November 25, 1980

Interstate Commerce Commission
Washington,
D. C.

Dear Sir or Madam:

Enclosed for recordation under the provisions of 49 USC 11303(a) are the original and six counterpart copies of the following documents:

(1) Conditional Sale Agreement, dated as of October 1, 1980, between FMC Corporation (Vendor), and Exchange National Bank of Chicago, as trustee (Purchaser); Agreement and Assignment, dated as of October 1, 1980, between FMC Corporation (Assignor), and La Salle National Bank (Assignee).

(2) Railroad Equipment Lease, dated as of October 1, 1980, between Exchange National Bank of Chicago, as trustee (Lessor), and Chicago and North Western Transportation Company (Lessee); Assignment of Lease and Agreement, dated as of October 1, 1980, between Exchange National Bank of Chicago (Assignor), and La Salle National Bank (Assignee).

(3) Conditional Sale Agreement, dated as of October 2, 1980, between FMC Corporation (Vendor), and Exchange National Bank of Chicago, as trustee (Purchaser); Agreement and Assignment, dated as of October 2, 1980, between FMC Corporation (Assignor), and La Salle National Bank (Assignee).

(4) Railroad Equipment Lease, dated as of October 2, 1980, between Exchange National Bank of Chicago, as trustee (Lessor), and Chicago and North Western Transportation Company (Lessee); Assignment of Lease and Agreement, dated as of October 2, 1980, between Exchange National Bank of Chicago (Assignor), and La Salle National Bank (Assignee).

A general description of the railroad equipment covered by the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

The undersigned is the Lessor mentioned in the enclosed documents, and has knowledge of the matters set forth therein.

RECORDATION NO. 12450 Filed 1425
NOV 28 1980 -2 25 PM
INTERSTATE COMMERCE COMMISSION
12450A
12450B
12450C

Please return the original and six copies of the enclosed documents to Matthew A. Gabel, Csaplar and Bok, 235 Montgomery Street, Suite 450, San Francisco, California, 94104.

Also enclosed is a check in the amount of $240. covering the required recording fee.

Very truly yours,

EXCHANGE NATIONAL BANK OF
CHICAGO, as trustee

By _____

Its Vice President
Lessor as aforesaid

Enclosures

## SCHEDULE A

The documents identified in paragraphs (1) and (2) of the foregoing letter relate to 167 units of railroad equipment, manufactured by FMC Corporation, consisting of 4,700 cubic feet, 100-ton covered steel hopper cars. Identification Numbers: CNW 178,600 through 179,766. A.A.R. mechanical designation (car type code): L-153.

The documents identified as paragraph (3) and (4) of the foregoing letter relate to 333 units of railroad equipment, manufactured by FMC Corporation, consisting of 4,700 cubic feet, 100-ton covered steel hopper cars. Identification Numbers: CNW 179,767 through 179,099. A.A.R. mechanical designation (car-type code): L-153.

?

?

178,767 – in CSA

+ in Lease

# Interstate Commerce Commission

Washington, D.C. 20423

11/28/80

OFFICE OF THE SECRETARY

Matthew A. Gabel
Csaplar & Bok
235 Montgomery Street, Suite 450
San Francisco, Calif. 94104

Dear
Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/28/80 at 2:25pm, and assigned recordation number(s).

12449 & 12449-A, 12449-B & 12449-C
12450, 12450-A, 12450-B & 12450-C

Sincerely yours,

Agatha L. Mergenovich

Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

RECORDATION NO. 12450 Filed 1425
NOV 28 1980 -2 25 PM
INTERSTATE COMMERCE COMMISSION

# CONDITIONAL SALE AGREEMENT

between

FMC CORPORATION

and

EXCHANGE NATIONAL BANK OF CHICAGO,
as trustee

f/b/o
UNITED BANK OF DENVER

Dated as of October 2, 1980

13-1/2% Conditional Sale Indebtedness due February 1, 1998

CONDITIONAL SALE AGREEMENT, dated as of October 1, 1980 (this Agreement), between FMC CORPORATION, a Delaware corporation (the Builder), having an address at 4700 Northwest Front Avenue, P.O. Box 3616, Portland, Oregon 97208, and EXCHANGE NATIONAL BANK OF CHICAGO, a national banking association, having an address at 130 South La Salle Street, Chicago, Illinois 60603, and 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), for the benefit of UNITED BANK OF DENVER NATIONAL ASSOCIATION, a national banking association (the Owner), having an address at 1740 Broadway, Denver, Colorado 80217.

