTS*

	Page
PARTIES	L-1
PREAMBLES	L-1
GRANTING CLAUSE	L-1
§ 1. NET LEASE	L-2
§ 2. DELIVERY AND ACCEPTANCE OF UNITS	L-3
§ 3. RENTALS	L-3
§ 3.1. Amount and Date of Payment	L-3
§ 3.2. Payments on Nonbusiness Days	L-5
§ 3.3. Instructions To Pay Vendor and Trustee	L-6
§ 3.4. Payment in Immediately Available Funds	L-6
§ 4. TERM OF LEASE	L-6
§ 4.1. Beginning and Termination; Survival	L-6
§ 4.2. Rights and Obligations of Lessee Subject to CSA	L-7
§ 5. IDENTIFICATION MARKS	L-7
§ 5.1. Identifying Numbers; Legend; Changes	L-7
§ 5.2. Insignia of Lessee	L-8

* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

		Page
§ 6.	GENERAL TAX INDEMNIFICATION	L-8
§ 7.	PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE; ECONOMIC OBSOLESCENCE	L-12
§ 7.1.	Definition of Casualty Occurrence; Payments	L-12
§ 7.2.	Requisition	L-14
§ 7.3.	Lessee Agent for Disposal	L-14
§ 7.4.	Payments After Expiration of Lease ..	L-14
§ 7.5.	Amount of Casualty Value	L-14
§ 7.6.	No Release	L-15
§ 7.7.	Insurance To Be Maintained	L-15
§ 7.8.	Insurance Proceeds and Condemnation Payments	L-17
§ 7.9.	Economic Obsolescence	L-17
§ 8.	REPORTS AND INSPECTIONS	L-20
§ 9.	DISCLAIMER OF WARRANTIES	L-20
§ 10.	LAWS AND RULES	L-22
§ 10.1.	Compliance	L-22
§ 10.2.	Reports by Trustee	L-22
§ 11.	MAINTENANCE	L-22
§ 11.1.	Units in Good Operating Order	L-22
§ 11.2.	Additions and Accessions	L-23
§ 12.	INDEMNIFICATION	L-23
§ 12.1.	Indemnified Persons; Indemnified Matters	L-23
§ 12.2.	Indemnification of Builder	L-26
§ 12.3.	Survival	L-26
§ 13.	DEFAULT	L-26
§ 13.1.	Events of Default; Remedies	L-26
§ 13.2.	Remedies Not Exclusive; Waiver	L-30
§ 13.3.	Failure To Exercise Right Is Not Waiver	L-30
§ 13.4.	Notice of Event of Default	L-30

		Page
§ 14.	RETURN OF UNITS UPON DEFAULT	L-31
	§ 14.1. Return of Units	L-31
	§ 14.2. Trustee Appointed Agent of Lessee ...	L-32
§ 15.	ASSIGNMENT, POSSESSION AND USE	L-32
	§ 15.1. Assignment; Consent	L-32
	§ 15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units	L-32
	§ 15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation	L-34
§ 16.	RENEWAL OPTIONS AND DUTY TO FIRST OFFER	L-34
	§ 16.1. Renewal	L-34
	§ 16.2. Duty to First Offer	L-36
	§ 16.3. Determinations	L-37
§ 17.	RETURN OF UNITS UPON EXPIRATION OF TERM OR TERMINATION	L-38
§ 18.	RECORDING	L-40
§ 19.	INTEREST ON OVERDUE RENTALS	L-40
§ 20.	TRUSTEE'S RIGHT TO PERFORM FOR THE LESSEE	L-40
§ 21.	NOTICES	L-41
§ 22.	SEVERABILITY	L-41
§ 23.	EFFECT AND MODIFICATION OF LEASE	L-41
§ 24.	THIRD-PARTY BENEFICIARIES	L-42
§ 25.	EXECUTION	L-42
§ 26.	LAW GOVERNING	L-42

	Page
§ 27. IMMUNITIES; NO RECOURSE	L-42
§ 28. AGREEMENTS FOR BENEFIT OF OWNER'S AND TRUSTEE'S ASSIGNS	L-43
§ 29. TERM TRUSTEE	L-44
TESTIMONIUM	L-44
SIGNATURES	L-44
ACKNOWLEDGMENTS	L-45
APPENDIX A - Units Leased	L-46
APPENDIX B - Schedule of Casualty Values	L-47
APPENDIX C - Schedule of Termination Values	L-48

LEASE OF RAILROAD EQUIPMENT dated as of October 1, 1980, between UTILITY FUELS, INC., a Texas corporation (the "Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, acting not in its individual capacity but solely as Trustee (the "Trustee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with WELLS FARGO EQUIPMENT LEASING CORPORATION (the "Owner").

WHEREAS pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, HOUSTON INDUSTRIES INCORPORATED, a Texas corporation (the "Guarantor"), the Trustee, the Owner and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent (said bank so acting, being hereinafter called the "Vendor"), the Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Trustee the units of railroad equipment described in Appendix A hereto;

WHEREAS at the date of execution of this Agreement, no unit of the railroad equipment has been placed in service;

WHEREAS the Builder is assigning its interests in the CSA pursuant to an Agreement and Assignment dated the date hereof (the "CSA Assignment") to the Vendor;

WHEREAS the Lessee desires to lease such number of units of the railroad equipment as are settled for under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided;

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

WHEREAS the Trustee will assign this Lease for security to the Vendor pursuant to an Assignment of Lease

and Agreement (the "Lease Assignment") dated as of the date hereof and the Lessee and the Guarantor will acknowledge and consent thereto pursuant to the Consent and Agreement in the form attached to the Lease Assignment (the "Consent");

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 Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. NET LEASE

This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent or such other amounts or reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Trustee or the Owner under this Lease or the CSA, including the Lessee's rights by subrogation thereunder to the Builder or the Vendor, or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Trustee 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 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 of 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. 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 Trustee, the Owner or the Vendor for any reason whatsoever. Nothing in this § 1 shall constitute a waiver by Lessee of any rights to sue for damages or specific performance for breach of any obligations undertaken by the Trustee under this Agreement or by the Trustee or any other party to any of the other documents referred to herein but subject in all respects to the provisions of § 27 hereof.

§ 2. DELIVERY AND ACCEPTANCE OF UNITS

The Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Trustee under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is so delivered to the Trustee. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Trustee under the CSA and on behalf of itself hereunder and execute and deliver to the Trustee 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 and the Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. RENTALS

3.1. Amount and Date of Payment. The Lessee agrees to pay to the Trustee, as rental for each Unit subject to this Lease, one interim rental payment on April 1, 1981, and 32 consecutive semiannual payments payable, in arrears, on April 1 and October 1 in each year, commencing October 1, 1981, to and including April 1, 1997. The interim rental payment for each Unit shall be in an amount equal to the sums of (x) the product of (i) the Purchase

Price (as defined in Paragraph 4.1 of the CSA) of such Unit less (ii) the portion of the CSA Indebtedness (as defined in Paragraph 4.3(b) of the CSA) attributable to such Unit multiplied by 0.03493151% for each day (computed on an actual elapsed day, 365-day year, basis) from and including the Closing Date for such Unit to and including March 31, 1981, and (y) the amount payable to the Interim Investor on April 1, 1981, pursuant to Paragraph 4.4 of the CSA. The 32 semiannual rental payments for each Unit shall be in an amount equal to 4.8282% of the Purchase Price of such Unit. In no event shall the foregoing rentals be less than the principal and interest payment due on each such date pursuant to Article 4 of the CSA.

In the event of (i) an amendment to the Internal Revenue Code, as amended to the Documents Closing Date (as defined in the first paragraph of Paragraph 8 of the Participation Agreement), or the Income Tax Regulations promulgated thereunder, as of such Date, or a change in the interpretation thereof as a result of a decision of a court or a change in Revenue Procedure 77-10, 1977-1 Cum. Bull. 548, which amendment or change shall occur (A) during the period beginning on the Documents Closing Date and ending on April 1, 1981 (for purposes of this paragraph, regulations proposed to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, or his delegate, shall be treated as an amendment of the Income Tax Regulations, provided that such proposed regulations are adopted in substantially the form proposed), or (ii) a delivery of the Units at times and in numbers of Units other than 61 Units on each of October 9, October 27, November 17, December 9, and December 30, 1980, the effect of which event would be to increase or decrease by more than 25 basis points the pretax yield which the Owner expects to realize as the result of the transactions contemplated by the Participation Agreement and this Lease from the pretax yield which the Owner expected to realize as the result of the transactions contemplated by the Participation Agreement and this Lease had such event not occurred, (x) in the case of any such decrease in the pretax yield of the Owner, the semiannual rental payments occurring thereafter for each Unit and the percentages with respect to Termination Value and Casualty Value shall be adjusted in such manner as shall be required in order that, after giving effect to such event, the Owner's rate of return on, and rate of recovery of, investment shall be maintained and (y) in the case of any such increase in the pretax yield of the Owner, the Owner shall make a supplemental payment to the Lessee on each semiannual rental payment date occurring thereafter for each Unit in such amount, and the percentages with respect to Termination Value and Casualty Value shall be adjusted in such manner, as shall be required in order that, after

giving effect to such event, the Owner's rate of return on, and rate of recovery of, investment shall be maintained. Upon the occurrence of an event requiring an adjustment or supplemental payments pursuant to this paragraph, the Owner shall promptly make the necessary computations and furnish to the Trustee and the Lessee a certificate of the Owner setting forth, in reasonable detail, the revised semiannual rental payments or supplemental payments, as the case may be, and percentages with respect to Termination Value and Casualty Value. Any certificate furnished by the Owner to the Trustee and the Lessee pursuant to this paragraph shall be binding and final unless the Lessee shall notify the Owner and the Trustee within 30 days after the receipt of such certificate that it disagrees with such certificate. In the event that the Owner and the Lessee are unable to resolve any disagreement within 30 days after the receipt of the Lessee's notice to the Owner, the matter shall be referred to independent public accountants (which shall not be the Lessee's or the Guarantor's principal auditor) selected by the Lessee and approved by the Owner (such approval not to be unreasonably withheld) who shall verify the Owner's computations and, within 30 days of the date on which the matter was referred to it, furnish to the Owner, the Trustee and the Lessee a certificate setting forth, in reasonable detail, the revised semiannual rental payments or supplemental payments, as the case may be, and percentages with respect to Termination Value and Casualty Value. The revised semiannual rental payments or supplemental payments, as the case may be, and percentages with respect to Termination Value and Casualty Value as so verified or as adjusted by such accountants shall be binding and final on the Owner, the Trustee and the Lessee. The expense of any verification by the Lessee of the Owner's computations under this paragraph shall be at the expense of the Lessee. Notwithstanding the foregoing, (x) each semiannual rental payment shall not be less than the amount required to pay all amounts when due and payable on or with respect to the CSA Indebtedness on the date on which such semiannual rental payment is due and payable and to satisfy the profit and positive cash flow requirements set forth in Section 4(b) of Revenue Procedure 75-21, 1975-1 Cum. Bull. 715, as said requirements may be amended or modified as of the date on which any adjustment is to be made under this paragraph, and (y) the Termination Value or Casualty Value payable on any date shall not be less than the amount required to pay the principal of, and accrued and unpaid interest and all other amounts due and payable on or with respect to, the CSA Indebtedness on the date of the payment of Termination Value or Casualty Value.

3.2. Payments on Nonbusiness Days. If the interim rental payment date or any of the semiannual rental

payment dates referred to in § 3.1 is not a business day, the rental payment otherwise payable on such date shall be payable on the next 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, Houston, Texas or Hartford, Connecticut, or the principal place of business of the Owner are authorized or obligated to remain closed.

3.3. Instructions To Pay Vendors and Trustee. Upon execution and delivery of the Lease Assignment and until the Vendor shall have advised the Lessee in writing that all sums due from the Trustee under the CSA have been fully satisfied and discharged, the Trustee irrevocably instructs the Lessee (a) first, to remit to the Vendor on each rental payment date hereunder a sufficient portion of the then due rental payment to satisfy the obligations of the Trustee then payable under the CSA, and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay to the Trustee, on such rental payment date, the balance, if any, of such rental payment. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Vendor in writing that all sums due from the Trustee under the CSA have been fully discharged and satisfied, then all payments provided for in this Lease shall be made to the Trustee.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 in funds which are immediately available at or prior to 11:00 a.m. in the city where such payment is to be made in the manner specified in Paragraph 15 of the Participation Agreement.

§ 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery of such Unit under the CSA and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration or other termination of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA and if an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) in accordance with the terms of the CSA without affecting the indemnities which by the provisions of this Lease survive the termination of its term, all as provided herein; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee and the Guarantor are complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 hereof.

§ 5. IDENTIFICATION MARKS

5.1. Identifying Numbers; Legend; Changes. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Appendix A hereto, or in the case of any Unit not there listed such identification number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNED BY A BANK OR TRUST COMPANY AS TRUSTEE AND SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Trustee's title to, and the Vendor's security interest in, such Unit and the rights of the Trustee under this Lease and 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 such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identification 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 Trustee and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Trustee's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Trustee in such Units.

5.2. Insignia of Lessee. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, 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. GENERAL TAX INDEMNIFICATION

Whether or not any of the transactions contemplated hereby are consummated, the Lessee assumes responsibility for and agrees to pay, and agrees to protect, save, keep harmless and indemnify on an after-tax basis the Trustee (in both its individual and fiduciary capacities), the Owner, the Vendor, the Investors and their respective successors and assigns (the "Indemnified Persons") against, all taxes, levies, imposts, duties, assessments, fees, withholdings and other governmental charges of any nature whatsoever, including, without limitation, penalties, fines and interest (all such taxes, levies, imposts, duties, assessments, fees, withholdings, governmental charges, penalties, fines and interest being hereinafter called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or any Unit in whole or in part on account of, or with respect to, this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Units or any portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, transfer of title, operation, maintenance, repair, condition, sale, return, or other disposition of the Units or any portion thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom;

excluding, however, (i) Taxes of the United States or any state or political subdivision thereof imposed on or measured solely by the net income or excess profits or items of tax preference of the Indemnified Person (not including the Trustee in its fiduciary capacity), other than (1) Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, (2) any such Taxes which are in direct substitution for Taxes which the Lessee would otherwise be obligated to pay or reimburse as herein provided, and (3) the aggregate of all state or local Taxes measured by net income based on such receipts which are in excess of the amount of any such Taxes based on such receipts which would be payable to the state and locality in which the Indemnified Person has its principal place of business without apportionment to any other state; (ii) Taxes imposed on or measured by any fees or compensation received by the Trustee for its services in acting as trustee under the Trust Agreement; (iii) Taxes which are imposed on or measured solely by the net income of the Indemnified Person if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this § 6; (iv) Taxes imposed with respect to any period commencing after the date on which this Lease shall terminate and the Units shall be redelivered to the Trustee in accordance with the terms of this Lease and not relating to events or matters prior to such time; and (v) Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Trustee or the Owner (other than any transfer pursuant to § 7.3 or any transfer to the Lessee pursuant to § 16.2) or any transfer or disposition by the Trustee or the Owner resulting from bankruptcy or other proceedings for the relief of debtors in which the Trustee or the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease unless, at the time of any such transfer or disposition, an Event of Default shall have occurred and be continuing. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within 30 days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that if any Taxes are being contested in accordance with the sixth paragraph of this § 6, any payment shall be made at the time therein provided.

In the event that the Trustee shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any corresponding provision of the CSA not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Trustee as will enable the Trustee to fulfill completely its obligations pursuant to said provision. The Lessee covenants, for the benefit of the Builder, that the Lessee will indemnify and hold the Builder harmless from any sales taxes, including interest and penalties, which might be imposed in respect to the sale of the Units under the CSA.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Trustee and the Vendor in such Units, send a copy of such returns, statements or reports to the Trustee and the Vendor, and after notice to the Trustee and the Vendor (which may be in the form of a statement sent with copies that the same will be filed, barring objection, within a specified period of time) file such returns, statements or reports; provided, however, that the Trustee shall, with respect to any state or political subdivision thereof of the United States of America, file such returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by the Trustee's earnings or gross receipts arising from the Units, or the value added by the Trustee thereto, as the Lessee or the Trustee shall determine are required to be filed, and as shall be prepared by the Lessee, and shall remit the amount thereof upon payment by the Lessee to the Trustee (such payment to be made promptly upon demand by the Trustee therefor) of such taxes, fees and charges except as provided above. To the extent that the Trustee has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Trustee hereby authorizes the Lessee to act in the name of the Trustee and on its behalf; provided, however, that the Lessee shall indemnify and hold the Trustee (in both its individual and fiduciary capacities) 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.

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

If any taxing authority shall assert in writing liability for any Taxes or propose an increase in the liability of any Indemnified Person for any such Taxes (such assertion or such proposed increase being hereinafter called a "Claim"), indemnification for which would be required under this § 6, the Indemnified Person will promptly notify the Lessee of such Claim in writing. If the Lessee delivers to such Indemnified Person written notice of its desire to contest such Claim within 30 days after receipt of notice from such Indemnified Person, such Claim will be contested in accordance with this paragraph, except to the extent such Claim represents amounts payable to the Builder or the Vendor under Article 6 of the CSA. The Trustee will permit the Lessee to contest such claims under Article 6 of the CSA in accordance with the rights of the Trustee thereunder. The Indemnified Person shall have the exclusive right to conduct the contest unless such is waived in writing, in which event the contest and all preparations therefor shall be the sole responsibility of the Lessee and, in either case, shall be conducted entirely at its expense. Such Indemnified Person will cooperate with any reasonable request made by the Lessee in connection therewith; provided, however, that such Indemnified Person may in its sole discretion determine in what court or other forum such contest will be conducted and whether such contest will proceed by payment of the Taxes in contemplation of a suit for refund, and such Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified Person in a manner satisfactory to such Indemnified Person for any liability or loss which such Indemnified Person may incur as a result of contesting the validity of any Claim and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may incur in connection with contesting such Claim (including fees and disbursements of counsel). If in any such contest the decision is made to pay the Taxes and sue for a refund,

the Lessee will advance to such Indemnified Person on an interest-free basis sufficient funds to pay the Taxes which are to be contested. Upon receipt by any Indemnified Person of a refund of any Taxes paid by the Lessee pursuant to this paragraph, the amount of such refund and any interest paid to such Indemnified Person with respect thereto (attributable to the period during which the Lessee shall have advanced funds as aforesaid) shall be paid to the Lessee forthwith upon receipt by such Indemnified Person so long as an Event of Default shall not be continuing.

The Lessee covenants and agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder.

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

§ 7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE; ECONOMIC OBSOLESCENCE

7.1. Definitions of Casualty Occurrence; Payments. In the event that any Unit of equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to § 14 or 17 hereof, or the Purchase Price of any Unit shall have been refunded by the Builder pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of one year during the term of this Lease or during any renewal term hereof (a "Casualty Occurrence"), the Lessee shall promptly and fully notify

the Trustee and the Vendor with respect thereto. On the semiannual rental payment date next succeeding a Casualty Occurrence (each such date being hereinafter called a "Casualty Payment Date"), the Lessee shall pay to the Trustee a sum equal to the Casualty Value (as defined in § 7.5 hereof) of any such Unit as of such Casualty Payment Date, plus the semiannual rental in respect of such Unit accrued as of such rental payment date; provided, however, that in the event of a Casualty Occurrence during the period any Unit is being returned pursuant to § 14 or 17 hereof, the Lessee shall make such payment to the Trustee on a date 30 days after such Casualty Occurrence. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Trustee shall be entitled to recover possession of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the term of this Lease, in which event the Lessee shall promptly and fully notify the Trustee with respect thereto and pay the Trustee, as the Casualty Value therefor, an amount equal to 20% of the Purchase Price of such Unit. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Trustee. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as agent for the Trustee, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Trustee. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty

Value, such Unit shall be returned by the Lessee to the Trustee in the manner provided in § 17 hereof.

7.2. Requisition. In the event of any requisition for use by the United States Government or by any other governmental entity of any Unit which does not constitute a Casualty Occurrence, all of the Lessee's obligations (including the obligation to pay rent therefor) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Trustee or the Lessee from the United States Government or from such other governmental entity for the use of such Unit during such requisition 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.

7.3. Lessee Agent for Disposal. The Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component of any such Unit, before and after expiration of the Lease, at the best price the Lessee can reasonably obtain on an "as is, where is" basis. Upon effecting any such disposition, the Lessee shall promptly deliver to the Trustee a certificate stating the sale price obtained for such Unit or component thereof. Provided that the Lessee has previously paid the Casualty Value to the Trustee, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Trustee. 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 an amount equal to any payment made by the Builder to the Trustee in respect thereof under the CSA.

7.4. Payments After Expiration of Lease. If the date upon which the making of the payment by the Lessee in § 7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or the renewal term hereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.

7.5. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is to be made as aforesaid shall be an amount equal

to that percentage of the Purchase Price of such Unit as is set forth in Appendix B hereto opposite the rental payment date next succeeding the actual date of such Casualty Occurrence, or if there is no such rental payment date, the last rental payment date; but in no event shall such amount be less than the Casualty Value (as defined in Paragraph 7.3 of the CSA) as of such rental payment date.