PRELIMINARY STATEMENT

The Builder has agreed to construct and sell to Chicago and North Western Transportation Company, a Delaware corporation (the Lessee), certain units of railroad equipment described in Schedules A and B hereto (such units of railroad equipment, until excluded herefrom by reason of Article 3.2 or 4.1, are severally called a Unit and collectively called the Equipment) and certain other units of similar equipment, all pursuant to the Purchase Order (as defined in that certain Participation Agreement, dated as of October 1, 1980 (the Participation Agreement), among the Lessee, the Trustee, the Owner and the other parties thereto). By the terms of the Participation Agreement, the Lessee has assigned to the Trustee the Lessee's rights under the Purchase Order with respect to the Equipment; and by the terms of that certain Railroad Equipment Lease, dated as of the date hereof (the Lease), the Lessee will lease from the Trustee so much of the Equipment as is delivered to the Trustee and accepted hereunder. This Agreement supersedes the Purchase Order insofar as it relates to the Equipment except as expressly provided herein and in the Participation Agreement.

The Builder intends to assign its rights under this Agreement for consideration to La Salle National Bank, a national banking association (the Agent), as agent for one or more investors (the Investors). In connection with such assignment and in order to secure the performance of its obligations under this Agreement, the Trustee will assign to the Agent certain rights, titles and interests of the Trustee in and to the Lease by an Assignment of Lease and Agreement (the Lease Assignment) to which the Lessee

will consent by Consent and Agreement (the Consent); the Lease, the Lease Assignment and the Consent are all dated Lease Assignment and the Consent are all dated as of the date hereof and in the forms attached as Exhibits D, E and F to the Participation Agreement.

Payment of the Purchase Price (as hereinafter defined) of the Equipment is intended to be provided in part by the Trustee pursuant to subparagraph (a) of Article 4.3, and the balance of the Purchase Price will be paid to the Builder by the Agent pursuant to an Agreement and Assignment, dated as of the date hereof (the Purchase Assignment), between the Builder and the Agent.

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

ARTICLE 1. Construction.

The Builder will construct the Equipment in accordance with the Purchase Order and the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as have been agreed upon in writing between the Builder and the Lessee on or before October 31, 1980 (which specifications as so modified are called the Specifications). The design, quality and component parts of each Unit will conform, on the date of completion of manufacture 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 and reasonably interpreted as being applicable to railroad equipment of the character of such Unit. Each Unit will be new railroad equipment, will not incorporate any used components, and will not have been used by any person so as to preclude the "original use" of such Unit, within the meaning of Sections 48(b)(2) and 167(c) (2) of the Internal Revenue Code of 1954, as amended, from commencing with the Trustee.

ARTICLE 2. Sale of Equipment.

The Builder will sell to the Trustee, and the Trustee will purchase from the Builder, the Equipment, upon the terms and conditions set forth herein.

ARTICLE 3. Inspection and Delivery.

3.1. The Builder will deliver the Units to the Trustee at the place specified in Schedule B hereto, freight, storage, switching and insurance charges prepaid and included in the Purchase Price as hereinafter provided, in accordance with the delivery schedule set forth in Schedule B hereto. No