7.6. No Release. Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.7. Insurance To Be Maintained. (1) The Lessee will at all times prior to the return of the Units to the Trustee (including, without limitation, during any storage period provided for in this Lease), at its own expense, cause to be carried and maintained (A) public liability insurance with respect to third party personal injury and property damage, and (B) property insurance in respect of the Units at the time subject hereto in amounts at least equal at all times to the aggregate Casualty Value of such Units as computed on the next succeeding semiannual rental payment date; provided, however, that the Lessee may, in the case of property insurance, self-insure such Units to the extent that such self-insurance is (x) consistent with prudent industry practice and, in any event, (y) in an amount (considered in relation to the then current value thereof) no greater than the amount of self-insurance maintained with respect to other similar equipment, if any, then owned or leased by the Lessee (considered in relation to the then current value of such similar equipment). All such public liability insurance and, except as otherwise provided in the foregoing sentence, all such property insurance in respect of the Units shall be carried in such amounts, for such risks, with such deductibles and with such insurance companies as shall be (I) reasonably satisfactory to the Trustee and the Vendor and, in any event, (II) consistent with prudent industry practice and at least comparable in amounts to the insurance coverage carried by, and against risks customarily insured against by the Lessee in respect of equipment owned or leased by the Lessee similar in nature to the Units. It is hereby agreed that the Lessee's current insurance coverage is satisfactory to the Trustee and the Vendor on the date hereof. The proceeds of any such property insurance as is

required hereunder shall be payable to the Vendor, the Trustee, the Owner and, so long as there is no Event of Default hereunder, the Lessee, as their respective interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not have been paid in full, and thereafter to the Trustee, the Owner and, so long as there is no Event of Default hereunder, the Lessee, as their respective interests may appear. Any policies of insurance required to be carried in accordance with this paragraph shall (i) require at least 30 days' prior notice in writing by the insurance carrier to the Trustee, the Owner and the Vendor as a prerequisite to the effectiveness, as against such parties, of any cancelation thereof or material change in coverage, (ii) name the Trustee, the Owner and the Vendor as additional named insureds as their respective interests may appear, (iii) waive any right to claim any premiums or commissions against the Owner, the Trustee and the Vendor and (iv) as to the Trustee, the Owner and the Vendor, be primary insurance. In the event such policies shall contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Trustee, the Owner and the Vendor in such policies, the insurance shall not require contributions from other policies held by the Trustee, the Owner or the Vendor, shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Trustee and the Vendor, respectively) and shall insure the Trustee, the Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Trustee and the Vendor, respectively). Prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter not less than 15 days prior to the expiration dates of the expiring policies carried pursuant to this § 7, the Lessee shall deliver to the Owner certificates issued by the insurer(s) for the insurance required to be maintained pursuant to this § 7 (such certificates or a letter from the Lessee's independent insurance broker to state that no representations or warranties have been made by the Lessee or the Guarantor with respect to such insurance); provided, however, that if the delivery of any certificate is delayed, the Lessee shall deliver an executed binder or letter from the Lessee's independent insurance broker with respect thereto and shall deliver such certificate upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Owner or the Trustee may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Owner or the Trustee, as the case may be, for the cost thereof together with interest on the amount

of the cost to the Owner or the Trustee of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in § 19 hereof.

7.8. Insurance Proceeds and Condemnation Payments. If the Trustee shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence or involved in a Termination (as defined in § 7.9 hereof), the Trustee shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value or the Termination Value (as defined in § 7.9 hereof), as the case may be, with respect to any Unit theretofore paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Trustee; provided, however, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value or the Termination Value, as the case may be, thereof, and accrued rentals in respect of such Units, to the Trustee. All insurance proceeds received by the Trustee (directly or from the Vendor) in respect of any Unit not suffering a Casualty Occurrence shall promptly be paid to the Lessee upon proof satisfactory to the Trustee that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so long as an Event of Default shall not be continuing.

7.9. Economic Obsolescence. In the event that, during the term of this Lease the Lessee shall, in the reasonable judgment of its Board of Directors (such judgment to be evidenced by a resolution of the Board of Directors of the Lessee, and to be certified by an officer of the Lessee and delivered to the Trustee), determine that all Units then subject to this Lease have become economically obsolete or surplus to continued use 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 Trustee and the Vendor, to terminate (a "Termination") this Lease (subject to the survival of the obligations described in § 4.1 hereof) as of any succeeding rental payment date specified in such notice (the termination date specified in such notice being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than April 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, (iii) on the Termination Date the Units shall be in the same condition as if being redelivered pursuant to § 14.1 hereof and

(iv) on the Termination Date the Lessee shall have complied with all of its obligations contained in this § 7.9 and the Trustee shall have paid to the Vendor a sum sufficient to prepay the CSA Indebtedness in accordance with Paragraph 7.2 of the CSA.

Unless the Trustee elects to retain such Units as provided in the last paragraph of this § 7.9, during the period from the 90th day after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of the Units, and the Lessee shall at least five business days prior to such Termination Date certify to the Trustee 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 purchase or lease the Units) submitting such bid. On the Termination Date the Trustee shall sell the Units for cash to the bidder who shall have submitted the highest bid prior to the Termination Date; provided that if such highest bid shall be less than the Termination Value, the Lessee may at its discretion direct that all such bids shall be rejected, in which case the Trustee shall reject such bids and no sale of the Units shall be completed on such Termination Date. The total sale price realized shall be retained by the Trustee.

On such Termination Date, (a) the Lessee shall pay to the Trustee (i) the excess, if any, of the Termination Value computed as of such date over the total sale price of the Units after the deduction of all expenses incurred by the Trustee in connection with such sale and (ii) the rental payment due on such Termination Date and (b) the Trustee shall pay to the Vendor a sum sufficient to prepay the CSA Indebtedness in accordance with Paragraph 7.2 of the CSA. The Termination Value as of the Termination Date on which payment is to be made shall be that percentage of the aggregate Purchase Price of the Units as is set forth in Appendix C hereto opposite such date; but in no event shall such amount be less than the Termination Value (as defined in Paragraph 7.4 of the CSA) as of such date.

If the Lessee shall have directed that all bids be rejected as provided for in the second paragraph of this § 7.9 or no sale shall occur on the date scheduled therefor as provided, this Lease shall continue in full

force and effect without change; provided, however, that the Lessee, on behalf of the Trustee, may attempt to sell the Units at some later date upon 180 days' prior written notice to the Trustee and following the procedure set forth above. Upon termination of the Lease, the Lessee shall return the Units to the Trustee pursuant to § 17 hereof.

In the event of any such sale and the receipt by the Trustee of the amounts above described and the receipt by the Vendor from the Trustee of a sum sufficient to prepay the CSA Indebtedness with respect to such Units in accordance with Paragraph 7.2 of the CSA, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Units on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Trustee and the Owner shall have the right but shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale pursuant to this § 7.9 other than to transfer or to cause to be transferred all of the Trustee's right, title and interest in and to such Units to the purchaser named in the highest bid. Any sale pursuant to this § 7.9 shall be free and clear of all of the Lessee's rights to, and the Vendor's rights in, such Units, but otherwise shall be made without warranties other than against the Trustee's acts.

If the Lessee shall exercise its option to terminate this Lease under this § 7.9, the Trustee may, notwithstanding such election by the Lessee, by written notice to the Lessee given not more than 90 days after the termination notice is given to the Trustee and the Vendor, elect to retain the Units, in which case the Trustee shall pay the Vendor a sum sufficient to prepay the CSA Indebtedness in accordance with Paragraph 7.2 of the CSA and the Lessee shall not be obligated to pay the Termination Value thereof to the Trustee; provided, however, that the Trustee may not make such election unless it can demonstrate, to the reasonable satisfaction of the Vendor within said 90-day notice period, that it has made firm arrangements with a creditworthy entity to cause such CSA Indebtedness to be prepaid in accordance with Paragraph 7.2 of the CSA on the Termination Date; and provided further, however, that this Lease shall not terminate unless the CSA Indebtedness in respect thereof is prepaid on the Termination Date pursuant to Article 7 of the CSA. In the event the Trustee shall so elect to retain such Units and shall have prepaid such CSA

Indebtedness pursuant to Article 7 of the CSA, the Lessee shall assemble and deliver such Units to the Trustee in accordance with the provisions of § 17 hereof.

§ 8. REPORTS AND INSPECTIONS

On or before April 30 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Owner and the Vendor an accurate statement (a) setting forth as of the preceding December 31, the total number, description and identification numbers of all Units then leased hereunder and covered by the CSA, the total number, description and identification 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 repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Trustee or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5.1 hereof and by the CSA have been preserved or replaced, (c) setting forth as of the preceding December 31, the total number, description and identification numbers of all Units then leased hereunder and covered by the CSA which are subleased to another user or users and the name and address of such sublessee or sublessees and (d) further stating that the Lessee is in compliance under the Lease and has performed or has caused to be performed the required maintenance of the Units and that there has occurred during such period no Event of Default and no event which with the lapse of time or notice or both would constitute an Event of Default. In the event that the Lessee has, at any time during the period covered by such statement, been self-insuring the Units to any extent, such statement shall state the extent of such self-insurance and shall certify that the requirements of Section 7.7 with respect to self-insurance have at all such times been met. The Trustee, the Vendor and the Owner shall each have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Trustee, the Vendor or the Owner may request during the continuance of this Lease.

§ 9. DISCLAIMER OF WARRANTIES

NEITHER THE TRUSTEE NOR THE OWNER MAKES, HAS

MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE TRUSTEE NOR THE OWNER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS, NOR 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 Trustee and the Lessee, are to be borne by the Lessee except that the Trustee warrants that it has received such title as was conveyed to the Trustee by the Builder and that such title has not been encumbered except as otherwise contemplated by the Documents (as defined in the sixth paragraph of Paragraph 2 of the Participation Agreement); but the Trustee 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 Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Trustee may have against the Builder under the provisions of Items 3 and 4 of Annex A of the CSA and against the manufacturer, supplier and/or installer of any accessions, additions, replacements and/or alterations to any of the Units; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Trustee may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Trustee and the Owner shall have no 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, including strict liability in tort; (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 Trustee 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 Trustee, the Owner or the Vendor based on any of the foregoing matters.

§ 10. LAWS AND RULES

10.1. Compliance. The Lessee agrees, for the benefit of the Trustee and the Vendor, to comply in all material respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units (all such laws and rules to such extent hereinafter called "Applicable Laws"), and in the event that such Applicable Laws require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such Applicable Laws in any reasonable manner which does not, in the opinion of the Trustee or the Vendor, adversely affect the property or rights of the Trustee or the Vendor under this Lease or under the CSA.

10.2. Reports by Trustee. The Lessee agrees to prepare and deliver to the Trustee and the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Trustee and the Vendor) any and all reports (other than income tax returns) to be filed by the Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Trustee of the Units or the security interest of the Vendor therein or the leasing thereof to the Lessee. To the extent the Trustee has knowledge of, or receives any written notice with respect to the requirements of any such report, the Trustee will promptly notify the Lessee thereof.

§ 11. MAINTENANCE

11.1. Units in Good Operating Order. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, in accordance with the interchange rules of the American Association of Railroads and in the same condition as as other similar equipment, if any, owned or leased by the Lessee.

11.2. Additions and Accessions. (1) The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value or utility of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are described in § 11.2(3) hereof.

(2) The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units as are in accordance with the requirements set forth in Rev. Proc. 79-48, 1979-39 I.R.B. 27, and which, in addition, do not in the opinion of the Owner and the Vendor (i) materially alter the structure or weight of such Units, (ii) materially change the maintenance requirements with respect to such Units, (iii) adversely affect the resale value of such Units or (iv) materially change the use or purpose of such Units.

(3) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units, (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body or (v) pursuant to § 11.2(2) hereof, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Trustee and the Vendor as their respective interests may appear in the Unit itself.

§ 12. INDEMNIFICATION

12.1. Indemnified Persons; Indemnified Matters. The Lessee shall pay, and shall protect, indemnify and hold the Trustee (in both its individual and fiduciary capacities) the Owner, the Vendor and any assignee thereof, the Investors and their respective successors, assigns, agents

and servants (the "Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements and expenses (including without limitation attorneys' fees and expenses of any Indemnified Person) relating thereto) in any way relating to or arising, or alleged to arise out of this Lease, the CSA or the Units (except any such causes of action, suits, penalties, claims, demands or judgments resulting from any acts done by such Indemnified Person in violation of the covenants, terms or provisions of the Lease or the CSA), including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent and other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof except that to the extent any such injury, death, damage or loss arises from the gross negligence or wilful misconduct of the Indemnified Person, the Lessee shall not be liable to such Indemnified Person hereunder; (vi) any violation, or alleged violation, of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except that to the extent any such violation arises from the gross negligence or wilful misconduct of an Indemnified Person, the Lessee shall not be liable to such Indemnified Person hereunder; or (vii) any claim arising out of any of the Trustee's obligations under the Lease Assignment or the Vendor's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement except to the extent such claim arises from the gross negligence or wilful misconduct of the Trustee (all of which matters hereinabove set forth in this Article 12

being hereinafter called the "Indemnified Matters"). The Lessee shall be obligated under this § 12.1, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may, at the Lessee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person (which approval shall not unreasonably be withheld) and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding; provided that the Lessee shall not be liable for any settlement of any such action, suit or proceeding effected without its consent. In the event the Lessee is required to make any indemnification payment under this § 12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Trustee each agrees to give each other promptly upon obtaining knowledge (knowledge on the part of the Trustee being actual knowledge of an officer or employee in its Corporate Trust Department) thereof written notice of any claim or liability hereby indemnified against, but the giving of such notice shall not be a condition to the Lessee's obligations under this § 12.1 except to the extent the Lessee has been disadvantaged as a result of any failure to give such notice. Upon the payment in full of any indemnities as contained in this § 12 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the Indemnified Matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 12.1 shall be paid over to the Lessee to

the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matters. Nothing in this § 12.1 shall constitute a guarantee by the Lessee of the CSA Indebtedness of the Trustee under the CSA or a guarantee of the residual value of any Unit.

12.2. Indemnification of Builder. The Lessee further agrees to indemnify, protect and hold harmless the Builder as a third-party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

§ 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal hereof, 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 16 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 the Units, or any thereof and the Lessee shall, for more than 30 days after demand in writing by the Trustee and the Vendor, fail to secure a reassignment or retransfer to the Trustee and the Vendor of such Lease, interest or right;

(C) the Lessee shall fail to maintain insurance at the time in force required to be maintained pursuant to § 7.7(1)(A), unless the Lessee shall be diligently, to the reasonable satisfaction of the Trustee and the Vendor, attempting to reinstate or otherwise obtain such insurance;

(D) the Lessee shall, for more than 30 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Lease, the Participation Agreement, the Consent or, after the CSA Indebtedness shall have been discharged and satisfied in full, the Indemnity Agreement, on its part to be kept and performed or to make provision satisfactory to the Trustee and the Vendor for such compliance, unless the Lessee shall be diligently, to the reasonable satisfaction of the Trustee and the Vendor, attempting to comply with any such covenant, agreement, term or provision;

(E) any representation or warranty made by the Lessee herein or by the Lessee or the Guarantor in the Participation Agreement or in any certificate or statement furnished to the Trustee, the Vendor or the Owner pursuant to or in connection with any such agreements proves incorrect or untrue in any material respect as of the date of issuance or making thereof; provided, however, that if any such incorrectness is susceptible of remedy, it shall not constitute an Event of Default if the Lessee or the Guarantor shall be diligently, to the reasonable satisfaction of the Trustee and the Vendor, attempting to remedy such incorrectness;

(F) any proceeding shall be commenced by or against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee or the Guarantor under this Lease, the Participation Agreement or the Consent or of the Guarantor under the Guarantee under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless such

proceeding 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 or the Guarantor under this Lease, under the Participation Agreement or under the Consent or of the Guarantor under the Guarantee, as the case may be, shall not be and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or the Guarantor or for the property of the Lessee or the Guarantor in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced;

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

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

(b) by notice in writing to the Lessee terminate this Lease whereupon all rights of the Lessee to the use of such 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 Trustee may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized to so permit, where any of such Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, 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; but the Trustee 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 from and including the date the rental period begins to and including the termination date and the denominator is the total number of days in such full rental period) in respect of such Units and also to recover forthwith from the Lessee as liquidated damages for loss of a bargain and not as a penalty whichever of the following amounts the Owner in its sole discretion, shall specify: (i) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals 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, such present value to be computed on the basis of a 12.75% per annum discount with respect to the rentals which were originally due to and including October 1, 1994, and a 5.77% per annum discount with respect to the remaining rentals, in each case compounded semiannually from the respective dates upon which such rentals would have been payable hereunder had this Lease not been terminated over (A) the then present value of the rental which the Trustee reasonably estimates to be obtainable for such Unit during such period, such present value to be computed on the basis of a 12.75% per annum discount with respect to the rentals which were originally due to and including October 1, 1994, and a 5.77% per annum discount with respect to the remaining rentals, in each case compounded semiannually from the respective dates upon which such rentals would have been payable hereunder had this Lease not been terminated or, (B) if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount, with respect to each Unit, equal to the excess, if any, of the Casualty Value of such Unit as of the semiannual rental payment date on or next preceding the date of termination over the amount the Trustee reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Trustee shall have sold any Unit, the Trustee, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with

respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Trustee and the Lessee shall pay to the Trustee 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 semiannual rental payment date on or next preceding the date of termination over the net proceeds of such sale.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Trustee 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.

13.3. Failure To Exercise Rights Is Not Waiver. The failure of the Trustee 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.

13.4. Notice of Event of Default. The Lessee agrees to furnish the Trustee, the Owner 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. For the purposes of this § 13.4, 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.

§ 14. RETURN OF UNITS UPON DEFAULT

14.1. Return of Units. If this Lease shall terminate in respect of any of the Units pursuant to § 13 hereof or pursuant to Article 16 of the CSA, the Lessee shall forthwith deliver possession of such Units to the Trustee. Each Unit so delivered shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear in the service of hauling Western coal excepted, (ii) meet the standards then in effect under the interchange rules of the Association of American Railroads (the Lessee having certified that to the best knowledge of the certifying officer of the Lessee the Units do not have any basic structural weakness or damage which would cause an unsafe operating condition) and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom at the Lessee's expense any such device not so considered an accession. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) 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 to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks as the Trustee reasonably may designate;

(b) cause such Units to be stored on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Trustee; and

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

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 Trustee 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, maintain and keep the Units in good order and repair and will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Trustee and, if received by the Lessee, shall be promptly turned over to the Trustee. If 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 Trustee for each day thereafter an amount equal to the amount, if any, by which (x) the Purchase Price of such Unit multiplied by 0.026456% exceeds (y) the actual earnings received by the Trustee on such Unit for each such day.

14.2. Trustee Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 14, the Lessee hereby irrevocably appoints the Trustee 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 Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit at the time.

§ 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Trustee upon prior written consent of the Lessee, which consent shall not be unreasonably withheld. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units. (1) So long as (i) no Event of Default exists hereunder, (ii) the Lessee and the Guarantor are complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA. Without the prior written consent of the Trustee and the Vendor, the Lessee shall not assign or transfer its lease-

hold interest under this Lease in the Units or any of them except as provided in paragraph (2) below of of this § 15.2; and the Lessee shall not, without the prior written consent (not to be unreasonably withheld) of the Trustee 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 by the provisions of paragraph (2) of this § 15.2. 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 Trustee or the Vendor or resulting from claims against the Trustee or the Vendor not related to the transactions contemplated by the Participation Agreement or any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Trustee and the Vendor) upon or with respect to any Unit, including any accession thereto, or the interest of the Trustee, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) So long as (i) no Event of Default exists hereunder, (ii) the Lessee and the Guarantor are complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and 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 of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to any or all of the Units or to sublease any or all of the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease, use or permit the assignment, sublease or use of any Unit outside the United States of America except to the extent that such assignment, sublease or use is de minimis, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of Section 48 of the Internal Revenue Code of 1954, as amended. Subject to Section 14.1 hereof, the Lessee may receive and retain compensation for the use of any of the Units from rail-

roads or other entities so using such Units. Any sublease permitted by this paragraph may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be expressly subordinate to all the provisions of this Lease, including, without limitation, the rights and remedies of the Vendor under the CSA and the Trustee under this Lease in respect of the Units covered by such sublease; that the Lessee remain fully liable under this Lease in respect of the Units covered by such sublease; and that the Guarantor shall remain fully liable under the Guarantee with respect of the Units covered by such sublease.

15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation. Nothing in this § 15 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 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) 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.

§ 16. RENEWAL OPTIONS AND DUTY TO FIRST OFFER

16.1 Renewal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Owner not less than 270 days prior to the end of the original term of this Lease in respect of the Units still subject to this Lease, elect to extend such original term in respect of all but not less than all the Units then covered by this Lease for a period (such period being hereinafter called the First Renewal Term) as determined below commencing on the scheduled expiration of such original term, at a rate equal to 50% of the semiannual rental payable pursuant to § 3.1 hereof with respect to the Units then covered by this Lease, payable, in arrears, in semiannual payments on the month and day (such dates being hereinafter called the Renewal Payment Dates) such rentals

were payable for the Units in each year of the original term of this Lease. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may also by written notice delivered to the Owner (i) not less than 180 days prior to the end of the First Renewal Term or, (ii) if there is no First Renewal Term, not more than 10 days after such determination, as provided below, in respect of the Units still subject to this Lease, elect to extend such First Renewal Term or the original term of this Lease in respect of all but not less than all the Units then covered by this Lease for a period equal to the then estimated remaining useful life of the Units (such period being hereinafter called the Additional Renewal Term and the First Renewal Term and the Additional Renewal Term being hereinafter collectively referred to as the Renewal Terms) as determined below commencing on the scheduled expiration of such First Renewal Term or such original term, at a rate equal to the then Fair Market Rental (as hereinafter defined) with respect to the Units then covered by this Lease, payable, in arrears, in semiannual payments on the Renewal Payment Dates.

The Owner and the Lessee shall determine by mutual agreement or, failing such agreement, by arbitration in the manner provided in § 16.3 hereof, the period of the Additional Renewal Term, Fair Market Value and Fair Market Rental. The First Renewal Term shall be determined by an independent qualified appraiser mutually selected and agreed to by the Owner and the Lessee or, failing to so agree, by arbitration in the manner provided in § 16.3 hereof, as the longest period commencing on the scheduled expiration of the original term of this Lease and ending on a Renewal Payment Date at which date the estimated remaining useful life of the Units then covered by this Lease will be at least 20% of the total estimated useful life of such Units from the beginning of the original term of this Lease (such total estimated useful life being equal to the period during which the Units were and are expected to be economically useable by one or more users with normal repairs, overhauls and maintenance, for the purpose for which they were intended at the inception of this Lease, without limitation by the term of this Lease). There shall be no First Renewal Term if the period as determined by the preceding sentence is less than one year. If the First Renewal Term exceeds three years, it shall be divided into optional periods of three years each plus a final optional period equal to the remaining First Renewal Term. The Lessee may terminate the First Renewal Term, without

penalty, at the expiration of each such optional period upon 180 days prior written notice to the Trustee.

16.2. Duty to First Offer. If upon the termination of this Lease (other than its termination as provided in §§ 7, 13 and 16.1 hereof) or upon expiration of the last Renewal Term, the Trustee, acting on behalf of the Owner, decides to sell any one or more Units, the Trustee shall, prior to the expiration of such term, give notice to the Lessee of its intention to sell such Units ("Notice of Sale"). The Lessee shall have the right, exercisable as hereinafter provided, to purchase for cash all (but not less than all) of the Units which the Trustee proposes to sell, at a price equal to the then Fair Market Value of such Units. If the Lessee desires to purchase such Units, the Lessee shall indicate its intent to negotiate the purchase of such Units by giving notice thereof to the Trustee within 30 days following Lessee's receipt of the Notice of Sale, whereupon the Lessee and the Trustee shall proceed with diligence and in good faith to determine by mutual agreement the Fair Market Value of such Units. If Lessee and Trustee are unable to agree upon the Fair Market Value of such Units within 50 days following Lessee's receipt of the Notice of Sale, then Lessee may, at its sole option, by notice to the Trustee within said 50-day period, require determination of the Fair Market Value of such Units by arbitration in the manner set forth in § 16.3 hereof, whereupon the Lessee and the Trustee shall each be obligated to effect the sale of such Units to the Lessee at such Fair Market Value.

Upon determination of the Fair Market Value of such Units (whether by mutual agreement or arbitration), the sale of such Units to the Lessee shall be effected at a time mutually agreeable to Lessee and the Trustee on or before the later of (i) 15 days following such date of determination of the Fair Market Value, or (ii) upon expiration of such term or renewal term of this Lease, as the case may be. In the event Lessee shall (a) fail to give notice of its intent to negotiate purchase of such Units within the 30-day period specified above, or (b) fail to give notice of its election to determine the Fair Market Value by arbitration within the specified 50-day period in the event Lessee and Trustee are unable to agree upon the Fair Market Value, then Lessee shall have no obligation to purchase such Units and, except as hereinafter provided, the Trustee shall have no obligation to sell such Units.

If Lessee shall not purchase such Units as provided above, Lessee may, at any time within 50 days follow-

ing Lessee's receipt of the Notice of Sale, give the Trustee notice of an offer for which, and a period of time (which shall not be greater than 180 days) during which, Lessee is willing to purchase such Units and the Trustee may accept such offer at any time during such term by notice to the Lessee. During the period of such offer, the Trustee shall not disclose the amount and terms of such offer to any third party and the Trustee shall not sell such Units to any third party for an amount less than the amount and upon terms less favorable than the terms so offered by the Lessee. Following the expiration of the Lessee's rights of purchase as herein set forth, the Trustee may sell such Units as it may see fit.

16.3. Determinations. (1) The Fair Market Rental of any Unit or Units shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use or storage shall not be a deduction from such rental.

(2) The Fair Market Value of any Unit or Units shall be determined on the basis of, and shall be equal in amount to, the purchase price which would obtain in an arm's-length transaction between an informed and willing purchaser and an informed and willing seller under no compulsion to sell and, in such determination, cost of removal from the location of current use or storage shall not be a deduction from such purchase price.

(3) If the Owner and the Lessee are unable to agree, within a period of 50 days, upon a selection of an independent appraiser for a determination of the period of the First Renewal Term or a determination of the period of the Additional Renewal Term, Fair Market Value or Fair Market Rental, such determination shall be made in accordance with the applicable definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given

appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to make his or their determination within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. This appraisal procedure shall be the exclusive means of making such determinations and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee and the Owner in equal shares.

§ 17. RETURN OF UNITS UPON EXPIRATION OF TERM OR TERMINATION

As soon as practicable on or after the expiration of the original term of this Lease or any of the Renewal Terms with respect to any Unit or on or after a Termination of this Lease with respect to any Unit pursuant to §§ 7.9 and 16.1 hereof, and in any event not later than 90 days thereafter, the Lessee will, at its own cost and expense, deliver possession of such Unit to the Trustee at such location or locations on any of the current Burlington Northern Inc. routes or The Atchison, Topeka and Santa Fe Railway Company routes within the continental United States of America and within 1,000 miles of Houston, Texas, as the Trustee may designate, or, in the absence of such designation, as the Lessee may select, or at the request of the Trustee, permit the Trustee to store such Unit on such storage tracks as the Lessee may select for a period not exceeding three months (or, in the case of a Termination, six months) and transport the same upon disposition of such Unit, at any time within such three-month or six-month period, to any such location or locations, or to any

connecting carrier for shipment, all as directed by the Trustee, the movement and storage of such Units to be at the expense and risk of the Lessee; provided, however, that the Units shall be returned to the Trustee, upon such expiration or Termination, in not more than three groups of Units (the number of such groups and the number of Units in each such group to be designated by the Trustee). During any such storage period the Lessee will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit or Units, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or intentional tortious act 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 Trustee or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Trustee pursuant to this § 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear in the service of hauling Western coal excepted, (ii) meet the standards then in effect under the interchange rules of the Association of American Railroads (the Lessee having certified that to the best knowledge of the certifying officer of the Lessee the Units do not have any basic structural weakness or damage which would cause an unsafe operating condition) and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee shall maintain the Units in such manner as owners or lessees of similar units of railroad equipment normally maintain such units owned or leased by them in similar storage circumstances. 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 Trustee 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 expiration of this Lease shall belong to the Trustee and, if received by the Lessee, shall be promptly turned over to the Trustee. If any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such expiration, the Lessee shall in addition, pay to the Trustee for each day thereafter an

amount equal to the amount, if any, by which (x) the Purchase Price of such Unit multiplied by 0.026456% exceeds (y) the actual earnings received by the Trustee on such Unit for each such day.

§ 18. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed 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 Trustee under the CSA. The Lessee in addition 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 Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Trustee evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel satisfactory to the Vendor and the Trustee confirming that such filing, registering, depositing or recording has been validly effected. This Lease, the CSA, the CSA Assignment and the Lease Assignment shall be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery and acceptance hereunder of any Unit.

§ 19. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to interest at 13.75% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 20. TRUSTEE'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Trustee may upon

notice to the Lessee perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Trustee incurred in connection with such performance or compliance, together with interest on such amount at 13.75% per annum shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Trustee shall be deemed a waiver of the rights and remedies of the Trustee or any assignee of the Trustee against the Lessee hereunder.

§ 21. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be mailed, registered or certified mail, postage prepaid, return receipt requested, shall be effective on the date of receipt as shown on the return receipt, and shall be addressed as follows:

(a) if to the Trustee, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department, with copies to Wells Fargo Equipment Leasing Corporation, 425 California Street, San Francisco, California 94104, Attention of Contract Administration; and

(b) if to the Lessee, at 611 Walker Street, Houston, Texas 77002, (P. O. Box 539, 77001) Attention of Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 22. SEVERABILITY

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

§ 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement, this

Lease exclusively and completely states the rights of the Trustee and the Lessee with respect to the leasing of the Units and supersedes 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 Trustee and the Lessee.

§ 24. THIRD-PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owner, the Vendor, the Builder and the permitted successors and assigns of any such person or party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

§ 25. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, 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.

§ 26. LAW GOVERNING

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

§ 27. IMMUNITIES; NO RECOURSE

(1) No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or of the Owner, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any

assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

(2) It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties and agreements herein made on the part of the financial institution acting as Trustee hereunder are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution, including its successors and assigns, or for the purpose or with the intention of binding said financial institution personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the Trustee solely in the exercise of the powers expressly conferred upon the Trustee as trustee under the Trust Agreement; and, except for gross negligence or wilful misconduct, that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee or the Owner on account of any representation, warranty or agreement herein of the Trustee, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that it is expressly understood that the Lessee is not hereby waiving its right to proceed in a separate action against the Owner on account of any breach of any representation, warranty or agreement herein of the Owner.

§ 28. AGREEMENTS FOR BENEFIT OF OWNER'S AND TRUSTEE'S ASSIGNS

All rights of the Trustee hereunder (including, but not limited to, its rights under §§ 6, 7, 12, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Owner and any of the Owner's assigns under the Trust Agreement and the Trustee's assigns (including the Vendor). Upon the effectiveness of any such assignment, such successor Owner or successor Trustee, as the case may be, shall give notice thereof to the Lessee.

§ 29. TERM TRUSTEE

Whenever the term Trustee is used in this Lease it shall apply and refer to the Trustee and any assignee of the Trustee (including, so long as any CSA Indebtedness under the CSA or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Vendor).

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

UTILITY FUELS, INC.,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Secretary

THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity, but solely as Trustee,

by

_____
Authorized Officer

[Seal]

Attest:

_____
Authorized Officer

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

On this day of October 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of UTILITY FUELS, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

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

On this day of October 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST 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 acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

APPENDIX A TO LEASE

Type	AAR Mechanical Designation	Builder's Specifications	Builder's Plant	Quantity†	Lessee's Identification Numbers (Each Set of Which Is Inclusive)†	Estimated Unit Price*	Estimated Total Price†*	Estimated Time and Place of Delivery
105-ton 4240 cu. ft. gondola coal car	GTS	Per Purchase Order UFI-00108 dated August 3, 1979	St. Louis, Missouri	610	13001-13110 14001-14110 15001-15110 16001-16170 17001-17110	$42,260	$25,778,600	Oct.-Dec., 1980, F.O.B. Builder's plant with shipment to Jacobs Junction, Wyoming, or Spring Creek Mine, Montana.

† This Appendix A sets forth the description of the units of Equipment which are scheduled for delivery both under this Lease of Railroad Equipment (A) (the "Lease-(A)") and under a Lease of Railroad Equipment dated as of October 1, 1980, between the Lessee and another lessor, U B Leasing, Inc. (the "Lease-(B)"), under which deliveries cannot be accepted after December 31, 1980. It is expected that some of these units of Equipment will be delivered in time for acceptance under Lease-(B) and that an equal number of these units will be delivered in time for acceptance hereunder. After delivery of all the units of Equipment covered by both Leases, this Appendix A will be appropriately amended to describe only those units of Equipment covered by this Lease-(A).

* Includes prepaid freight to Jacobs Junction, Wyoming, or Spring Creek Mine, Montana, as the case may be.

APPENDIX B TO LEASE

Casualty Values

Casualty Payment Dates	Percentage of Purchase Price*
April 1, 1981 and before	104.3943%
October 1, 1981	105.1163
April 1, 1982	105.2976
October 1, 1982	105.7004
April 1, 1983	105.9225
October 1, 1983	105.9050
April 1, 1984	98.8694
October 1, 1984	98.1335
April 1, 1985	97.4171
October 1, 1985	96.4886
April 1, 1986	88.5562
October 1, 1986	87.2134
April 1, 1987	85.6615
October 1, 1987	83.9352
April 1, 1988	75.0212
October 1, 1988	72.9857
April 1, 1989	70.7867
October 1, 1989	68.4486
April 1, 1990	65.9642
October 1, 1990	63.3665
April 1, 1991	60.6421
October 1, 1991	57.5832
April 1, 1992	54.6702
October 1, 1992	51.7048
April 1, 1993	48.6602
October 1, 1993	45.5867
April 1, 1994	42.4502
October 1, 1994	39.2979
April 1, 1995	35.7714
October 1, 1995	32.3717
April 1, 1996	28.8153
October 1, 1996	25.1829
April 1, 1997	20.0000

* As defined in Paragraph 4.1 of the CSA.

APPENDIX C TO LEASE

Termination Values

Termination Dates	Percentage of Purchase Price*
April 1, 1981 and before	104.3943%
October 1, 1981	105.1163
April 1, 1982	105.2976
October 1, 1982	105.7004
April 1, 1983	105.9225
October 1, 1983	105.9050
April 1, 1984	98.8694
October 1, 1984	98.1335
April 1, 1985	97.4171
October 1, 1985	96.4886
April 1, 1986	88.5562
October 1, 1986	87.2134
April 1, 1987	85.6615
October 1, 1987	83.9352
April 1, 1988	75.0212
October 1, 1988	72.9857
April 1, 1989	70.7867
October 1, 1989	68.4486
April 1, 1990	65.9642
October 1, 1990	63.3665
April 1, 1991	60.6421
October 1, 1991	57.5832
April 1, 1992	54.6702
October 1, 1992	51.7048
April 1, 1993	48.6602
October 1, 1993	45.5867
April 1, 1994	42.4502
October 1, 1994	39.2979
April 1, 1995	35.7714
October 1, 1995	32.3717
April 1, 1996	28.8153
October 1, 1996	25.1829
April 1, 1997	20.0000

* As defined in Paragraph 4.1 of the CSA.

[CS&M Ref. 2483-135]

ANNEX D
to
Conditional Sale Agreement

ASSIGNMENT OF LEASE AND AGREEMENT dated as of October 1, 1980 (this "Assignment"), by and between THE CONNECTICUT BANK AND TRUST COMPANY, acting solely in its capacity as Trustee (the "Trustee") under a Trust Agreement dated as of the date hereof with the Owner named therein (the "Trust Agreement"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof.

WHEREAS the Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with ACF INDUSTRIES, INCORPORATED (the "Builder"), providing for the sale to the Trustee of such units of railroad equipment (the "Units") described in the Annexes thereto as are accepted by the Trustee thereunder;

WHEREAS the Trustee and UTILITY FUELS, INC. (the "Lessee"), have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the leasing by the Trustee to the Lessee of the Units;

WHEREAS Houston Industries Incorporated (the "Guarantor") has executed and delivered a Guarantee dated as of the date hereof (the "Guarantee") pursuant to which the Guarantor has guaranteed unconditionally the payment by the Lessee of all its obligations under the Lease; and

WHEREAS, in order to provide security for the obligations of the Trustee under the CSA and as an inducement to the Vendor to invest in the CSA Indebtedness (as defined in Paragraph 4.3(b) of the CSA), the Trustee agrees to assign for security purposes its rights in, to and under the Lease and the Guarantee to the Vendor;

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

1. The Trustee hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Trustee under the CSA, all the Trustee's right, title and interest, powers, privileges and other benefits under (i) the Lease (except for the Trustee's and the Owner's rights under §§ 6, 12 and 20 of the Lease), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Trustee from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise, and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Trustee is or may become entitled to do under the Lease, and (ii) the Guarantee (except for the Trustee's rights under the second sentence of the Guarantee and except to the extent the Guarantee relates to §§ 6, 12 and 20 of the Lease), including without limitation all amounts paid or payable to the Trustee thereunder and all rights of the Trustee to enforce payment of any amounts thereunder (except for amounts payable under the second sentence thereof and except for amounts payable under the Guarantee to the extent the Guarantee relates to the Lessee's obligations under §§ 6, 12 and 20 of the Lease) or performance of any duty, agreement, covenant or obligation thereunder. (Moneys paid or payable to or receivable by the Trustee under the Lease (except for moneys paid or payable to or receivable by the Trustee or the Owner with respect to their individual indemnities pursuant to §§ 6 and 12 of the Lease and pursuant to § 20 of the Lease) or the Guarantee (except pursuant to the second sentence of the Guarantee and except to the extent the Guarantee relates to §§ 6, 12 and 20 of the Lease) are hereinafter called collectively the "Payments.") In furtherance of the foregoing assignment, the Trustee hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Trustee is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Trustee pursuant to the Lease or by the Guarantor pursuant to the Guarantee. To

the extent received, the Vendor will apply such Payments to satisfy the obligations of the Trustee under the CSA, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Owner on the same date such Payment is applied to satisfy such obligations of the Trustee, by check mailed to the Trustee on such date or, upon written request of the Trustee, by bank wire to the Trustee at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Trustee. If the Vendor shall not receive any rental payment under § 3.1 of the Lease when due, the Vendor shall promptly notify the Trustee, the Owner and the Lessee at their addresses set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Trustee shall not affect the obligations of the Trustee hereunder or under the CSA.

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

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

4. The Trustee does hereby constitute the Vendor the Trustee's true and lawful attorney, irrevocably, with full power (in the name of the Trustee, or otherwise), to ask, require, demand, receive, compound and

give acquittance for any and all Payments due and to become due under or arising out of the Lease or the Guarantee to which the Trustee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease and by the Guarantor with all the terms and provisions of the Guarantee, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Trustee under the CSA, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease and the Guarantee shall revert to the Trustee without further act or deed, but the Vendor shall execute and deliver such documents as the Trustee may reasonably request in order to confirm, or make clear upon the public record, such termination and/or reversion. Promptly following such full discharge and satisfaction, the Vendor agrees that it will advise the Lessee in writing that all sums due from the Trustee under the CSA have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Vendor.

6. The Trustee will, from time to time, execute, acknowledge and deliver any and all further instruments reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder. The Vendor will give written notice to the Trustee and the Lessee of any such assignment.

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

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

9. The Trustee shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor.

10. The Vendor hereby agrees with the Trustee that the Vendor will not, so long as no event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Trustee to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the CSA, the Trustee may, so long as no event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges and remedies arising out of § 13.1(a) of the Lease; provided, however, that the Trustee shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of § 13.1(b) of the Lease.

11. It is expressly understood and agreed by and between the parties hereto, anything in this Agreement to the contrary notwithstanding, that each and all of the representations, warranties and agreements in this Agreement made on the part of the financial institution acting as Trustee hereunder are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution, or for the purpose or with the intention of binding said financial institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the said financial institution solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the said financial institution or the Owner on account of any representation, warranty or agreement herein of the Trustee or the Owner either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for the satisfaction of the same.

This Assignment shall be effective upon delivery

of fully executed counterparts hereof to the Trustee at its offices in Hartford, Connecticut.

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

THE CONNECTICUT BANK AND TRUST COMPANY, as Trustee as aforesaid,

by

_____
Authorized Officer

[Seal]

Attest:

_____
Authorized Officer

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

by

_____
Assistant Vice President

[Corporate Seal]

Attest:

_____
Corporate Trust Officer

STATE OF CONNECTICUT,)
) ss.:
CITY OF HARTFORD,)

On this day of 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an of THE CONNECTICUT BANK AND TRUST COMPANY, 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.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND,)
) ss.:
CITY OF BALTIMORE,)

On this day of 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the 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.

Notary Public

[Notarial Seal]

My Commission expires

CONSENT AND AGREEMENT

The undersigned, UTILITY FUELS, INC., a Texas corporation (the "Lessee"), the lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment") and HOUSTON INDUSTRIES INCORPORATED, a Texas corporation (the "Guarantor"), the guarantor pursuant to the guarantee (the "Guarantee") referred to in the Lease Assignment, hereby (a) acknowledge receipt of a copy of the Lease Assignment and (b) consent to all the terms and conditions of the Lease Assignment and agree that:

(1) in the case of the Lessee, it will pay all rentals, casualty payments, liquidated damages, indemnities (except any amounts of indemnity payable to the Owner and/or Trustee in their individual capacity pursuant to §§ 6, 12 and 20 of the Lease) other moneys provided for in the Lease due and to become due under the Lease, and, in the case of the Guarantor, it will pay all amounts payable under the Guarantee (except amounts payable under the second sentence thereof and except for amounts payable under the Guarantee to the extent the Guarantee relates to the Lessee's obligations under §§ 6, 12 and 20 of the Lease), directly to Mercantile-Safe Deposit and Trust Company, as Agent (the "Vendor"), the assignee named in the Lease Assignment, by wire transfer to the Annapolis Banking and Trust Company, Main Street and Church Circle, Annapolis, Maryland, for credit to the Vendor's Account No. 52076-1, in the name of Mercantile-Safe Deposit and Trust Company, marked "RE: UTILITY-10/1/80", with advice to Mrs. K. M. Tollberg, Assistant Vice President, Mercantile-Safe Deposit and Trust Company, Two Hopkins Plaza (P. O. Box 2258), Baltimore, Maryland 21203 (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) except as otherwise contemplated by Paragraphs 1 and 10 of the Lease Assignment, the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease and by the Guarantor under the Guarantee as though the Vendor were named therein as the Trustee;

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

(4) neither the Lease nor the Guarantee shall, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee or the Guarantor, the taking or omission of which might result in an alteration or impairment of the Lease or the Guarantee or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement shall be construed in accordance with the laws of the State of Texas.

UTILITY FUELS, INC.,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Secretary

HOUSTON INDUSTRIES INCORPORATED,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Secretary

[CS&M Ref. 2483-135]

CONDITIONAL SALE AGREEMENT

(A)

Dated as of October 1, 1980

Between

THE CONNECTICUT BANK AND TRUST COMPANY,
not in its individual capacity but solely
as Trustee under a Trust Agreement
dated as of the date hereof
with
Wells Fargo Equipment Leasing Corporation

and

ACF INDUSTRIES, INCORPORATED

CONDITIONAL SALE AGREEMENT

Table of Contents*

	Page
PARTIES	C-1
PREAMBLES	C-1
ARTICLE 1. ASSIGNMENT; DEFINITIONS	C-1
1.1. Contemplated Sources of Purchase Price; Assignment	C-1
1.2. Lease Assignment	C-2
1.3. Meaning of "Builder" and "Vendor"	C-2
ARTICLE 2. CONSTRUCTION AND SALE	C-2
ARTICLE 3. INSPECTION AND DELIVERY	C-3
3.1. Place of Delivery	C-3
3.2. Force Majeure	C-4
3.3. Exclusion of Equipment	C-4
3.4. Inspection	C-5
3.5. Builder's Responsibilities After Delivery	C-5
ARTICLE 4. PURCHASE PRICE AND PAYMENT	C-6
4.1. Meaning of "Purchase Price"; Exclusion of Units	C-6
4.2. Settlement and Closing Dates	C-6
4.3. Indebtedness of Trustee to Vendor	C-7
4.4. CSA Indebtedness; Payment Dates; Interest	C-8
4.5. Calculation of Interest	C-9
4.6. Penalty Interest	C-9
4.7. Currency of Payment	C-9

* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of, this document.