delivery hereunder of any Unit, however, shall be made by the Builder or accepted by the Trustee (i) until this Agreement, the Lease, the Purchase Assignment and the Lease Assignment shall have been filed pursuant to 49 U.S.C. Section 11303, and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall have been made for publication of notice of such deposit in The Canada Gazette; (ii) after the Builder shall have been given notice (if not written, such notice shall be directed to the Builder's General Manager, Sales Manager or Controller at the Builder's Plant Location specified in Schedule B, shall be effective if received by any such officer or the office of the Controller, and shall be confirmed in writing before the close of the following business day) by an Owner, the Trustee or the Agent of the commencement of any proceeding or the occurrence of any event specified in clause (c) or (d) of Article 15.1, or the occurrence of any event of default (as described in Article 15.1) or of any event which, after lapse of time, demand or both, would constitute such an event of default (any of the foregoing being called a Default); (iii) if the Purchase Price for such Unit, when added to the aggregate Purchase Price of all Units theretofore delivered to and accepted by the Trustee hereunder and all other Units proposed to be delivered to and accepted by the Trustee hereunder concurrently with such Unit, would exceed the Maximum Purchase Price for the Equipment specified in Schedule A hereto (or such higher amount as the Trustee and the Lessee may have agreed to pursuant to Article 4.1); and (iv) until, in the case of the Builder, it shall have received notice from the Trustee and the Agent that the conditions contained in paragraphs 8 and 9 of the Participation Agreement to be satisfied on or prior to the First Delivery Date (as defined in the Participation Agreement) have been met or waived on or prior to such date.

3.2. Any Unit not delivered to the Trustee hereunder at the time of receipt by the Builder of the notice specified in clause (ii) of the last sentence of Article 3.1, any Unit delivered to the Trustee for the benefit of one other than the Owner and any Unit not delivered and accepted hereunder before <*> (unless a later date shall be agreed to by the Agent, the Trustee and the Lessee), by reason of noncompliance with the conditions referred to in Article 3.1 or by reason of the causes set forth in Article 3.3 or otherwise, shall be excluded from this Agreement and the Trustee shall be relieved of its obligation hereunder to purchase and pay for such Unit. If

any Unit shall be excluded herefrom pursuant to the preceding sentence, the Trustee, the Agent and the Builder shall execute an agreement supplemental hereto limiting this Agreement, by specific identifying number of each Unit, to the Units not so excluded herefrom. Pursuant to the Participation Agreement, the Lessee has agreed to purchase from the Builder upon the satisfaction or waiver of the conditions of the Purchase Order, all as provided in Paragraph 1 of the Participation Agreement, such excluded Units and any Units excluded from this Agreement pursuant to Article 4.1. The Trustee, upon any such exclusion, will take such steps, including the execution and delivery of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of equipment so excluded from this Agreement; and the Trustee shall have no further obligation or liability in respect of such units so excluded.

3.3. The obligation of the Builder as to the time of delivery set forth in Schedule B is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including 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, shortage of materials (but only if the Builder shall notify the Trustee and the Lessee in writing of the possiblity of such shortage in time to give the Trustee and the Lessee a reasonable opportunity to cause materials to be supplied to the Builder in time to prevent delay) or failure or interruption of normal transportation or power facilities. Subject to the foregoing but notwithstanding any other provision of this Agreement, this Agreement shall not relieve the Builder of its obligations with respect to the rights and interests of the Lessee in and to the Purchase Order which were not assigned to the Trustee pursuant to Paragraph 1 of the Participation Agreement.

3.4. During construction, the Units shall be subject to inspection and approval by the authorized inspectors of the Trustee (who may be employees of the Lessee), and the Builder will grant such inspectors reasonable access to its plants. The Builder will inspect the materials used in the construction of the Units in accordance with its standard quality control practices. Upon completion of a Unit, such Unit shall be presented to

inspectors of the Trustee for inspection at the place specified for delivery. If such Unit shall conform to the Specifications and other requirements and standards applicable thereto, such authorized inspectors shall execute and deliver to the Builder a certificate of inspection and acceptance (an Acceptance Certificate) substantially in the form of Schedule B to the Lease, but the delivery of such certificate shall not relieve the Builder of its warranties referred to in Article 13. The Trustee hereby appoints the Lessee (and any employee or agent thereof designated by the Lessee) its agent for inspection and acceptance of the Equipment pursuant to this Article 3.

3.5. Upon delivery to and acceptance by the Lessee on behalf of the Trustee of each Unit, as evidenced by the execution of an Acceptance Certificate with respect to such Unit as described above, at the place specified for delivery, the Trustee shall be the legal owner of such Unit, and shall have physical possession and control thereof, even though the Purchase Price therefor may be paid thereafter. Upon such acceptance, the Builder shall have no further responsibility for, or bear any risk of, any damage to or the destruction or loss of such Unit; but such delivery and acceptance shall not relieve the Builder of its warranties referred to in Article 13.