		Page
4.8.	Liability of Trustee Limited to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments	C-9
ARTICLE 5.	SECURITY INTEREST IN THE EQUIPMENT	C-11
5.1.	Vendor To Retain Security Interest; Accessions Are Part of Equipment	C-11
5.2.	Obligations upon Payment of CSA Indebtedness	C-12
ARTICLE 6.	TAXES	C-13
6.1.	General Tax Indemnification	C-13
6.2.	Claims; Contests; Refunds	C-14
6.3.	Reports or Returns	C-15
6.4.	Survival	C-15
ARTICLE 7.	MAINTENANCE; TERMINATION, CASUALTY OCCURRENCES AND OPTIONAL PRE-PAYMENT	C-15
7.1.	Maintenance	C-15
7.2.	Termination; Casualty Occurrences	C-15
7.3.	Casualty Value	C-16
7.4.	Termination Value	C-16
7.5.	Obligations upon Payment of Casualty Value or Termination Value	C-16
7.6.	Optional Prepayment	C-17
ARTICLE 8.	INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS	C-18
ARTICLE 9.	REPORTS AND INSPECTIONS	C-18
ARTICLE 10.	MARKING OF EQUIPMENT	C-18
10.1.	Marking of Equipment	C-18
10.2.	No Designations of Ownership	C-19
ARTICLE 11.	COMPLIANCE WITH LAWS AND RULES	C-19

		Page
ARTICLE 12.	POSSESSION AND USE	C-19
12.1.	Possession and Use of Equipment by Trustee	C-19
12.2.	Lease Permitted; Lease Subordinate; No Amendment or Termination	C-19
12.3.	Other Leases of Equipment	C-20
ARTICLE 13.	PROHIBITION AGAINST LIENS	C-20
13.1.	Trustee To Discharge Liens	C-20
13.2.	No Breach for Certain Liens	C-21
13.3.	Article 13 Subject to Paragraph 4.8 and Article 23 Except in Certain Instances	C-21
ARTICLE 14.	INDEMNITIES AND WARRANTIES	C-22
14.1.	Indemnification	C-22
14.2.	Survival; No Subrogation	C-23
14.3.	Trustee Not Released if Equipment Damaged or Lost	C-23
14.4.	Warranties of Builder; Patent Indemnities	C-23
ARTICLE 15.	ASSIGNMENTS	C-24
15.1.	Assignment by Trustee	C-24
15.2.	Assignment by Vendor	C-24
15.3.	Notice of Assignment by Vendor	C-24
15.4.	No Setoff Against CSA Indebtedness upon Assignment	C-25
ARTICLE 16.	DEFAULTS	C-25
16.1.	Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness	C-25
16.2.	Waiver of Defaults	C-28
16.3.	Prepayment	C-29

		Page
ARTICLE 17.	REMEDIES	C-29
17.1.	Vendor May Take Possession of Equipment	C-29
17.2.	Assembling of Equipment for Vendor	C-29
17.3.	Vendor May Dispose of or Retain Equipment	C-30
17.4.	Vendor May Sell Equipment; Trustee's Right of Redemption	C-31
17.5.	Sale of Equipment by Vendor	C-32
17.6.	Effect of Remedies and Powers and Exercise Thereof	C-33
17.7.	Deficiencies	C-33
17.8.	Expenses	C-34
17.9.	Remedies Subject to Mandatory Legal Requirements	C-34
ARTICLE 18.	APPLICABLE STATE LAWS	C-34
18.1.	Conflicts with State Laws	C-34
18.2.	Waiver of Notices	C-34
ARTICLE 19.	RECORDING	C-35
ARTICLE 20.	REPRESENTATIONS AND WARRANTIES OF BUILDER	C-35
ARTICLE 21.	ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT	C-35
21.1.	Article and Paragraph Headings for Convenience Only	C-35
21.2.	Effect and Modification of Agreement	C-36
ARTICLE 22.	NOTICE	C-36
ARTICLE 23.	IMMUNITIES; SATISFACTION OF UNDERTAKINGS	C-37
23.1.	No Recourse Against Certain Persons	C-37
23.2.	Satisfaction of Certain Covenants	C-37
23.3.	No Personal Liability of Trustee	C-37
ARTICLE 24.	LAW GOVERNING	C-38
ARTICLE 25.	EXECUTION	C-39

	Page
TESTIMONIUM	C-39
SIGNATURES	C-39
ACKNOWLEDGMENTS	C-41
Schedule I	C-42
Schedule II	C-43
Annex A--Miscellaneous	C-44
Annex B--Specifications	C-47

CONDITIONAL SALE AGREEMENT dated as of October 1, 1980, between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, acting not in its individual capacity but solely as Trustee (the "Trustee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with Wells Fargo Equipment Leasing Corporation, a California corporation (the "Owner").

WHEREAS the Builder has agreed to construct, sell and deliver to the Trustee, and the Trustee agrees to purchase, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (the "Equipment" as more specifically described in Paragraph 4.2 hereof);

WHEREAS the Trustee is entering into a lease with UTILITY FUELS, INC., a Texas corporation (the "Lessee"), in substantially the form annexed hereto as Annex C (the "Lease"); and

WHEREAS MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY (the "Assignee") is acting as agent for certain investors pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, the Assignee, the Trustee, the Owner and the parties named in Appendix I thereto (the "Investors");

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1

ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; Assignment. The parties hereto contemplate that the

Trustee will furnish 38.5404% of the Purchase Price (as defined in Paragraph 4.1 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") between the Builder and the Assignee.

1.2. Lease Assignment. The Trustee will assign to the Vendor (as defined in Paragraph 1.3 hereof), as security for the payment and performance of all the Trustee's obligations hereunder, all right, title, and interest of the Trustee in and to the Lease, pursuant to an Assignment of Lease and Agreement in substantially the form of Annex D hereto (the "Lease Assignment") and the Lessee shall consent thereto pursuant to a Consent and Agreement in substantially the form attached to Annex D (the "Consent").

1.3. Meaning of "Builder" and "Vendor". The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the party hereto which has manufactured the Equipment to be constructed and sold hereunder and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement, means, before any such assignment, the Builder, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights, as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Any reference herein to this Agreement or any other agreement shall mean said agreement and all amendments and supplements hereto or thereto then in effect.

ARTICLE 2

CONSTRUCTION AND SALE

Pursuant to this Agreement, the Builder shall construct the Equipment at its plant described in Annex B hereto, and will sell and deliver the Equipment to the Trustee, and the Trustee will (as hereinafter provided) purchase from the Builder and accept delivery of and pay for the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in

Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Trustee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The Builder represents and warrants that (i) the design, quality and component parts of each unit of the Equipment to be delivered by the Builder under this Agreement shall conform, on the date of delivery and acceptance thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of each such unit of Equipment; (ii) none of such component parts will be used components; and (iii) none of such units will have been used so as to preclude the "original use" thereof by the Trustee within the meaning of Sections 48(b) and 167(c)(2) of the Internal Revenue Code, as amended.

ARTICLE 3

INSPECTION AND DELIVERY

3.1. Place of Delivery. The Builder will deliver the units of the Equipment to the Trustee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Trustee), freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) or (d) of Paragraph 16.1 hereof or subsequent to the occurrence of any event of default (as described in Paragraph 16.1 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default. The Builder agrees not to deliver any unit of its Equipment hereunder (a) following receipt of written notice from the Trustee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as

aforesaid, until such time as such written notice may be canceled by a further written notice and (b) until it receives notice (i) from the Assignee that the conditions contained in Paragraph 8 of the Participation Agreement have been met and (ii) from the Trustee that the conditions contained in Paragraph 9 of the Participation Agreement have been met.

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

3.3. Exclusion of Equipment. Notwithstanding the provisions of Paragraph 3.2 hereof, any Equipment not delivered pursuant to Paragraph 3.1 hereof and any Equipment not delivered and accepted hereunder on or before December 31, 1980, shall be excluded from this Agreement, and the Trustee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions of this Paragraph 3.3 or pursuant to Paragraph 4.1 hereof, or in the event the Trustee is relieved of its obligation hereunder to accept or pay for any or all units of Equipment in accordance with the terms and conditions hereof for any reason whatsoever, the Lessee will be obligated pursuant to Paragraph 1 of the Participation Agreement to accept all such units completed and delivered by the Builder and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with such Builder relating to the Equipment (the "Purchase Order"), and the Trustee will reassign, transfer and set over without representation or warranty (except that any such units shall be free and clear of any encumbrances created by the Trustee) to the Builder and the Lessee, as their respective interests shall appear, all the right, title and interest of the Trustee in and to the units so excluded and the Purchase Order to the

extent relating thereto. The delivery to and acceptance by or on behalf of the Trustee of any unit of Equipment excluded from this Agreement shall be ineffective, ab initio, to create in or transfer to the Trustee any legal or beneficial right or interest in such unit or to impose on the Trustee any liability, obligation or responsibility (except as specifically set forth above) with respect thereto.

3.4. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Trustee (who may be employees or agents of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon or after completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications and requirements and standards applicable thereto, such inspector or an authorized representative of the Trustee (who may be an employee or agent of the Lessee) shall execute and deliver to the Builder (with a copy to the Vendor) a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Trustee and are marked in accordance with Paragraph 10.1 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties or patent indemnification obligations referred to in Paragraph 14.4 hereof. By § 2 of the Lease, the Trustee is appointing the Lessee its agent to inspect and accept delivery of the Equipment hereunder. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit by the Trustee.

3.5. Builder's Responsibilities After Delivery. On delivery by the Builder hereunder of units of Equipment and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranties or patent indemnification obligations referred to in Paragraph 14.4 hereof.

ARTICLE 4

PURCHASE PRICE AND PAYMENT

4.1. Meaning of "Purchase Price"; Exclusion of Units. The estimated price or prices per unit of the Equipment are set forth in Annex B hereto. Such estimated price or prices are subject to such increase or decrease as are provided for in the Purchase Order or as otherwise may be agreed to by the Builder, the Trustee and the Lessee and shall include therein storage, switching and freight charges. The term "Purchase Price" as used herein shall mean the estimated price or prices as so increased or decreased as set forth in the invoice of the Builder delivered to the Trustee and, if the Purchase Price is other than the estimated price or prices set forth in said Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Trustee (such invoice or invoices being hereinafter called the "Invoices"). If on any Closing Date the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as to which the Trustee and the Lessee may have agreed prior to the delivery of the Equipment being settled for on such Closing Date), the Builder (and any assignee of the Builder) will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Trustee and the Lessee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than said Maximum Purchase Price (or such higher amount as aforesaid) and the Trustee shall have no further obligation or liability in respect of units so excluded.

4.2. Closing Dates and Settlement. The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Trustee as is provided in Item 2 of Annex A hereto. The term "Closing Date" with respect to any Group (as hereinafter defined) shall be such date as is specified in Item 2 of Annex A hereto or such other date as may be specified by the Lessee by six days' written notice thereof with the concurrence of the Trustee, the Assignee and the Builder, but in no event shall such Closing Date be later than

January 31, 1981. Such notice shall specify the aggregate Purchase Price of such Group and a copy thereof shall be sent by the Lessee to the Builder, the Assignee and the Trustee. The term "Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date. The place of each closing shall be determined by mutual agreement among the parties hereto. At least five business days prior to the Closing Date with respect to a Group of Equipment, the Builder shall present to the Trustee, the Agent, the Owner and the Lessee the Invoices for the Equipment to be settled for. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Hartford, Connecticut, New York, New York, or Baltimore, Maryland, Houston, Texas, or the principal place of business of the Owner, are authorized or obligated to remain closed.

4.3. Indebtedness of Trustee to Vendor. Subject to the terms of this Agreement, the Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay (or in the case of Paragraph 4.3(a) hereof, to pay to the Agent, who will then pay) in cash or immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group (i) an amount equal to 38.5404% of the aggregate Purchase Price of the units of Equipment in such Group plus, if the Trustee and the Lessee agree to a higher amount pursuant to the last sentence of Paragraph 4.1 hereof, (ii) the amount, if any, by which (x) 61.4596% of the Purchase Price of the Equipment for which settlement has theretofore and is then being made, as set forth in the Invoice or Invoices therefor (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the Maximum CSA Indebtedness specified in Item 6 of Annex A and any amount or amounts previously paid or payable by the Trustee with respect to the Invoiced Purchase Prices pursuant to this clause (ii); and

(b) in 27 semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid

or payable with respect thereto pursuant to subparagraph (a) of this paragraph (said portion of the Purchase Price payable in installments under this subparagraph (b) being hereinafter called the "CSA Indebtedness").

4.4. CSA Indebtedness; Payment Dates; Interest. (1) The installments of the CSA Indebtedness shall be payable semiannually on April 1 and October 1 in each year, commencing October 1, 1981, to and including October 1, 1994, each such date being hereinafter called a "Payment Date". The unpaid balance of the CSA Indebtedness shall bear interest from and including the Closing Date in respect of which such indebtedness was incurred to and including March 31, 1981, at a rate equal to the lower of (x) the Floating Prime Rate (as defined below) or (y) 11% per annum, and commencing on the Take-Out Date at the rate of 12.75% per annum. Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued on April 1, 1981, and on each Payment Date thereafter. The amounts of CSA Indebtedness payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal shall completely amortize the CSA Indebtedness at maturity. The Trustee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

(2) The term "Floating Prime Rate" shall mean the prime commercial rate of First City National Bank of Houston from time to time in effect, except that any change in such rate five business days before any calculation shall be disregarded. Anything herein to the contrary notwithstanding, the obligations herein shall be subject to the limitation that payment of interest shall not be required to the extent that the receipt of such payments by the Interim Investor would be contrary to the provisions of law applicable to the Interim Investor which limited the maximum rate of interest which may be charged or collected by First City National Bank of Houston.

(3) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next succeeding business day.

4.5. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months except that interest payable on April 1, 1981, shall be computed on an actual elapsed day, 365-day year, basis.

4.6. Penalty Interest. The Trustee will pay interest, to the extent legally enforceable, at the rate of 13.75% per annum (the "Penalty Rate") upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. Currency of Payment. All payments provided for in this Agreement shall be made 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. Except as provided in Articles 7 and 16 hereof, the Trustee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

4.8. Liability of Trustee Limited to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments. Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof, except as set forth in this Paragraph 4.8), but not limiting the effect of Article 23 hereof, it is understood and agreed by the Vendor that the liability of the Trustee or any assignee of the Trustee for all payments to be made by it under and pursuant to this Agreement, and for all performance obligations, with the exception only of the payments to be made pursuant to subparagraph (a) of Paragraph 4.3 hereof and the proviso to Paragraph 13.3 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Trustee only to the extent that the Trustee or any assignee of the Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Vendor agrees that the Trustee

shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Trustee or any assignee of the Trustee. In addition, the Vendor agrees that the Trustee:

(i) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease, insofar as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder, and

(ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease and the Lease Assignment against the Lessee and the Equipment.

As used herein the term "income and proceeds from the Equipment" shall mean:

(i) if one of the events of default specified in Paragraph 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Trustee or any assignee of the Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of a Termination and/or Casualty Occurrences (as defined in Paragraph 7.2 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 13 or any other provision of the Lease (except any indemnity paid or payable to the Trustee or the Owner pursuant to § 6, § 12 or § 20 of the Lease) and all such amounts paid by the Guarantor under the Guarantee and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and

(b) (not including amounts paid by the Lessee to the Trustee as reimbursement of sums paid by the Trustee on account of prior defaults under subparagraph A of § 13.1 of the Lease) as are indefeasibly received by the Trustee or any assignee of the Trustee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Terminations, Casualty Occurrences or Redemptions) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Trustee or any assignee of the Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Terminations or Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Trustee or any assignee of the Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease or this Agreement. Nothing contained herein limiting the liability of the Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Trustee for an amount in excess of the amounts payable by the Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

ARTICLE 5

SECURITY INTEREST IN THE EQUIPMENT

5.1. Vendor To Retain Security Interest; Acces-

sories Are Part of Equipment. The Vendor shall and hereby does retain a security interest in the Equipment until the Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Trustee and the Lessee as provided in this Agreement and the Lease. Such retention of security interest is solely to secure performance by the Trustee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Trustee), and, subject thereto, ownership of the Equipment shall be and remain in the Trustee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads and/or the Interstate Commerce Commission, the United States Department of Transportation or any other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.2. Obligations upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Trustee at that time, will (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Trustee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make

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

ARTICLE 6

TAXES

6.1. General Tax Indemnification. Whether or not any of the transactions contemplated hereby are consummated, the Trustee assumes responsibility for and agrees to pay, and agrees to protect, save, keep harmless and indemnify on an after-tax basis the Vendor (but not including the Builder), the Investors and their successors and assigns (the "Indemnified Persons") against, all Taxes (as defined in § 6 of the Lease) imposed on, incurred by or asserted against any Indemnified Person or any Unit in whole or in part on account of, or with respect to, this Agreement or the Lease or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Units or any portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, transfer of title, operation, maintenance, repair, condition, sale, return, or other disposition of the Units or any portion thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom, excluding, however: (i) Taxes of the United States or any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, to the extent imposed on or measured by the net income, excess profits or items of tax preference of such Indemnified Person, other than Taxes arising out of or imposed in respect of the

receipt of indemnification payments pursuant to this Agreement, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its worldwide income without regard to the transactions contemplated by this Agreement shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; and (iii) Taxes which are imposed on or measured solely by the net income of the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Trustee has not agreed to pay or indemnify against pursuant to this Article 6; provided, however, that the Trustee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in Paragraph 6.2 hereof.

6.2. Claims; Contests; Refunds. If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Trustee. If reasonably requested by the Trustee in writing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor, which consent shall not be unreasonably withheld. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Trustee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Trustee the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in Paragraph 16.1 hereof

and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Trustee under or arising out of this Article 6, the Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Trustee.

6.4. Survival. All of the obligations of the Trustee under this Article 6 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person.

ARTICLE 7

MAINTENANCE; TERMINATION, CASUALTY OCCURRENCES AND OPTIONAL PREPAYMENT

7.1. Maintenance. The Trustee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear excepted.

7.2. Termination; Casualty Occurrences. In the event that the Lease is terminated pursuant to § 7.9 of the Lease (a "Termination") or any unit of Equipment shall suffer a Casualty Occurrence (as defined in § 7.1 of the Lease) during the term of this Agreement, the Trustee shall, promptly after it shall have received notice from the Lessee or has otherwise been informed of a Termination or that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the Casualty Payment Date (as defined in § 7.1 of the Lease) in the case of a Casualty Occurrence (or, in the event of a Casualty Occurrence during the period in which any unit of

Equipment is being returned pursuant to § 14 or § 17 of the Lease, on a date 30 days after such Casualty Occurrence), or on the Termination Date (as defined in § 7.9 of the Lease) in the case of a Termination (each such date hereinafter called a "Settlement Date"), the Trustee shall pay to the Vendor (i) in the case of a Casualty Occurrence, a sum equal to the Casualty Value (as defined in Paragraph 7.3 hereof) of such unit suffering a Casualty Occurrence as of such Settlement Date, and (ii) in the case of a Termination, a sum equal to the Termination Value (as defined in Paragraph 7.4 hereof). On any such Settlement Date, the Trustee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or the Termination Value, as the case may be. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date of such payment to prepay, without penalty or premium, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. The Trustee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in Paragraph 4.4 hereof.

7.3. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof referred to in Paragraph 4.3(b) hereof remaining unpaid on the Settlement Date (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), together with interest accrued thereon but unpaid as of the Settlement Date. For the purpose of this paragraph and Paragraph 7.4 hereof, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

7.4. Termination Value. The Termination Value shall be equal to the aggregate of the Casualty Values of the units of Equipment subject to the Lease as determined pursuant to Paragraph 7.3 hereof.

7.5. Obligations upon Payment of Casualty Value or Termination Value. Upon payment by the Trustee to the

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

7.6. Optional Prepayment. The Trustee shall have the option, with the prior written consent of the Lessee, to prepay the CSA Indebtedness, or any portion thereof (any such prepayment being hereinafter called a "Redemption"), on the next succeeding date for the payment of an installment on the CSA Indebtedness (such date being hereinafter called a "Redemption Date"). On such Redemption Date the Trustee shall pay to the Vendor (i) that portion of the outstanding CSA Indebtedness with respect to which the Trustee shall have given 90 days' prior written notice to the Vendor of its election to prepay, (ii) a prepayment premium equal to the product of that portion of the CSA Indebtedness being prepaid multiplied by the applicable percentage set forth in Schedule II hereto and (iii) the interest payment due on such Redemption Date on the CSA Indebtedness being prepaid; provided, however, that prior to April 1, 1991, no such prepayment shall be made in connection with or in anticipation of any refinancing involving directly or indirectly the borrowing of money by any person at an effective interest cost (calculated in accordance with accepted financial practice) equal to or less than 12.75% per annum or on terms which provide for an average maturity shorter than the then average maturity of the outstanding CSA Indebtedness or which permit optional prepayment on terms more favorable than the provisions hereof relating to optional prepayment (average maturities being calculated in accordance with accepted financial practice). The Trustee's notice of election to exercise its option to prepay shall be accompanied by a certificate of an officer in the Corporate Trust Department of the Trustee and of the Lessee stating that such prepayment will comply with the proviso of the preceding sentence.

ARTICLE 8

INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of any unit suffering a Casualty Occurrence or involved in a Termination, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Trustee; provided, however, that no event of default shall have occurred and be continuing hereunder and the Trustee shall have made payment (i) of the Casualty Value of such unit and/or (ii) of the Termination Value of such unit, together with accrued interest thereon to the Vendor. All insurance proceeds received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Trustee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 9

REPORTS AND INSPECTIONS

On or before April 30 in each year, commencing with the year 1981, the Trustee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10

MARKING OF EQUIPMENT

10.1. Marking of Equipment. The Trustee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Trustee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Trustee in all public offices where this Agreement

shall have been filed, recorded and deposited.

10.2. No Designations of Ownership. Except as provided in Paragraph 10.1 hereof, the Trustee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

ARTICLE 11

COMPLIANCE WITH LAWS AND RULES

During the term of this Agreement, the Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all material respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in § 10.1 of the Lease), and in the event that such Applicable Laws require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Trustee will or will cause the Lessee to conform therewith at no expense to the Vendor; provided, however, that the Trustee or the Lessee may, in good faith, contest the validity or application of any such Applicable Laws in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 12

POSSESSION AND USE

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

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Trustee simultaneously is

leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement and under the Consent (as defined in the Lease); provided, however, that, so long as (i) no Event of Default exists under the Lease, (ii) the Lessee and the Guarantor are complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 of the Lease. The Lease shall not be amended in any material respect or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

12.3. Other Leases of Equipment. Subject to the rights of the Lessee under the Lease, the Trustee may also lease the Equipment to any other entity, but only with the prior written consent of the Vendor, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States and (iii) such lease shall be assigned to the Vendor as security on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

ARTICLE 13

PROHIBITION AGAINST LIENS

13.1. Trustee To Discharge Liens. The Trustee will pay or discharge any and all sums claimed by any party from, through or under the Trustee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the income and proceeds from such Equipment, as defined in Article 4 hereof, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security

interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. The foregoing covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

13.3. Article 13 Subject to Paragraph 4.8 and Article 23 Except in Certain Instances. The obligations of the Trustee under this Article 13 are subject to the limitations contained in Paragraph 4.8 and Article 23 hereof; provided, however, that the Trustee in its individual capacity will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Trustee or its successors or assigns, and to the extent it receives funds sufficient for such purpose from the Owner, from, through or under the Owner and its successors and assigns, not arising out of the transactions contemplated hereby or in other documents mentioned herein (but, to the extent that it receives funds sufficient for such purpose from the Owner, including taxes arising out of the receipt of rentals and other payments under the Lease and any other proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment or the Trustee's interest in the Lease and the payments to be made thereunder, but the Trustee shall not be required to pay or discharge any such tax, claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment, its interest in the income and proceeds from the Equipment or otherwise under this Agreement.

ARTICLE 14

INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Trustee shall pay, and shall protect, indemnify and hold the Vendor, the Investors and any assignee thereof, and their respective successors, assigns, agents and servants ("Indemnified Persons"), harmless from and against any and all Indemnified Matters (as defined in § 12.1 of the Lease) which may be imposed on, incurred by or asserted against any Indemnified Person; except that the Trustee shall not be liable to the Builder in respect of any Indemnified Matter to the extent liability in respect thereof arises out of any tort by the Builder or out of any breach of warranty or failure to perform any covenant hereunder by the Builder or is covered by the Builder's warranty of material and workmanship or patent indemnification referred to in Paragraph 14.4 hereof. The Trustee shall be obligated under this Article 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Trustee may, at the Trustee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Trustee and approved by such Indemnified Person (which approval shall not be unreasonably withheld) and, in the event of any failure by the Trustee to do so, the Trustee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding; provided that the Trustee shall not be liable for any settlement of any action, suit or proceeding effected without its consent. In the event the Trustee is required to make any payment under this Article 14, the Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense

indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Trustee agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Article 14 by the Trustee, and provided that no event of default described in Paragraph 16.1 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than the Trustee) with respect to any Indemnified Matter shall be paid over to the Trustee to the extent necessary to reimburse the Trustee for Indemnification payments previously made in respect of such matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

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

14.4. Warranties of Builder; Patent Indemnities. The agreement of the parties relating to the Builder's warranties of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto. The Builder represents and warrants that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, the Builder will have good and marketable

title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights created by this Agreement, the CSA Assignment and the Lease.

ARTICLE 15

ASSIGNMENTS

15.1. Assignment by Trustee. Except as provided in Article VII of the Trust Agreement and except as provided in Article 12 hereof, the Trustee will not (a) transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement.

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

15.3. Notice of Assignment by Vendor. Upon any such assignment, the assignor shall give written notice to the Trustee and the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Trustee of the notification of any such assignment, all payments thereafter to be made by the Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

15.4. No Setoff Against CSA Indebtedness upon Assignment. The Trustee recognizes that this Agreement will be assigned to the Assignee as provided in the CSA Assignment. The Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the assignee to the entire unpaid CSA Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by the Trustee arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Trustee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Trustee against and only against the Builder.

ARTICLE 16

DEFAULTS

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

(a) the Trustee shall fail to pay or cause to be paid in full any sum payable by the Trustee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Trustee) and such default shall continue for 10 business days after the date such payment is due and payable; or

(b) the Trustee or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply

with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Trustee), or of the Lease, the CSA Assignment, the Lease Assignment or the Consent or any covenant, agreement, term or provision of the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance, unless the Trustee or the Lessee, as the case may be, shall be diligently, to the reasonable satisfaction of the Vendor, attempting to comply with any such covenant, agreement, term or provision; or

(c) any proceeding shall be commenced by or against the Trustee, the Owner, the Lessee or the Guarantor for any relief 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 proceeding which does not permit any readjustment of the obligations hereunder or under the Lease, the Lease Assignment, the Consent or the Participation Agreement or the Trust Agreement of the Trustee, in such capacity, or such Owner or the Guarantee of the Guarantor, as the case may be) and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not be 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 Trustee, in such capacity, such Owner, such Lessee or such Guarantor, as the case may be, or for its or any or all of their property in connection with any such proceeding in such manner that such obligations have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(d) the Trustee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the

right to possession of any unit of the Equipment and the Trustee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Trustee of such Agreement, interest or right; or

(e) any Event of Default (as defined in the Lease) shall have occurred and be continuing under the Lease unless the Trustee shall have cured such Event of Default and the corresponding event of default hereunder (after giving effect to any applicable grace periods) within five days after the Vendor shall have given notice to the Trustee pursuant to the last paragraph of Paragraph 1 of the Lease Assignment (as defined in the Participation Agreement); provided, however, that if more than four Events of Default or more than two consecutive Events of Default shall have occurred under clause (A) of § 13.1 of the Lease within 12 calendar months, any such Event of Default shall be an event of default hereunder whether or not the corresponding event of default hereunder is cured;

(it being understood, however, that any event described in clauses (a) and (b) above, to the extent that it also constitutes an Event of Default under the Lease, shall not be deemed an event of default hereunder unless and until (i) the five-day period, if any, during which, in accordance with the provisions of clause (e) above, the Trustee may cure such Event of Default under the Lease and the corresponding event hereunder shall have expired and (ii) the Trustee shall not, during such period, have effected such cure) then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Trustee, the Owner and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare (a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. In addition, if the Trustee does not pay the entire unpaid CSA Indebtedness, together with the Interest thereon accrued and unpaid to the date of payment within 15 days of such notice of Declaration of Default, the Vendor may cause the term of the Lease immediately to terminate

(and the Trustee acknowledges the right of the Vendor to terminate the term of the Lease); provided, however, that such termination shall not be in derogation of or impair the rights of the Trustee or the Vendor (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under § 13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Trustee or the Vendor (under the assignment thereof), as the case may be, to sue for and recover damages provided for in § 13 of the Lease upon the occurrence of an event of default under the Lease; and provided further, however, that, so long as (i) no Event of Default exists under the Lease, (ii) the Lessee is complying with the provisions of the Consent (as defined in the Lease) and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 of the Lease. Upon a Declaration of Default, subject to Articles 4 and 23 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Trustee, subject to the provisions of Articles 4 and 23 hereof and the second proviso in the preceding sentence, wherever situated. The Trustee shall promptly notify the Vendor of any event of which an officer or employee in the Corporate Trust Department of the Trustee has knowledge which constituted, constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under this Agreement.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Trustee that time is of the essence of this Agreement and that no such waiver, rescis-

sion or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

16.3. Prepayment. If an event of default shall have occurred and be continuing hereunder by virtue of an Event of Default under the Lease, and a Declaration of Default has not been made by the Vendor for at least 30 days after the Vendor was entitled to make such a Declaration, the Trustee may prepay the entire CSA Indebtedness together with interest thereon then accrued and unpaid, without premium or penalty.

ARTICLE 17

REMEDIES

17.1. Vendor May Take Possession of Equipment. Except as hereinafter in this Article 17 expressly provided, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Trustee any sums theretofore paid and free from all claims whatsoever, and may remove the same from possession and use of the Trustee, the Lessee or any other person and for such purpose may enter upon the premises of the Trustee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Trustee shall, subject to the provisions of Article 4 and Article 23 hereof, at its own expense and risk:

(a) 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 to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) place such units upon such storage tracks as the Vendor reasonably may designate;

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

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

During any storage period, the Lessee has agreed pursuant to § 14.1 of the Lease, at its own cost and expense, to insure, maintain and keep each such unit in good order and repair and to permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of this Agreement between the parties, and the Trustee acknowledges that upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled under the Lease as assignee of the rights of the Trustee thereunder to a decree against the Lessee requiring specific performance hereof. The Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

17.3. Vendor May Dispose of or Retain Equipment. At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as provided in Paragraph 17.1 hereof) may, at its election, retain the Equipment in satisfaction of the entire CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Trustee and the Lessee by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such

Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Trustee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee; provided further that if the Trustee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Lessee is not in default under the Lease, the right of the Vendor to lease the Equipment to a third party or parties hereunder is subject to the right of the Lessee to lease, within 30 days after written notice of the proposed lease terms and conditions, the Equipment for the same term and rent as the proposed lessee upon terms and conditions found to be mutually acceptable to the Vendor and the Lessee. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Trustee's Right of Redemption. At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Trustee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Trustee, the Lessee or any other party claiming from, through or under the Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the

Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Trustee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee. The proceeds of such sale or other disposition, less the attorneys' fee and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited against the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder shall be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Trustee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Trustee and the Lessee shall be given written notice of such sale not less than ten business days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Trustee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Trustee (except to the extent of surplus money

received as provided in Paragraph 17.7 hereof), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

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

17.7. Deficiencies. If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Trustee shall, subject to the limitations of Paragraph 4.8 hereof and Article 23 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate, and, if the Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of Paragraph 4.8 hereof and Article 23 hereof, be entitled to recover a judgment therefor against the Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Trustee. The foregoing provisions of this paragraph are subject to the provisions of Paragraph 18 of the Participation Agreement.

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

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto and are further subject to the condition that, so long as (i) no Event of Default exists under the Lease, (ii) the Lessee is complying with the provisions of the Consent (as defined in the Lease) and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 of the Lease.

ARTICLE 18

APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

enforcement of the Vendor's rights and any and all rights of redemption.

ARTICLE 19

RECORDING

Subject to the provisions of Paragraph 4.8 and Article 23 hereof, the Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Trustee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Trustee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20

REPRESENTATIONS AND WARRANTIES OF BUILDER

The Builder hereby represents and warrants to the Trustee, its successors and assigns, that this Agreement is duly authorized by it and lawfully executed and delivered by it for a valid consideration, and that, assuming due authorization, execution and delivery by the Trustee, this Agreement is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon and enforceable against the Builder in accordance with its terms.

ARTICLE 21

ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. Article and Paragraph Headings for Convenience Only. All article and paragraph headings are

inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21.2. Effect and Modification of Agreement. Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Trustee.

ARTICLE 22

NOTICE

Any notice required or permitted to be given by any party hereto to any other party or parties shall be mailed, registered or certified mail, postage prepaid, return receipt requested, shall be effective on the date of receipt as shown on the return receipt, and shall be addressed as follows:

(a) to the Trustee, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department, with copies to the Owner at its address set forth below,

(b) to the Builder, at the address specified in Item 1 of Annex A hereto,

(c) to any assignee of the Vendor, or of the Trustee, at such address as may have been furnished in writing to the Trustee, or the Vendor, as the case may be, by such assignee, and

(d) to the Owner at its address set forth below:

Wells Fargo Equipment Leasing Corporation
425 California Street
San Francisco, California 94104

Attention of Contract Administration,

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

ARTICLE 23

IMMUNITIES; SATISFACTION OF UNDERTAKINGS

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

23.2. Satisfaction of Certain Covenants. The obligations of the Trustee under Paragraphs 7.1, 7.2, 17.2, 17.7 and 17.8 hereof, and under Articles 3, 6, 9, 10, 11, 13, 14 and 19 hereof and any and all obligations at any time arising thereunder shall be deemed satisfied in full in all respects (except as set forth in Paragraph 13.3 hereof), and be of no further force or effect insofar as they involve personal liability for money or performance or otherwise of the Trustee, other than out of "income and proceeds from the Equipment" (as defined in Paragraph 4.8 hereof), by the Lessee's execution and delivery of the Lease. The Trustee shall not have any responsibility for the Lessee's failure to perform such obligations; but if the same shall not be performed, they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor; provided, however, that the Vendor shall consent to any agreement in writing between the Lessee and the Trustee increasing or decreasing the rentals, casualty values or termination values payable pursuant to §§ 3 and 7 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Trustee hereunder, such consent to be given by the Vendor within 30 days of delivery of a copy of any such agreement to the Vendor.

23.3. No Personal Liability of Trustee. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties and

agreements herein made on the part of the financial institution acting as Trustee hereunder are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution, including its successors and assigns, or for the purpose or with the intention of binding said financial institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by said financial institution solely in the exercise of the powers expressly conferred upon said financial institution as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution (except as provided in Paragraph 13.3 hereof) or the Owner hereunder, on account of any representation, warranty or agreement of the Trustee (except as aforesaid), or the Owner hereunder, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Nothing contained in this Paragraph 23.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Trustee (provided that neither the Trustee in its fiduciary or individual capacity nor the Owner shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of the Trustee or the Owner) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease.

The Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

ARTICLE 24

LAW GOVERNING

The terms of this Agreement and all rights and

obligations hereunder shall be governed by the laws of the State of Connecticut; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights, if any, arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

ARTICLE 25

EXECUTION

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, 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. This Agreement shall be effective when executed counterparts hereof have been delivered to Cravath, Swaine & Moore at their offices in New York, New York.

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

THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity, but solely as Trustee as aforesaid,

by

_____
Authorized Officer

[Seal]

Attest:

_____
Authorized Officer

ACF INDUSTRIES, INCORPORATED,

by _____
Vice President

[Corporate Seal]

Attest:

_____
ASSISTANT Secretary

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

On this day of October 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an of THE CONNECTICUT BANK AND TRUST COMPANY, 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.

Notary Public

[Notarial Seal]

My Commission expires

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

On this 10th day of October 1980, before me personally appeared C. R. GARR , to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Anthony M. Romanello
Notary Public

[Notarial Seal]

ANTHONY M. ROMANELLO
Notary Public, State of New York
No. 31-4703607
Qualified in New York County
Commission Expires March 30, 1981

My Commission expires

SCHEDULE I

Allocation Schedule of Each $1,000,000 of
12.75% CSA Indebtedness

Due Date	Installment No.	Total Payment	Interest Payment	Principal Recovery	Ending Principal
4/1981	—	*	*	—	$1,000,000.00
10/1981	1	$ 78,559.07	$ 63,750.00	$ 14,809.07	$985,190.93
4/1982	2	78,559.07	62,805.92	15,753.15	969,437.78
10/1982	3	78,559.07	61,801.66	16,757.41	952,680.37
4/1983	4	78,559.07	60,733.37	17,825.70	934,854.67
10/1983	5	78,559.07	59,596.99	18,962.08	915,892.59
4/1984	6	78,559.07	58,388.15	20,170.92	895,721.67
10/1984	7	78,559.07	57,102.26	21,456.81	874,264.86
4/1985	8	78,559.07	55,734.38	22,824.69	851,440.17
10/1985	9	78,559.07	54,279.31	24,279.76	827,160.41
4/1986	10	78,559.07	52,731.48	25,827.59	801,332.82
10/1986	11	78,559.07	51,084.97	27,474.10	773,858.72
4/1987	12	78,559.07	49,333.49	29,225.58	744,633.14
10/1987	13	78,559.07	47,470.36	31,088.71	713,544.43
4/1988	14	78,559.07	45,488.46	33,070.61	680,473.82
10/1988	15	78,559.07	43,380.21	35,178.86	645,294.96
4/1989	16	78,559.07	41,137.55	37,421.52	607,873.44
10/1989	17	78,559.07	38,751.93	39,807.14	568,066.30
4/1990	18	78,559.07	36,214.23	42,344.84	525,721.46
10/1990	19	78,559.07	33,514.74	45,044.33	480,677.13
4/1991	20	78,559.07	30,643.17	47,915.90	432,761.23
10/1991	21	78,559.07	27,588.53	50,970.54	381,790.69
4/1992	22	78,559.07	24,339.~~14~~16	54,219.91	327,570.78
10/1992	23	78,559.07	20,882.64	57,676.43	269,894.35
4/1993	24	78,559.07	17,205.76	61,353.31	208,541.04
10/1993	25	78,559.07	13,394.49	65,264.58	143,276.46
4/1994	26	78,559.07	9,133.87	69,425.20	73,851.26
10/~~1984~~ 1994	27	78,559.~~19~~28	4,708.02	73,851.26	0.00
		121,095.10	121,095.10		
		$2,~~167,937.09~~	$1,~~167,937.19~~	$1,000,000.00	0.00

* Interest on the CSA Indebtedness shall be paid to the extent accrued on this date at the lower of 11% per annum or the Floating Prime Rate per annum.

SCHEDULE II

Schedule of Redemption Premiums

Redemption Date	Premium
Prior to April 2, 1982	12.750%
April 2, 1982-April 1, 1983	11.839
April 2, 1983-April 1, 1984	10.929
April 2, 1984-April 1, 1985	10.018
April 2, 1985-April 1, 1986	9.107
April 2, 1986-April 1, 1987	8.196
April 2, 1987-April 1, 1988	7.286
April 2, 1988-April 1, 1989	6.375
April 2, 1989-April 1, 1990	5.464
April 2, 1990-April 1, 1991	4.554
April 2, 1991-April 1, 1992	3.643
April 2, 1992-April 1, 1993	2.732
April 2, 1993-April 1, 1994	1.821
April 2, 1994-September 30, 1994	0.911
On October 1, 1994	0.000

Annex A
to
Conditional Sale Agreement

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

Item 2: Unless the parties shall otherwise agree, the Equipment shall be settled for in no more than six Groups. Each Group shall consist of an even number of cars and of at least 100 cars and the Closing Date therefor shall be held within 10 business days after the Builder has delivered the requisite invoice and closing documents.

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

WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, LIABILITY FOR LOST PROFIT OR FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR COMMERCIAL LOSSES, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES, AND THE BUILDER DOES NOT ASSUME OR AUTHORIZE ANY PERSON TO ASSUME CONSTRUCTION AND DELIVERY OF THE EQUIPMENT EXCEPT AS AFORESAID. IT IS FURTHER UNDERSTOOD AND AGREED THAT IN NO EVENT SHALL THE BUILDER BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND.

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

Item 4: The Builder agrees to indemnify, protect and hold harmless the Trustee (in both its individual and fiduciary capacities) and the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Trustee or the Lessee because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right, except any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Trustee or the Lessee because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination specified by the Lessee and not developed or purported to be developed by the Builder or any article or material specified by the Lessee and not manufactured by the Builder. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or

hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment, on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

Item 5: The Maximum Purchase Price referred to in Article 4 of the CSA to which this Annex A is attached is $13,174,305.56.

Item 6: The Maximum CSA Indebtedness referred to in Article 4 of the CSA to which this Annex A is attached is $8,096,875.50.

Annex B
to
Conditional Sale Agreement

Type	AAR Mechanical Designation	Builder's Specifications	Builder's Plant	Quantity†	Lessee's Identification Numbers (Each Set of Which is Inclusive)†	Estimated Unit Price*	Estimated Total Price†*	Estimated Time and Place of Delivery
105-ton 4240 cu. ft. gondola coal car	GTS	Per Purchase Order UFI-00108 dated August 3, 1979	St. Louis, Missouri	610	13001-13110 14001-14110 15001-15110 16001-16170 17001-17110	$42,260	$25,778,600	Oct.-Dec., 1980, F.O.B. Builder's plant with shipment to Jacobs Junction, Wyoming or Spring Creek Mine, Montana.

† This Annex B sets forth the description of the units of Equipment which are scheduled for delivery both under this Conditional Sale Agreement (A) (the "CSA-(A)") and under a Conditional Sale Agreement (B) dated as of October 1, 1980, between the Builder and another owner, U B Leasing, Inc., (the "CSA-(B)") under which deliveries cannot be accepted after December 31, 1980. It is expected that some of these units of Equipment will be delivered in time for acceptance under CSA-(B) and that an equal number of these units will be delivered in time for acceptance hereunder. After delivery of all the units of Equipment covered by both Agreements, this Annex B will be appropriately amended to describe only those units of Equipment covered by this CSA-(A).

* Includes prepaid freight to Jacobs Junction, Wyoming or Spring Creek Mine, Montana, as the case may be.

ANNEX C
to
Conditional Sale Agreement (A)

[CS&M Ref. 2483-135]

LEASE OF RAILROAD EQUIPMENT

(A)

Dated as of October 1, 1980

Between

UTILITY FUELS, INC.,

as Lessee,

and

THE CONNECTICUT BANK AND TRUST COMPANY,
not in its individual capacity
but solely as Trustee under a Trust Agreement
dated as of the date hereof
with Wells Fargo Equipment Leasing Corporation,
as Lessor.

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of Mercantile-Safe Deposit and Trust Company, as Agent for certain institutional investors. The original of this Lease is held by said Agent.

LEASE OF RAILROAD EQUIPMENT

TABLE OF CONTENTS*

	Page
PARTIES	L-1
PREAMBLES	L-1
GRANTING CLAUSE	L-1
§ 1. NET LEASE	L-2
§ 2. DELIVERY AND ACCEPTANCE OF UNITS	L-3
§ 3. RENTALS	L-3
§ 3.1. Amount and Date of Payment	L-3
§ 3.2. Payments on Nonbusiness Days	L-5
§ 3.3. Instructions To Pay Vendor and Trustee	L-6
§ 3.4. Payment in Immediately Available Funds	L-6
§ 4. TERM OF LEASE	L-6
§ 4.1. Beginning and Termination; Survival	L-6
§ 4.2. Rights and Obligations of Lessee Subject to CSA	L-7
§ 5. IDENTIFICATION MARKS	L-7
§ 5.1. Identifying Numbers; Legend; Changes	L-7
§ 5.2. Insignia of Lessee	L-8

* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

		Page
§ 6.	GENERAL TAX INDEMNIFICATION	L-8
§ 7.	PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE; ECONOMIC OBSOLESCENCE	L-12
§ 7.1.	Definition of Casualty Occurrence; Payments	L-12
§ 7.2.	Requisition	L-14
§ 7.3.	Lessee Agent for Disposal	L-14
§ 7.4.	Payments After Expiration of Lease ..	L-14
§ 7.5.	Amount of Casualty Value	L-14
§ 7.6.	No Release	L-15
§ 7.7.	Insurance To Be Maintained	L-15
§ 7.8.	Insurance Proceeds and Condemnation Payments	L-17
§ 7.9.	Economic Obsolescence	L-17
§ 8.	REPORTS AND INSPECTIONS	L-20
§ 9.	DISCLAIMER OF WARRANTIES	L-20
§ 10.	LAWS AND RULES	L-22
§ 10.1.	Compliance	L-22
§ 10.2.	Reports by Trustee	L-22
§ 11.	MAINTENANCE	L-22
§ 11.1.	Units in Good Operating Order	L-22
§ 11.2.	Additions and Accessions	L-23
§ 12.	INDEMNIFICATION	L-23
§ 12.1.	Indemnified Persons; Indemnified Matters	L-23
§ 12.2.	Indemnification of Builder	L-26
§ 12.3.	Survival	L-26
§ 13.	DEFAULT	L-26
§ 13.1.	Events of Default; Remedies	L-26
§ 13.2.	Remedies Not Exclusive; Waiver	L-30
§ 13.3.	Failure To Exercise Right Is Not Waiver	L-30
§ 13.4.	Notice of Event of Default	L-30

	Page
§ 14. RETURN OF UNITS UPON DEFAULT	L-31
§ 14.1. Return of Units	L-31
§ 14.2. Trustee Appointed Agent of Lessee ...	L-32
§ 15. ASSIGNMENT, POSSESSION AND USE	L-32
§ 15.1. Assignment; Consent	L-32
§ 15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units	L-32
§ 15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation	L-34
§ 16. RENEWAL OPTIONS AND DUTY TO FIRST OFFER	L-34
§ 16.1. Renewal	L-34
§ 16.2. Duty to First Offer	L-36
§ 16.3. Determinations	L-37
§ 17. RETURN OF UNITS UPON EXPIRATION OF TERM OR TERMINATION	L-38
§ 18. RECORDING	L-40
§ 19. INTEREST ON OVERDUE RENTALS	L-40
§ 20. TRUSTEE'S RIGHT TO PERFORM FOR THE LESSEE	L-40
§ 21. NOTICES	L-41
§ 22. SEVERABILITY	L-41
§ 23. EFFECT AND MODIFICATION OF LEASE	L-41
§ 24. THIRD-PARTY BENEFICIARIES	L-42
§ 25. EXECUTION	L-42
§ 26. LAW GOVERNING	L-42

	Page
§ 27. IMMUNITIES; NO RECOURSE	L-42
§ 28. AGREEMENTS FOR BENEFIT OF OWNER'S AND TRUSTEE'S ASSIGNS	L-43
§ 29. TERM TRUSTEE	L-44
TESTIMONIUM	L-44
SIGNATURES	L-44
ACKNOWLEDGMENTS	L-45
APPENDIX A - Units Leased	L-46
APPENDIX B - Schedule of Casualty Values	L-47
APPENDIX C - Schedule of Termination Values	L-48

LEASE OF RAILROAD EQUIPMENT dated as of October 1, 1980, between UTILITY FUELS, INC., a Texas corporation (the "Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, acting not in its individual capacity but solely as Trustee (the "Trustee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with WELLS FARGO EQUIPMENT LEASING CORPORATION (the "Owner").

WHEREAS pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, HOUSTON INDUSTRIES INCORPORATED, a Texas corporation (the "Guarantor"), the Trustee, the Owner and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent (said bank so acting, being hereinafter called the "Vendor"), the Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Trustee the units of railroad equipment described in Appendix A hereto;

WHEREAS at the date of execution of this Agreement, no unit of the railroad equipment has been placed in service;

WHEREAS the Builder is assigning its interests in the CSA pursuant to an Agreement and Assignment dated the date hereof (the "CSA Assignment") to the Vendor;

WHEREAS the Lessee desires to lease such number of units of the railroad equipment as are settled for under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided;

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

WHEREAS the Trustee will assign this Lease for security to the Vendor pursuant to an Assignment of Lease

and Agreement (the "Lease Assignment") dated as of the date hereof and the Lessee and the Guarantor will acknowledge and consent thereto pursuant to the Consent and Agreement in the form attached to the Lease Assignment (the "Consent");

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 Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. NET LEASE

This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent or such other amounts or reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Trustee or the Owner under this Lease or the CSA, including the Lessee's rights by subrogation thereunder to the Builder or the Vendor, or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Trustee 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 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 of 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. 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 Trustee, the Owner or the Vendor for any reason whatsoever. Nothing in this § 1 shall constitute a waiver by Lessee of any rights to sue for damages or specific performance for breach of any obligations undertaken by the Trustee under this Agreement or by the Trustee or any other party to any of the other documents referred to herein but subject in all respects to the provisions of § 27 hereof.

§ 2. DELIVERY AND ACCEPTANCE OF UNITS

The Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Trustee under the CSA shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is so delivered to the Trustee. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Trustee under the CSA and on behalf of itself hereunder and execute and deliver to the Trustee 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 and the Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. RENTALS

3.1. Amount and Date of Payment. The Lessee agrees to pay to the Trustee, as rental for each Unit subject to this Lease, one interim rental payment on April 1, 1981, and 32 consecutive semiannual payments payable, in arrears, on April 1 and October 1 in each year, commencing October 1, 1981, to and including April 1, 1997. The interim rental payment for each Unit shall be in an amount equal to the sums of (x) the product of (i) the Purchase

Price (as defined in Paragraph 4.1 of the CSA) of such Unit less (ii) the portion of the CSA Indebtedness (as defined in Paragraph 4.3(b) of the CSA) attributable to such Unit multiplied by 0.03493151% for each day (computed on an actual elapsed day, 365-day year, basis) from and including the Closing Date for such Unit to and including March 31, 1981, and (y) the amount payable to the Interim Investor on April 1, 1981, pursuant to Paragraph 4.4 of the CSA. The 32 semiannual rental payments for each Unit shall be in an amount equal to 4.8282% of the Purchase Price of such Unit. In no event shall the foregoing rentals be less than the principal and interest payment due on each such date pursuant to Article 4 of the CSA.

In the event of (i) an amendment to the Internal Revenue Code, as amended to the Documents Closing Date (as defined in the first paragraph of Paragraph 8 of the Participation Agreement), or the Income Tax Regulations promulgated thereunder, as of such Date, or a change in the interpretation thereof as a result of a decision of a court or a change in Revenue Procedure 77-10, 1977-1 Cum. Bull. 548, which amendment or change shall occur (A) during the period beginning on the Documents Closing Date and ending on April 1, 1981 (for purposes of this paragraph, regulations proposed to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, or his delegate, shall be treated as an amendment of the Income Tax Regulations, provided that such proposed regulations are adopted in substantially the form proposed), or (ii) a delivery of the Units at times and in numbers of Units other than 61 Units on each of October 9, October 27, November 17, December 9, and December 30, 1980, the effect of which event would be to increase or decrease by more than 25 basis points the pretax yield which the Owner expects to realize as the result of the transactions contemplated by the Participation Agreement and this Lease from the pretax yield which the Owner expected to realize as the result of the transactions contemplated by the Participation Agreement and this Lease had such event not occurred, (x) in the case of any such decrease in the pretax yield of the Owner, the semiannual rental payments occurring thereafter for each Unit and the percentages with respect to Termination Value and Casualty Value shall be adjusted in such manner as shall be required in order that, after giving effect to such event, the Owner's rate of return on, and rate of recovery of, investment shall be maintained and (y) in the case of any such increase in the pretax yield of the Owner, the Owner shall make a supplemental payment to the Lessee on each semiannual rental payment date occurring thereafter for each Unit in such amount, and the percentages with respect to Termination Value and Casualty Value shall be adjusted in such manner, as shall be required in order that, after

giving effect to such event, the Owner's rate of return on, and rate of recovery of, investment shall be maintained. Upon the occurrence of an event requiring an adjustment or supplemental payments pursuant to this paragraph, the Owner shall promptly make the necessary computations and furnish to the Trustee and the Lessee a certificate of the Owner setting forth, in reasonable detail, the revised semiannual rental payments or supplemental payments, as the case may be, and percentages with respect to Termination Value and Casualty Value. Any certificate furnished by the Owner to the Trustee and the Lessee pursuant to this paragraph shall be binding and final unless the Lessee shall notify the Owner and the Trustee within 30 days after the receipt of such certificate that it disagrees with such certificate. In the event that the Owner and the Lessee are unable to resolve any disagreement within 30 days after the receipt of the Lessee's notice to the Owner, the matter shall be referred to independent public accountants (which shall not be the Lessee's or the Guarantor's principal auditor) selected by the Lessee and approved by the Owner (such approval not to be unreasonably withheld) who shall verify the Owner's computations and, within 30 days of the date on which the matter was referred to it, furnish to the Owner, the Trustee and the Lessee a certificate setting forth, in reasonable detail, the revised semiannual rental payments or supplemental payments, as the case may be, and percentages with respect to Termination Value and Casualty Value. The revised semiannual rental payments or supplemental payments, as the case may be, and percentages with respect to Termination Value and Casualty Value as so verified or as adjusted by such accountants shall be binding and final on the Owner, the Trustee and the Lessee. The expense of any verification by the Lessee of the Owner's computations under this paragraph shall be at the expense of the Lessee. Notwithstanding the foregoing, (x) each semiannual rental payment shall not be less than the amount required to pay all amounts when due and payable on or with respect to the CSA Indebtedness on the date on which such semiannual rental payment is due and payable and to satisfy the profit and positive cash flow requirements set forth in Section 4(b) of Revenue Procedure 75-21, 1975-1 Cum. Bull. 715, as said requirements may be amended or modified as of the date on which any adjustment is to be made under this paragraph, and (y) the Termination Value or Casualty Value payable on any date shall not be less than the amount required to pay the principal of, and accrued and unpaid interest and all other amounts due and payable on or with respect to, the CSA Indebtedness on the date of the payment of Termination Value or Casualty Value.

3.2. Payments on Nonbusiness Days. If the interim rental payment date or any of the semiannual rental

payment dates referred to in § 3.1 is not a business day, the rental payment otherwise payable on such date shall be payable on the next 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, Houston, Texas or Hartford, Connecticut, or the principal place of business of the Owner are authorized or obligated to remain closed.

3.3. Instructions To Pay Vendors and Trustee. Upon execution and delivery of the Lease Assignment and until the Vendor shall have advised the Lessee in writing that all sums due from the Trustee under the CSA have been fully satisfied and discharged, the Trustee irrevocably instructs the Lessee (a) first, to remit to the Vendor on each rental payment date hereunder a sufficient portion of the then due rental payment to satisfy the obligations of the Trustee then payable under the CSA, and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay to the Trustee, on such rental payment date, the balance, if any, of such rental payment. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Vendor in writing that all sums due from the Trustee under the CSA have been fully discharged and satisfied, then all payments provided for in this Lease shall be made to the Trustee.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 in funds which are immediately available at or prior to 11:00 a.m. in the city where such payment is to be made in the manner specified in Paragraph 15 of the Participation Agreement.

§ 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery of such Unit under the CSA and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration or other termination of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA and if an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) in accordance with the terms of the CSA without affecting the indemnities which by the provisions of this Lease survive the termination of its term, all as provided herein; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee and the Guarantor are complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 15 hereof.

§ 5. IDENTIFICATION MARKS

5.1. Identifying Numbers; Legend; Changes. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Appendix A hereto, or in the case of any Unit not there listed such identification number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNED BY A BANK OR TRUST COMPANY AS TRUSTEE AND SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Trustee's title to, and the Vendor's security interest in, such Unit and the rights of the Trustee under this Lease and 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 such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identification 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 Trustee and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Trustee's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Trustee in such Units.

5.2. Insignia of Lessee. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, 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. GENERAL TAX INDEMNIFICATION

Whether or not any of the transactions contemplated hereby are consummated, the Lessee assumes responsibility for and agrees to pay, and agrees to protect, save, keep harmless and indemnify on an after-tax basis the Trustee (in both its individual and fiduciary capacities), the Owner, the Vendor, the Investors and their respective successors and assigns (the "Indemnified Persons") against, all taxes, levies, imposts, duties, assessments, fees, withholdings and other governmental charges of any nature whatsoever, including, without limitation, penalties, fines and interest (all such taxes, levies, imposts, duties, assessments, fees, withholdings, governmental charges, penalties, fines and interest being hereinafter called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or any Unit in whole or in part on account of, or with respect to, this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Units or any portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, transfer of title, operation, maintenance, repair, condition, sale, return, or other disposition of the Units or any portion thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom;

excluding, however, (i) Taxes of the United States or any state or political subdivision thereof imposed on or measured solely by the net income or excess profits or items of tax preference of the Indemnified Person (not including the Trustee in its fiduciary capacity), other than (1) Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, (2) any such Taxes which are in direct substitution for Taxes which the Lessee would otherwise be obligated to pay or reimburse as herein provided, and (3) the aggregate of all state or local Taxes measured by net income based on such receipts which are in excess of the amount of any such Taxes based on such receipts which would be payable to the state and locality in which the Indemnified Person has its principal place of business without apportionment to any other state; (ii) Taxes imposed on or measured by any fees or compensation received by the Trustee for its services in acting as trustee under the Trust Agreement; (iii) Taxes which are imposed on or measured solely by the net income of the Indemnified Person if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this § 6; (iv) Taxes imposed with respect to any period commencing after the date on which this Lease shall terminate and the Units shall be redelivered to the Trustee in accordance with the terms of this Lease and not relating to events or matters prior to such time; and (v) Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Trustee or the Owner (other than any transfer pursuant to § 7.3 or any transfer to the Lessee pursuant to § 16.2) or any transfer or disposition by the Trustee or the Owner resulting from bankruptcy or other proceedings for the relief of debtors in which the Trustee or the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease unless, at the time of any such transfer or disposition, an Event of Default shall have occurred and be continuing. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within 30 days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that if any Taxes are being contested in accordance with the sixth paragraph of this § 6, any payment shall be made at the time therein provided.

In the event that the Trustee shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any corresponding provision of the CSA not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Trustee as will enable the Trustee to fulfill completely its obligations pursuant to said provision. The Lessee covenants, for the benefit of the Builder, that the Lessee will indemnify and hold the Builder harmless from any sales taxes, including interest and penalties, which might be imposed in respect to the sale of the Units under the CSA.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Trustee and the Vendor in such Units, send a copy of such returns, statements or reports to the Trustee and the Vendor, and after notice to the Trustee and the Vendor (which may be in the form of a statement sent with copies that the same will be filed, barring objection, within a specified period of time) file such returns, statements or reports; provided, however, that the Trustee shall, with respect to any state or political subdivision thereof of the United States of America, file such returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by the Trustee's earnings or gross receipts arising from the Units, or the value added by the Trustee thereto, as the Lessee or the Trustee shall determine are required to be filed, and as shall be prepared by the Lessee, and shall remit the amount thereof upon payment by the Lessee to the Trustee (such payment to be made promptly upon demand by the Trustee therefor) of such taxes, fees and charges except as provided above. To the extent that the Trustee has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Trustee hereby authorizes the Lessee to act in the name of the Trustee and on its behalf; provided, however, that the Lessee shall indemnify and hold the Trustee (in both its individual and fiduciary capacities) 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.

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

If any taxing authority shall assert in writing liability for any Taxes or propose an increase in the liability of any Indemnified Person for any such Taxes (such assertion or such proposed increase being hereinafter called a "Claim"), indemnification for which would be required under this § 6, the Indemnified Person will promptly notify the Lessee of such Claim in writing. If the Lessee delivers to such Indemnified Person written notice of its desire to contest such Claim within 30 days after receipt of notice from such Indemnified Person, such Claim will be contested in accordance with this paragraph, except to the extent such Claim represents amounts payable to the Builder or the Vendor under Article 6 of the CSA. The Trustee will permit the Lessee to contest such claims under Article 6 of the CSA in accordance with the rights of the Trustee thereunder. The Indemnified Person shall have the exclusive right to conduct the contest unless such is waived in writing, in which event the contest and all preparations therefor shall be the sole responsibility of the Lessee and, in either case, shall be conducted entirely at its expense. Such Indemnified Person will cooperate with any reasonable request made by the Lessee in connection therewith; provided, however, that such Indemnified Person may in its sole discretion determine in what court or other forum such contest will be conducted and whether such contest will proceed by payment of the Taxes in contemplation of a suit for refund, and such Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified Person in a manner satisfactory to such Indemnified Person for any liability or loss which such Indemnified Person may incur as a result of contesting the validity of any Claim and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may incur in connection with contesting such Claim (including fees and disbursements of counsel). If in any such contest the decision is made to pay the Taxes and sue for a refund,

the Lessee will advance to such Indemnified Person on an interest-free basis sufficient funds to pay the Taxes which are to be contested. Upon receipt by any Indemnified Person of a refund of any Taxes paid by the Lessee pursuant to this paragraph, the amount of such refund and any interest paid to such Indemnified Person with respect thereto (attributable to the period during which the Lessee shall have advanced funds as aforesaid) shall be paid to the Lessee forthwith upon receipt by such Indemnified Person so long as an Event of Default shall not be continuing.

The Lessee covenants and agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder.

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

§ 7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE; ECONOMIC OBSOLESCENCE

7.1. Definitions of Casualty Occurrence; Payments. In the event that any Unit of equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to § 14 or 17 hereof, or the Purchase Price of any Unit shall have been refunded by the Builder pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of one year during the term of this Lease or during any renewal term hereof (a "Casualty Occurrence"), the Lessee shall promptly and fully notify

the Trustee and the Vendor with respect thereto. On the semiannual rental payment date next succeeding a Casualty Occurrence (each such date being hereinafter called a "Casualty Payment Date"), the Lessee shall pay to the Trustee a sum equal to the Casualty Value (as defined in § 7.5 hereof) of any such Unit as of such Casualty Payment Date, plus the semiannual rental in respect of such Unit accrued as of such rental payment date; provided, however, that in the event of a Casualty Occurrence during the period any Unit is being returned pursuant to § 14 or 17 hereof, the Lessee shall make such payment to the Trustee on a date 30 days after such Casualty Occurrence. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Trustee shall be entitled to recover possession of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the term of this Lease, in which event the Lessee shall promptly and fully notify the Trustee with respect thereto and pay the Trustee, as the Casualty Value therefor, an amount equal to 20% of the Purchase Price of such Unit. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Trustee. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as agent for the Trustee, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Trustee. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty

Value, such Unit shall be returned by the Lessee to the Trustee in the manner provided in § 17 hereof.

7.2. Requisition. In the event of any requisition for use by the United States Government or by any other governmental entity of any Unit which does not constitute a Casualty Occurrence, all of the Lessee's obligations (including the obligation to pay rent therefor) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Trustee or the Lessee from the United States Government or from such other governmental entity for the use of such Unit during such requisition 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.

7.3. Lessee Agent for Disposal. The Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component of any such Unit, before and after expiration of the Lease, at the best price the Lessee can reasonably obtain on an "as is, where is" basis. Upon effecting any such dispostion, the Lessee shall promptly deliver to the Trustee a certificate stating the sale price obtained for such Unit or component thereof. Provided that the Lessee has previously paid the Casualty Value to the Trustee, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Trustee. 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 an amount equal to any payment made by the Builder to the Trustee in respect thereof under the CSA.

7.4. Payments After Expiration of Lease. If the date upon which the making of the payment by the Lessee in § 7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or the renewal term hereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.

7.5. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is to be made as aforesaid shall be an amount equal

to that percentage of the Purchase Price of such Unit as is set forth in Appendix B hereto opposite the rental payment date next succeeding the actual date of such Casualty Occurrence, or if there is no such rental payment date, the last rental payment date; but in no event shall such amount be less than the Casualty Value (as defined in Paragraph 7.3 of the CSA) as of such rental payment date.

7.6. No Release. Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.7. Insurance To Be Maintained. (1) The Lessee will at all times prior to the return of the Units to the Trustee (including, without limitation, during any storage period provided for in this Lease), at its own expense, cause to be carried and maintained (A) public liability insurance with respect to third party personal injury and property damage, and (B) property insurance in respect of the Units at the time subject hereto in amounts at least equal at all times to the aggregate Casualty Value of such Units as computed on the next succeeding semiannual rental payment date; provided, however, that the Lessee may, in the case of property insurance, self-insure such Units to the extent that such self-insurance is (x) consistent with prudent industry practice and, in any event, (y) in an amount (considered in relation to the then current value thereof) no greater than the amount of self-insurance maintained with respect to other similar equipment, if any, then owned or leased by the Lessee (considered in relation to the then current value of such similar equipment). All such public liability insurance and, except as otherwise provided in the foregoing sentence, all such property insurance in respect of the Units shall be carried in such amounts, for such risks, with such deductibles and with such insurance companies as shall be (I) reasonably satisfactory to the Trustee and the Vendor and, in any event, (II) consistent with prudent industry practice and at least comparable in amounts to the insurance coverage carried by, and against risks customarily insured against by the Lessee in respect of equipment owned or leased by the Lessee similar in nature to the Units. It is hereby agreed that the Lessee's current insurance coverage is satisfactory to the Trustee and the Vendor on the date hereof. The proceeds of any such property insurance as is

required hereunder shall be payable to the Vendor, the Trustee, the Owner and, so long as there is no Event of Default hereunder, the Lessee, as their respective interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not have been paid in full, and thereafter to the Trustee, the Owner and, so long as there is no Event of Default hereunder, the Lessee, as their respective interests may appear. Any policies of insurance required to be carried in accordance with this paragraph shall (i) require at least 30 days' prior notice in writing by the insurance carrier to the Trustee, the Owner and the Vendor as a prerequisite to the effectiveness, as against such parties, of any cancelation thereof or material change in coverage, (ii) name the Trustee, the Owner and the Vendor as additional named insureds as their respective interests may appear, (iii) waive any right to claim any premiums or commissions against the Owner, the Trustee and the Vendor and (iv) as to the Trustee, the Owner and the Vendor, be primary insurance. In the event such policies shall contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Trustee, the Owner and the Vendor in such policies, the insurance shall not require contributions from other policies held by the Trustee, the Owner or the Vendor, shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Trustee and the Vendor, respectively) and shall insure the Trustee, the Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Trustee and the Vendor, respectively). Prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter not less than 15 days prior to the expiration dates of the expiring policies carried pursuant to this § 7, the Lessee shall deliver to the Owner certificates issued by the insurer(s) for the insurance required to be maintained pursuant to this § 7 (such certificates or a letter from the Lessee's independent insurance broker to state that no representations or warranties have been made by the Lessee or the Guarantor with respect to such insurance); provided, however, that if the delivery of any certificate is delayed, the Lessee shall deliver an executed binder or letter from the Lessee's independent insurance broker with respect thereto and shall deliver such certificate upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Owner or the Trustee may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Owner or the Trustee, as the case may be, for the cost thereof together with interest on the amount

of the cost to the Owner or the Trustee of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in § 19 hereof.

7.8. Insurance Proceeds and Condemnation Payments. If the Trustee shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence or involved in a Termination (as defined in § 7.9 hereof), the Trustee shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value or the Termination Value (as defined in § 7.9 hereof), as the case may be, with respect to any Unit theretofore paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Trustee; provided, however, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value or the Termination Value, as the case may be, thereof, and accrued rentals in respect of such Units, to the Trustee. All insurance proceeds received by the Trustee (directly or from the Vendor) in respect of any Unit not suffering a Casualty Occurrence shall promptly be paid to the Lessee upon proof satisfactory to the Trustee that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so long as an Event of Default shall not be continuing.

7.9. Economic Obsolescence. In the event that, during the term of this Lease the Lessee shall, in the reasonable judgment of its Board of Directors (such judgment to be evidenced by a resolution of the Board of Directors of the Lessee, and to be certified by an officer of the Lessee and delivered to the Trustee), determine that all Units then subject to this Lease have become economically obsolete or surplus to continued use 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 Trustee and the Vendor, to terminate (a "Termination") this Lease (subject to the survival of the obligations described in § 4.1 hereof) as of any succeeding rental payment date specified in such notice (the termination date specified in such notice being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than April 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, (iii) on the Termination Date the Units shall be in the same condition as if being redelivered pursuant to § 14.1 hereof and

(iv) on the Termination Date the Lessee shall have complied with all of its obligations contained in this § 7.9 and the Trustee shall have paid to the Vendor a sum sufficient to prepay the CSA Indebtedness in accordance with Paragraph 7.2 of the CSA.

Unless the Trustee elects to retain such Units as provided in the last paragraph of this § 7.9, during the period from the 90th day after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of the Units, and the Lessee shall at least five business days prior to such Termination Date certify to the Trustee 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 purchase or lease the Units) submitting such bid. On the Termination Date the Trustee shall sell the Units for cash to the bidder who shall have submitted the highest bid prior to the Termination Date; provided that if such highest bid shall be less than the Termination Value, the Lessee may at its discretion direct that all such bids shall be rejected, in which case the Trustee shall reject such bids and no sale of the Units shall be completed on such Termination Date. The total sale price realized shall be retained by the Trustee.

On such Termination Date, (a) the Lessee shall pay to the Trustee (i) the excess, if any, of the Termination Value computed as of such date over the total sale price of the Units after the deduction of all expenses incurred by the Trustee in connection with such sale and (ii) the rental payment due on such Termination Date and (b) the Trustee shall pay to the Vendor a sum sufficient to prepay the CSA Indebtedness in accordance with Paragraph 7.2 of the CSA. The Termination Value as of the Termination Date on which payment is to be made shall be that percentage of the aggregate Purchase Price of the Units as is set forth in Appendix C hereto opposite such date; but in no event shall such amount be less than the Termination Value (as defined in Paragraph 7.4 of the CSA) as of such date.

If the Lessee shall have directed that all bids be rejected as provided for in the second paragraph of this § 7.9 or no sale shall occur on the date scheduled therefor as provided, this Lease shall continue in full

force and effect without change; provided, however, that the Lessee, on behalf of the Trustee, may attempt to sell the Units at some later date upon 180 days' prior written notice to the Trustee and following the procedure set forth above. Upon termination of the Lease, the Lessee shall return the Units to the Trustee pursuant to § 17 hereof.

In the event of any such sale and the receipt by the Trustee of the amounts above described and the receipt by the Vendor from the Trustee of a sum sufficient to prepay the CSA Indebtedness with respect to such Units in accordance with Paragraph 7.2 of the CSA, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Units on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Trustee and the Owner shall have the right but shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale pursuant to this § 7.9 other than to transfer or to cause to be transferred all of the Trustee's right, title and interest in and to such Units to the purchaser named in the highest bid. Any sale pursuant to this § 7.9 shall be free and clear of all of the Lessee's rights to, and the Vendor's rights in, such Units, but otherwise shall be made without warranties other than against the Trustee's acts.

If the Lessee shall exercise its option to terminate this Lease under this § 7.9, the Trustee may, notwithstanding such election by the Lessee, by written notice to the Lessee given not more than 90 days after the termination notice is given to the Trustee and the Vendor, elect to retain the Units, in which case the Trustee shall pay the Vendor a sum sufficient to prepay the CSA Indebtedness in accordance with Paragraph 7.2 of the CSA and the Lessee shall not be obligated to pay the Termination Value thereof to the Trustee; provided, however, that the Trustee may not make such election unless it can demonstrate, to the reasonable satisfaction of the Vendor within said 90-day notice period, that it has made firm arrangements with a creditworthy entity to cause such CSA Indebtedness to be prepaid in accordance with Paragraph 7.2 of the CSA on the Termination Date; and provided further, however, that this Lease shall not terminate unless the CSA Indebtedness in respect thereof is prepaid on the Termination Date pursuant to Article 7 of the CSA. In the event the Trustee shall so elect to retain such Units and shall have prepaid such CSA

Indebtedness pursuant to Article 7 of the CSA, the Lessee shall assemble and deliver such Units to the Trustee in accordance with the provisions of § 17 hereof.

§ 8. REPORTS AND INSPECTIONS

On or before April 30 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Owner and the Vendor an accurate statement (a) setting forth as of the preceding December 31, the total number, description and identification numbers of all Units then leased hereunder and covered by the CSA, the total number, description and identification 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 repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Trustee or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5.1 hereof and by the CSA have been preserved or replaced, (c) setting forth as of the preceding December 31, the total number, description and identification numbers of all Units then leased hereunder and covered by the CSA which are subleased to another user or users and the name and address of such sublessee or sublessees and (d) further stating that the Lessee is in compliance under the Lease and has performed or has caused to be performed the required maintenance of the Units and that there has occurred during such period no Event of Default and no event which with the lapse of time or notice or both would constitute an Event of Default. In the event that the Lessee has, at any time during the period covered by such statement, been self-insuring the Units to any extent, such statement shall state the extent of such self-insurance and shall certify that the requirements of Section 7.7 with respect to self-insurance have at all such times been met. The Trustee, the Vendor and the Owner shall each have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Trustee, the Vendor or the Owner may request during the continuance of this Lease.

§ 9. DISCLAIMER OF WARRANTIES

NEITHER THE TRUSTEE NOR THE OWNER MAKES, HAS

MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE TRUSTEE NOR THE OWNER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS, NOR 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 Trustee and the Lessee, are to be borne by the Lessee except that the Trustee warrants that it has received such title as was conveyed to the Trustee by the Builder and that such title has not been encumbered except as otherwise contemplated by the Documents (as defined in the sixth paragraph of Paragraph 2 of the Participation Agreement); but the Trustee 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 Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Trustee may have against the Builder under the provisions of Items 3 and 4 of Annex A of the CSA and against the manufacturer, supplier and/or installer of any accessions, additions, replacements and/or alterations to any of the Units; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Trustee may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Trustee and the Owner shall have no 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, including strict liability in tort; (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 Trustee 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 Trustee, the Owner or the Vendor based on any of the foregoing matters.

§ 10. LAWS AND RULES

10.1. Compliance. The Lessee agrees, for the benefit of the Trustee and the Vendor, to comply in all material respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units (all such laws and rules to such extent hereinafter called "Applicable Laws"), and in the event that such Applicable Laws require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such Applicable Laws in any reasonable manner which does not, in the opinion of the Trustee or the Vendor, adversely affect the property or rights of the Trustee or the Vendor under this Lease or under the CSA.

10.2. Reports by Trustee. The Lessee agrees to prepare and deliver to the Trustee and the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Trustee and the Vendor) any and all reports (other than income tax returns) to be filed by the Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Trustee of the Units or the security interest of the Vendor therein or the leasing thereof to the Lessee. To the extent the Trustee has knowledge of, or receives any written notice with respect to the requirements of any such report, the Trustee will promptly notify the Lessee thereof.

§ 11. MAINTENANCE

11.1. Units in Good Operating Order. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, in accordance with the interchange rules of the American Association of Railroads and in the same condition as as other similar equipment, if any, owned or leased by the Lessee.

11.2. Additions and Accessions. (1) The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value or utility of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are described in § 11.2(3) hereof.

(2) The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units as are in accordance with the requirements set forth in Rev. Proc. 79-48, 1979-39 I.R.B. 27, and which, in addition, do not in the opinion of the Owner and the Vendor (i) materially alter the structure or weight of such Units, (ii) materially change the maintenance requirements with respect to such Units, (iii) adversely affect the resale value of such Units or (iv) materially change the use or purpose of such Units.

(3) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units, (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body or (v) pursuant to § 11.2(2) hereof, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Trustee and the Vendor as their respective interests may appear in the Unit itself.

§ 12. INDEMNIFICATION

12.1. Indemnified Persons; Indemnified Matters. The Lessee shall pay, and shall protect, indemnify and hold the Trustee (in both its individual and fiduciary capacities) the Owner, the Vendor and any assignee thereof, the Investors and their respective successors, assigns, agents

and servants (the "Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements and expenses (including without limitation attorneys' fees and expenses of any Indemnified Person) relating thereto) in any way relating to or arising, or alleged to arise out of this Lease, the CSA or the Units (except any such causes of action, suits, penalties, claims, demands or judgments resulting from any acts done by such Indemnified Person in violation of the covenants, terms or provisions of the Lease or the CSA), including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent and other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof except that to the extent any such injury, death, damage or loss arises from the gross negligence or wilful misconduct of the Indemnified Person, the Lessee shall not be liable to such Indemnified Person hereunder; (vi) any violation, or alleged violation, of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except that to the extent any such violation arises from the gross negligence or wilful misconduct of an Indemnified Person, the Lessee shall not be liable to such Indemnified Person hereunder; or (vii) any claim arising out of any of the Trustee's obligations under the Lease Assignment or the Vendor's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement except to the extent such claim arises from the gross negligence or wilful misconduct of the Trustee (all of which matters hereinabove set forth in this Article 12

being hereinafter called the "Indemnified Matters"). The Lessee shall be obligated under this § 12.1, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may, at the Lessee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person (which approval shall not unreasonably be withheld) and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding; provided that the Lessee shall not be liable for any settlement of any such action, suit or proceeding effected without its consent. In the event the Lessee is required to make any indemnification payment under this § 12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Trustee each agrees to give each other promptly upon obtaining knowledge (knowledge on the part of the Trustee being actual knowledge of an officer or employee in its Corporate Trust Department) thereof written notice of any claim or liability hereby indemnified against, but the giving of such notice shall not be a condition to the Lessee's obligations under this § 12.1 except to the extent the Lessee has been disadvantaged as a result of any failure to give such notice. Upon the payment in full of any indemnities as contained in this § 12 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the Indemnified Matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 12.1 shall be paid over to the Lessee to

the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matters. Nothing in this § 12.1 shall constitute a guarantee by the Lessee of the CSA Indebtedness of the Trustee under the CSA or a guarantee of the residual value of any Unit.

12.2. Indemnification of Builder. The Lessee further agrees to indemnify, protect and hold harmless the Builder as a third-party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

§ 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal hereof, 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 16 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 the Units, or any thereof and the Lessee shall, for more than 30 days after demand in writing by the Trustee and the Vendor, fail to secure a reassignment or retransfer to the Trustee and the Vendor of such Lease, interest or right;

(C) the Lessee shall fail to maintain insurance at the time in force required to be maintained pursuant to § 7.7(1)(A), unless the Lessee shall be diligently, to the reasonable satisfaction of the Trustee and the Vendor, attempting to reinstate or otherwise obtain such insurance;

(D) the Lessee shall, for more than 30 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Lease, the Participation Agreement, the Consent or, after the CSA Indebtedness shall have been discharged and satisfied in full, the Indemnity Agreement, on its part to be kept and performed or to make provision satisfactory to the Trustee and the Vendor for such compliance, unless the Lessee shall be diligently, to the reasonable satisfaction of the Trustee and the Vendor, attempting to comply with any such covenant, agreement, term or provision;

(E) any representation or warranty made by the Lessee herein or by the Lessee or the Guarantor in the Participation Agreement or in any certificate or statement furnished to the Trustee, the Vendor or the Owner pursuant to or in connection with any such agreements proves incorrect or untrue in any material respect as of the date of issuance or making thereof; provided, however, that if any such incorrectness is susceptible of remedy, it shall not constitute an Event of Default if the Lessee or the Guarantor shall be diligently, to the reasonable satisfaction of the Trustee and the Vendor, attempting to remedy such incorrectness;

(F) any proceeding shall be commenced by or against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee or the Guarantor under this Lease, the Participation Agreement or the Consent or of the Guarantor under the Guarantee under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless such

proceeding 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 or the Guarantor under this Lease, under the Participation Agreement or under the Consent or of the Guarantor under the Guarantee, as the case may be, shall not be and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or the Guarantor or for the property of the Lessee or the Guarantor in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced;

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

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

(b) by notice in writing to the Lessee terminate this Lease whereupon all rights of the Lessee to the use of such 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 Trustee may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized to so permit, where any of such Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, 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; but the Trustee 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 from and including the date the rental period begins to and including the termination date and the denominator is the total number of days in such full rental period) in respect of such Units and also to recover forthwith from the Lessee as liquidated damages for loss of a bargain and not as a penalty whichever of the following amounts the Owner in its sole discretion, shall specify: (i) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals 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, such present value to be computed on the basis of a 12.75% per annum discount with respect to the rentals which were originally due to and including October 1, 1994, and a 5.77% per annum discount with respect to the remaining rentals, in each case compounded semiannually from the respective dates upon which such rentals would have been payable hereunder had this Lease not been terminated over (A) the then present value of the rental which the Trustee reasonably estimates to be obtainable for such Unit during such period, such present value to be computed on the basis of a 12.75% per annum discount with respect to the rentals which were originally due to and including October 1, 1994, and a 5.77% per annum discount with respect to the remaining rentals, in each case compounded semiannually from the respective dates upon which such rentals would have been payable hereunder had this Lease not been terminated or, (B) if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount, with respect to each Unit, equal to the excess, if any, of the Casualty Value of such Unit as of the semiannual rental payment date on or next preceding the date of termination over the amount the Trustee reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Trustee shall have sold any Unit, the Trustee, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with

respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Trustee and the Lessee shall pay to the Trustee 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 semiannual rental payment date on or next preceding the date of termination over the net proceeds of such sale.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Trustee 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.

13.3. Failure To Exercise Rights Is Not Waiver. The failure of the Trustee 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.

13.4. Notice of Event of Default. The Lessee agrees to furnish the Trustee, the Owner 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. For the purposes of this § 13.4, 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.

§ 14. RETURN OF UNITS UPON DEFAULT

14.1. Return of Units. If this Lease shall terminate in respect of any of the Units pursuant to § 13 hereof or pursuant to Article 16 of the CSA, the Lessee shall forthwith deliver possession of such Units to the Trustee. Each Unit so delivered shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear in the service of hauling Western coal excepted, (ii) meet the standards then in effect under the interchange rules of the Association of American Railroads (the Lessee having certified that to the best knowledge of the certifying officer of the Lessee the Units do not have any basic structural weakness or damage which would cause an unsafe operating condition) and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom at the Lessee's expense any such device not so considered an accession. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) 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 to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks as the Trustee reasonably may designate;

(b) cause such Units to be stored on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Trustee; and

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

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 Trustee 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, maintain and keep the Units in good order and repair and will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Trustee and, if received by the Lessee, shall be promptly turned over to the Trustee. If 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 Trustee for each day thereafter an amount equal to the amount, if any, by which (x) the Purchase Price of such Unit multiplied by 0.026456% exceeds (y) the actual earnings received by the Trustee on such Unit for each such day.

14.2. Trustee Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 14, the Lessee hereby irrevocably appoints the Trustee 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 Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit at the time.

§ 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Trustee upon prior written consent of the Lessee, which consent shall not be unreasonably withheld. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units. (1) So long as (i) no Event of Default exists hereunder, (ii) the Lessee and the Guarantor are complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the CSA. Without the prior written consent of the Trustee and the Vendor, the Lessee shall not assign or transfer its lease-

hold interest under this Lease in the Units or any of them except as provided in paragraph (2) below of of this § 15.2; and the Lessee shall not, without the prior written consent (not to be unreasonably withheld) of the Trustee 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 by the provisions of paragraph (2) of this § 15.2. 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 Trustee or the Vendor or resulting from claims against the Trustee or the Vendor not related to the transactions contemplated by the Participation Agreement or any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Trustee and the Vendor) upon or with respect to any Unit, including any accession thereto, or the interest of the Trustee, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) So long as (i) no Event of Default exists hereunder, (ii) the Lessee and the Guarantor are complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and 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 of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to any or all of the Units or to sublease any or all of the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease, use or permit the assignment, sublease or use of any Unit outside the United States of America except to the extent that such assignment, sublease or use is de minimis, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of Section 48 of the Internal Revenue Code of 1954, as amended. Subject to Section 14.1 hereof, the Lessee may receive and retain compensation for the use of any of the Units from rail-

roads or other entities so using such Units. Any sublease permitted by this paragraph may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be expressly subordinate to all the provisions of this Lease, including, without limitation, the rights and remedies of the Vendor under the CSA and the Trustee under this Lease in respect of the Units covered by such sublease; that the Lessee remain fully liable under this Lease in respect of the Units covered by such sublease; and that the Guarantor shall remain fully liable under the Guarantee with respect of the Units covered by such sublease.

15.3. Transfers by Lessee Through Merger, Acquisition or Consolidation. Nothing in this § 15 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 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) 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.

§ 16. RENEWAL OPTIONS AND DUTY TO FIRST OFFER

16.1 Renewal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Owner not less than 270 days prior to the end of the original term of this Lease in respect of the Units still subject to this Lease, elect to extend such original term in respect of all but not less than all the Units then covered by this Lease for a period (such period being hereinafter called the First Renewal Term) as determined below commencing on the scheduled expiration of such original term, at a rate equal to 50% of the semiannual rental payable pursuant to § 3.1 hereof with respect to the Units then covered by this Lease, payable, in arrears, in semiannual payments on the month and day (such dates being hereinafter called the Renewal Payment Dates) such rentals

were payable for the Units in each year of the original term of this Lease. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may also by written notice delivered to the Owner (i) not less than 180 days prior to the end of the First Renewal Term or, (ii) if there is no First Renewal Term, not more than 10 days after such determination, as provided below, in respect of the Units still subject to this Lease, elect to extend such First Renewal Term or the original term of this Lease in respect of all but not less than all the Units then covered by this Lease for a period equal to the then estimated remaining useful life of the Units (such period being hereinafter called the Additional Renewal Term and the First Renewal Term and the Additional Renewal Term being hereinafter collectively referred to as the Renewal Terms) as determined below commencing on the scheduled expiration of such First Renewal Term or such original term, at a rate equal to the then Fair Market Rental (as hereinafter defined) with respect to the Units then covered by this Lease, payable, in arrears, in semiannual payments on the Renewal Payment Dates.

The Owner and the Lessee shall determine by mutual agreement or, failing such agreement, by arbitration in the manner provided in § 16.3 hereof, the period of the Additional Renewal Term, Fair Market Value and Fair Market Rental. The First Renewal Term shall be determined by an independent qualified appraiser mutually selected and agreed to by the Owner and the Lessee or, failing to so agree, by arbitration in the manner provided in § 16.3 hereof, as the longest period commencing on the scheduled expiration of the original term of this Lease and ending on a Renewal Payment Date at which date the estimated remaining useful life of the Units then covered by this Lease will be at least 20% of the total estimated useful life of such Units from the beginning of the original term of this Lease (such total estimated useful life being equal to the period during which the Units were and are expected to be economically useable by one or more users with normal repairs, overhauls and maintenance, for the purpose for which they were intended at the inception of this Lease, without limitation by the term of this Lease). There shall be no First Renewal Term if the period as determined by the preceding sentence is less than one year. If the First Renewal Term exceeds three years, it shall be divided into optional periods of three years each plus a final optional period equal to the remaining First Renewal Term. The Lessee may terminate the First Renewal Term, without

penalty, at the expiration of each such optional period upon 180 days prior written notice to the Trustee.

16.2. Duty to First Offer. If upon the termination of this Lease (other than its termination as provided in §§ 7, 13 and 16.1 hereof) or upon expiration of the last Renewal Term, the Trustee, acting on behalf of the Owner, decides to sell any one or more Units, the Trustee shall, prior to the expiration of such term, give notice to the Lessee of its intention to sell such Units ("Notice of Sale"). The Lessee shall have the right, exercisable as hereinafter provided, to purchase for cash all (but not less than all) of the Units which the Trustee proposes to sell, at a price equal to the then Fair Market Value of such Units. If the Lessee desires to purchase such Units, the Lessee shall indicate its intent to negotiate the purchase of such Units by giving notice thereof to the Trustee within 30 days following Lessee's receipt of the Notice of Sale, whereupon the Lessee and the Trustee shall proceed with diligence and in good faith to determine by mutual agreement the Fair Market Value of such Units. If Lessee and Trustee are unable to agree upon the Fair Market Value of such Units within 50 days following Lessee's receipt of the Notice of Sale, then Lessee may, at its sole option, by notice to the Trustee within said 50-day period, require determination of the Fair Market Value of such Units by arbitration in the manner set forth in § 16.3 hereof, whereupon the Lessee and the Trustee shall each be obligated to effect the sale of such Units to the Lessee at such Fair Market Value.

Upon determination of the Fair Market Value of such Units (whether by mutual agreement or arbitration), the sale of such Units to the Lessee shall be effected at a time mutually agreeable to Lessee and the Trustee on or before the later of (i) 15 days following such date of determination of the Fair Market Value, or (ii) upon expiration of such term or renewal term of this Lease, as the case may be. In the event Lessee shall (a) fail to give notice of its intent to negotiate purchase of such Units within the 30-day period specified above, or (b) fail to give notice of its election to determine the Fair Market Value by arbitration within the specified 50-day period in the event Lessee and Trustee are unable to agree upon the Fair Market Value, then Lessee shall have no obligation to purchase such Units and, except as hereinafter provided, the Trustee shall have no obligation to sell such Units.

If Lessee shall not purchase such Units as provided above, Lessee may, at any time within 50 days follow-

ing Lessee's receipt of the Notice of Sale, give the Trustee notice of an offer for which, and a period of time (which shall not be greater than 180 days) during which, Lessee is willing to purchase such Units and the Trustee may accept such offer at any time during such term by notice to the Lessee. During the period of such offer, the Trustee shall not disclose the amount and terms of such offer to any third party and the Trustee shall not sell such Units to any third party for an amount less than the amount and upon terms less favorable than the terms so offered by the Lessee. Following the expiration of the Lessee's rights of purchase as herein set forth, the Trustee may sell such Units as it may see fit.

16.3. Determinations. (1) The Fair Market Rental of any Unit or Units shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use or storage shall not be a deduction from such rental.

(2) The Fair Market Value of any Unit or Units shall be determined on the basis of, and shall be equal in amount to, the purchase price which would obtain in an arm's-length transaction between an informed and willing purchaser and an informed and willing seller under no compulsion to sell and, in such determination, cost of removal from the location of current use or storage shall not be a deduction from such purchase price.

(3) If the Owner and the Lessee are unable to agree, within a period of 50 days, upon a selection of an independent appraiser for a determination of the period of the First Renewal Term or a determination of the period of the Additional Renewal Term, Fair Market Value or Fair Market Rental, such determination shall be made in accordance with the applicable definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given

appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to make his or their determination within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. This appraisal procedure shall be the exclusive means of making such determinations and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee and the Owner in equal shares.

§ 17. RETURN OF UNITS UPON EXPIRATION OF TERM OR TERMINATION

As soon as practicable on or after the expiration of the original term of this Lease or any of the Renewal Terms with respect to any Unit or on or after a Termination of this Lease with respect to any Unit pursuant to §§ 7.9 and 16.1 hereof, and in any event not later than 90 days thereafter, the Lessee will, at its own cost and expense, deliver possession of such Unit to the Trustee at such location or locations on any of the current Burlington Northern Inc. routes or The Atchison, Topeka and Santa Fe Railway Company routes within the continental United States of America and within 1,000 miles of Houston, Texas, as the Trustee may designate, or, in the absence of such designation, as the Lessee may select, or at the request of the Trustee, permit the Trustee to store such Unit on such storage tracks as the Lessee may select for a period not exceeding three months (or, in the case of a Termination, six months) and transport the same upon disposition of such Unit, at any time within such three-month or six-month period, to any such location or locations, or to any

connecting carrier for shipment, all as directed by the Trustee, the movement and storage of such Units to be at the expense and risk of the Lessee; provided, however, that the Units shall be returned to the Trustee, upon such expiration or Termination, in not more than three groups of Units (the number of such groups and the number of Units in each such group to be designated by the Trustee). During any such storage period the Lessee will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit or Units, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or intentional tortious act 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 Trustee or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Trustee pursuant to this § 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear in the service of hauling Western coal excepted, (ii) meet the standards then in effect under the interchange rules of the Association of American Railroads (the Lessee having certified that to the best knowledge of the certifying officer of the Lessee the Units do not have any basic structural weakness or damage which would cause an unsafe operating condition) and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee shall maintain the Units in such manner as owners or lessees of similar units of railroad equipment normally maintain such units owned or leased by them in similar storage circumstances. 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 Trustee 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 expiration of this Lease shall belong to the Trustee and, if received by the Lessee, shall be promptly turned over to the Trustee. If any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such expiration, the Lessee shall in addition, pay to the Trustee for each day thereafter an

amount equal to the amount, if any, by which (x) the Purchase Price of such Unit multiplied by 0.026456% exceeds (y) the actual earnings received by the Trustee on such Unit for each such day.

§ 18. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed 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 Trustee under the CSA. The Lessee in addition 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 Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Trustee evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel satisfactory to the Vendor and the Trustee confirming that such filing, registering, depositing or recording has been validly effected. This Lease, the CSA, the CSA Assignment and the Lease Assignment shall be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery and acceptance hereunder of any Unit.

§ 19. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to interest at 13.75% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 20. TRUSTEE'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Trustee may upon

notice to the Lessee perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Trustee incurred in connection with such performance or compliance, together with interest on such amount at 13.75% per annum shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Trustee shall be deemed a waiver of the rights and remedies of the Trustee or any assignee of the Trustee against the Lessee hereunder.

§ 21. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be mailed, registered or certified mail, postage prepaid, return receipt requested, shall be effective on the date of receipt as shown on the return receipt, and shall be addressed as follows:

(a) if to the Trustee, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department, with copies to Wells Fargo Equipment Leasing Corporation, 425 California Street, San Francisco, California 94104, Attention of Contract Administration; and

(b) if to the Lessee, at 611 Walker Street, Houston, Texas 77002, (P. O. Box 539, 77001) Attention of Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 22. SEVERABILITY

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

§ 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement, this

Lease exclusively and completely states the rights of the Trustee and the Lessee with respect to the leasing of the Units and supersedes 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 Trustee and the Lessee.

§ 24. THIRD-PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owner, the Vendor, the Builder and the permitted successors and assigns of any such person or party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

§ 25. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, 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.

§ 26. LAW GOVERNING

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

§ 27. IMMUNITIES; NO RECOURSE

(1) No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or of the Owner, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any

assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

(2) It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties and agreements herein made on the part of the financial institution acting as Trustee hereunder are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution, including its successors and assigns, or for the purpose or with the intention of binding said financial institution personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the Trustee solely in the exercise of the powers expressly conferred upon the Trustee as trustee under the Trust Agreement; and, except for gross negligence or wilful misconduct, that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee or the Owner on account of any representation, warranty or agreement herein of the Trustee, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that it is expressly understood that the Lessee is not hereby waiving its right to proceed in a separate action against the Owner on account of any breach of any representation, warranty or agreement herein of the Owner.

§ 28. AGREEMENTS FOR BENEFIT OF OWNER'S AND TRUSTEE'S ASSIGNS

All rights of the Trustee hereunder (including, but not limited to, its rights under §§ 6, 7, 12, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Owner and any of the Owner's assigns under the Trust Agreement and the Trustee's assigns (including the Vendor). Upon the effectiveness of any such assignment, such successor Owner or successor Trustee, as the case may be, shall give notice thereof to the Lessee.

§ 29. TERM TRUSTEE

Whenever the term Trustee is used in this Lease it shall apply and refer to the Trustee and any assignee of the Trustee (including, so long as any CSA Indebtedness under the CSA or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Vendor).

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

UTILITY FUELS, INC.,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Secretary

THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity, but solely as Trustee,

by

_____
Authorized Officer

[Seal]

Attest:

_____
Authorized Officer

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

On this day of October 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of UTILITY FUELS, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

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

On this day of October 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST 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 acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

APPENDIX A TO LEASE

Type	AAR Mechanical Designation	Builder's Specifications	Builder's Plant	Quantity†	Lessee's Identification Numbers (Each Set of Which Is Inclusive)†	Estimated Unit Price*	Estimated Total Price†*	Estimated Time and Place of Delivery
105-ton 4240 cu. ft. gondola coal car	GTS	Per Purchase Order UFI-00108 dated August 3, 1979	St. Louis, Missouri	610	13001-13110 14001-14110 15001-15110 16001-16170 17001-17110	$42,260	$25,778,600	Oct.-Dec., 1980, F.O.B. Builder's plant with shipment to Jacobs Junction, Wyoming, or Spring Creek Mine, Montana.

† This Appendix A sets forth the description of the units of Equipment which are scheduled for delivery both under this Lease of Railroad Equipment (A) (the "Lease-(A)") and under a Lease of Railroad Equipment dated as of October 1, 1980, between the Lessee and another lessor, U B Leasing, Inc. (the "Lease-(B)"), under which deliveries cannot be accepted after December 31, 1980. It is expected that some of these units of Equipment will be delivered in time for acceptance under Lease-(B) and that an equal number of these units will be delivered in time for acceptance hereunder. After delivery of all the units of Equipment covered by both Leases, this Appendix A will be appropriately amended to describe only those units of Equipment covered by this Lease-(A).

* Includes prepaid freight to Jacobs Junction, Wyoming, or Spring Creek Mine, Montana, as the case may be.

APPENDIX B TO LEASE

Casualty Values

Casualty Payment Dates	Percentage of Purchase Price*
April 1, 1981 and before	104.3943%
October 1, 1981	105.1163
April 1, 1982	105.2976
October 1, 1982	105.7004
April 1, 1983	105.9225
October 1, 1983	105.9050
April 1, 1984	98.8694
October 1, 1984	98.1335
April 1, 1985	97.4171
October 1, 1985	96.4886
April 1, 1986	88.5562
October 1, 1986	87.2134
April 1, 1987	85.6615
October 1, 1987	83.9352
April 1, 1988	75.0212
October 1, 1988	72.9857
April 1, 1989	70.7867
October 1, 1989	68.4486
April 1, 1990	65.9642
October 1, 1990	63.3665
April 1, 1991	60.6421
October 1, 1991	57.5832
April 1, 1992	54.6702
October 1, 1992	51.7048
April 1, 1993	48.6602
October 1, 1993	45.5867
April 1, 1994	42.4502
October 1, 1994	39.2979
April 1, 1995	35.7714
October 1, 1995	32.3717
April 1, 1996	28.8153
October 1, 1996	25.1829
April 1, 1997	20.0000

* As defined in Paragraph 4.1 of the CSA.

APPENDIX C TO LEASE

Termination Values

Termination Dates	Percentage of Purchase Price*
April 1, 1981 and before	104.3943%
October 1, 1981	105.1163
April 1, 1982	105.2976
October 1, 1982	105.7004
April 1, 1983	105.9225
October 1, 1983	105.9050
April 1, 1984	98.8694
October 1, 1984	98.1335
April 1, 1985	97.4171
October 1, 1985	96.4886
April 1, 1986	88.5562
October 1, 1986	87.2134
April 1, 1987	85.6615
October 1, 1987	83.9352
April 1, 1988	75.0212
October 1, 1988	72.9857
April 1, 1989	70.7867
October 1, 1989	68.4486
April 1, 1990	65.9642
October 1, 1990	63.3665
April 1, 1991	60.6421
October 1, 1991	57.5832
April 1, 1992	54.6702
October 1, 1992	51.7048
April 1, 1993	48.6602
October 1, 1993	45.5867
April 1, 1994	42.4502
October 1, 1994	39.2979
April 1, 1995	35.7714
October 1, 1995	32.3717
April 1, 1996	28.8153
October 1, 1996	25.1829
April 1, 1997	20.0000

* As defined in Paragraph 4.1 of the CSA.

[CS&M Ref. 2483-135]

ANNEX D
to
Conditional Sale Agreement

ASSIGNMENT OF LEASE AND AGREEMENT dated as of October 1, 1980 (this "Assignment"), by and between THE CONNECTICUT BANK AND TRUST COMPANY, acting solely in its capacity as Trustee (the "Trustee") under a Trust Agreement dated as of the date hereof with the Owner named therein (the "Trust Agreement"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof.

WHEREAS the Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with ACF INDUSTRIES, INCORPORATED (the "Builder"), providing for the sale to the Trustee of such units of railroad equipment (the "Units") described in the Annexes thereto as are accepted by the Trustee thereunder;

WHEREAS the Trustee and UTILITY FUELS, INC. (the "Lessee"), have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the leasing by the Trustee to the Lessee of the Units;

WHEREAS Houston Industries Incorporated (the "Guarantor") has executed and delivered a Guarantee dated as of the date hereof (the "Guarantee") pursuant to which the Guarantor has guaranteed unconditionally the payment by the Lessee of all its obligations under the Lease; and

WHEREAS, in order to provide security for the obligations of the Trustee under the CSA and as an inducement to the Vendor to invest in the CSA Indebtedness (as defined in Paragraph 4.3(b) of the CSA), the Trustee agrees to assign for security purposes its rights in, to and under the Lease and the Guarantee to the Vendor;

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

1. The Trustee hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Trustee under the CSA, all the Trustee's right, title and interest, powers, privileges and other benefits under (i) the Lease (except for the Trustee's and the Owner's rights under §§ 6, 12 and 20 of the Lease), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Trustee from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise, and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Trustee is or may become entitled to do under the Lease, and (ii) the Guarantee (except for the Trustee's rights under the second sentence of the Guarantee and except to the extent the Guarantee relates to §§ 6, 12 and 20 of the Lease), including without limitation all amounts paid or payable to the Trustee thereunder and all rights of the Trustee to enforce payment of any amounts thereunder (except for amounts payable under the second sentence thereof and except for amounts payable under the Guarantee to the extent the Guarantee relates to the Lessee's obligations under §§ 6, 12 and 20 of the Lease) or performance of any duty, agreement, covenant or obligation thereunder. (Moneys paid or payable to or receivable by the Trustee under the Lease (except for moneys paid or payable to or receivable by the Trustee or the Owner with respect to their individual indemnities pursuant to §§ 6 and 12 of the Lease and pursuant to § 20 of the Lease) or the Guarantee (except pursuant to the second sentence of the Guarantee and except to the extent the Guarantee relates to §§ 6, 12 and 20 of the Lease) are hereinafter called collectively the "Payments.") In furtherance of the foregoing assignment, the Trustee hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Trustee is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Trustee pursuant to the Lease or by the Guarantor pursuant to the Guarantee. To

the extent received, the Vendor will apply such Payments to satisfy the obligations of the Trustee under the CSA, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Owner on the same date such Payment is applied to satisfy such obligations of the Trustee, by check mailed to the Trustee on such date or, upon written request of the Trustee, by bank wire to the Trustee at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Trustee. If the Vendor shall not receive any rental payment under § 3.1 of the Lease when due, the Vendor shall promptly notify the Trustee, the Owner and the Lessee at their addresses set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Trustee shall not affect the obligations of the Trustee hereunder or under the CSA.

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

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

4. The Trustee does hereby constitute the Vendor the Trustee's true and lawful attorney, irrevocably, with full power (in the name of the Trustee, or otherwise), to ask, require, demand, receive, compound and

give acquittance for any and all Payments due and to become due under or arising out of the Lease or the Guarantee to which the Trustee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease and by the Guarantor with all the terms and provisions of the Guarantee, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Trustee under the CSA, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease and the Guarantee shall revert to the Trustee without further act or deed, but the Vendor shall execute and deliver such documents as the Trustee may reasonably request in order to confirm, or make clear upon the public record, such termination and/or reversion. Promptly following such full discharge and satisfaction, the Vendor agrees that it will advise the Lessee in writing that all sums due from the Trustee under the CSA have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Vendor.

6. The Trustee will, from time to time, execute, acknowledge and deliver any and all further instruments reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder. The Vendor will give written notice to the Trustee and the Lessee of any such assignment.

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

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

9. The Trustee shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor.

10. The Vendor hereby agrees with the Trustee that the Vendor will not, so long as no event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Trustee to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the CSA, the Trustee may, so long as no event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges and remedies arising out of § 13.1(a) of the Lease; provided, however, that the Trustee shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of § 13.1(b) of the Lease.

11. It is expressly understood and agreed by and between the parties hereto, anything in this Agreement to the contrary notwithstanding, that each and all of the representations, warranties and agreements in this Agreement made on the part of the financial institution acting as Trustee hereunder are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution, or for the purpose or with the intention of binding said financial institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the said financial institution solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the said financial institution or the Owner on account of any representation, warranty or agreement herein of the Trustee or the Owner either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for the satisfaction of the same.

This Assignment shall be effective upon delivery

of fully executed counterparts hereof to the Trustee at its offices in Hartford, Connecticut.

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

THE CONNECTICUT BANK AND TRUST COMPANY, as Trustee as aforesaid,

by

_____
Authorized Officer

[Seal]

Attest:

_____
Authorized Officer

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

by

_____
Assistant Vice President

[Corporate Seal]

Attest:

_____
Corporate Trust Officer

STATE OF CONNECTICUT,)
) ss.:
CITY OF HARTFORD,)

On this day of 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an of THE CONNECTICUT BANK AND TRUST COMPANY, 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.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND,)
) ss.:
CITY OF BALTIMORE,)

On this day of 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the 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.

Notary Public

[Notarial Seal]

My Commission expires

CONSENT AND AGREEMENT

The undersigned, UTILITY FUELS, INC., a Texas corporation (the "Lessee"), the lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment") and HOUSTON INDUSTRIES INCORPORATED, a Texas corporation (the "Guarantor"), the guarantor pursuant to the guarantee (the "Guarantee") referred to in the Lease Assignment, hereby (a) acknowledge receipt of a copy of the Lease Assignment and (b) consent to all the terms and conditions of the Lease Assignment and agree that:

(1) in the case of the Lessee, it will pay all rentals, casualty payments, liquidated damages, indemnities (except any amounts of indemnity payable to the Owner and/or Trustee in their individual capacity pursuant to §§ 6, 12 and 20 of the Lease) other moneys provided for in the Lease due and to become due under the Lease, and, in the case of the Guarantor, it will pay all amounts payable under the Guarantee (except amounts payable under the second sentence thereof and except for amounts payable under the Guarantee to the extent the Guarantee relates to the Lessee's obligations under §§ 6, 12 and 20 of the Lease), directly to Mercantile-Safe Deposit and Trust Company, as Agent (the "Vendor"), the assignee named in the Lease Assignment, by wire transfer to the Annapolis Banking and Trust Company, Main Street and Church Circle, Annapolis, Maryland, for credit to the Vendor's Account No. 52076-1, in the name of Mercantile-Safe Deposit and Trust Company, marked "RE: UTILITY-10/1/80", with advice to Mrs. K. M. Tollberg, Assistant Vice President, Mercantile-Safe Deposit and Trust Company, Two Hopkins Plaza (P. O. Box 2258), Baltimore, Maryland 21203 (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) except as otherwise contemplated by Paragraphs 1 and 10 of the Lease Assignment, the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease and by the Guarantor under the Guarantee as though the Vendor were named therein as the Trustee;

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

(4) neither the Lease nor the Guarantee shall, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee or the Guarantor, the taking or omission of which might result in an alteration or impairment of the Lease or the Guarantee or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement shall be construed in accordance with the laws of the State of Texas.

UTILITY FUELS, INC.,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Secretary

HOUSTON INDUSTRIES INCORPORATED,

by

_____
Vice President

[Corporate Seal]

Attest:

_____
Secretary