3.6. Notwithstanding any other provision of this Agreement, no unit excluded from this Agreement pursuant to Article 3 or 4 shall have been, be or become subject to this Agreement, nor shall this Agreement have created in or transferred to the Trustee any legal or beneficial right or interest in such unit or (except as provided in Article 3.2 or 4.1) imposed on the Trustee any liability, obligation or responsibility with respect thereto; any right or interest in such unit created in or transferred to or purported to be created in or transferred to the Trustee shall be held by the Trustee solely as trustee for the benefit of the Builder.

ARTICLE 4. Purchase Price and Payment.

4.1. The base price per Unit to be paid by or for the account of the Trustee (the Unit Base Price) is set forth in Schedule B hereto. The term "Purchase Price" shall have the meaning specified in Schedule B hereto, and the Purchase Price for a Unit shall be set forth in the Builder's invoice delivered to the Trustee with respect to such Unit (such invoice or invoices being called the Invoices). Each Invoice shall set forth the Unit Base Price and each such increase and decrease thereto and shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the

Trustee (any request for such agreement or approval shall be deemed granted unless objected to in writing, with the reasons for withholding such agreement or approval being specified; such withholding of agreement or approval shall not be the basis for a delay of the Closing Date for such Units). If on any Closing Date (as defined in Article 4.2) the aggregate Purchase Price of the Units 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 Schedule A hereto (or such higher amount as to which the Trustee and the Lessee may have agreed prior to delivery of any Unit that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Trustee will enter into an agreement excluding from this Agreement such Units then proposed to be settled for in inverse order of their delivery until, after giving effect to such exclusion, the aggregate Purchase Price shall have been reduced to not more than the Maximum Purchase Price (or such higher amount).

4.2. The Units accepted pursuant to Article 3 shall be settled for in such number of groups as is provided in Item 2 of Schedule A (each such group being called a Group). The term "Closing Date" with respect to any Group shall mean a business day not earlier than the Date of Deposit (as defined in the Participation Agreement) nor later than 10 business days after presentation by the Builder to the Trustee and the Lessee of the Builder's Invoices and the Acceptance Certificates for such Group, and shall be fixed by the Lessee by written notice delivered to the Trustee, the Owner, the Builder and the Agent at least five business days prior to such Closing Date (if the Lessee shall fail to send a notice fixing such date within 5 business days after presentation of such invoices and certificates, such Closing Date shall be the 10th business day following such presentation, and the Builder shall notify all parties thereof). The Builder agrees to present to the Trustee and the Lessee on or before December 16, 1980, the Builder's Invoices and Acceptance Certificates for all Units delivered and accepted on or before December 16, 1980, subject to the force majeure provisions set forth in Article 3.3. The Builder, the Trustee and the Owner shall use their best efforts to comply with the schedule of estimated Closing Dates set forth in Item 7 of Schedule A hereto. The term "business day" means a calendar day, excluding Saturday, Sunday and any other day on which banking institutions in Denver, Colorado, New York, New York, or Chicago, Illinois, are authorized or obligated to remain closed. Notwithstanding the foregoing, if an event of default or an Event of Default under the Lease shall be continuing and the

Builder shall have been notified thereof after any Unit shall have been delivered and accepted but prior to a Closing Date having occurred with respect to such Unit, the Builder shall be entitled to be paid for such Unit pursuant to this Agreement and in accordance with Paragraph 10(b) of the Participation Agreement without regard to the Lessee's having fixed a Closing Date with respect to such Unit or the Lessee or the Trustee having approved the Builder's Invoice for such Unit, provided that the Builder shall comply with all requirements of this Agreement and the Purchase Agreement Assignment which may be satisfied by the Builder.

4.3. The Trustee acknowledges its indebtedness hereunder in the amount of, and hereby agrees to pay in immediately available funds to the Builder at such place as the Builder 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 36% of the aggregate Purchase Price of such Group plus (ii) to the extent agreed upon by the Trustee and the Lessee (as evidenced by the Trustee's and the Lessee's approval of the Builder's Invoice therefor), the amount, if any, by which (x) 64% of the Purchase Price of all Units for which settlement has theretofore or is then being made as set forth in the Invoices therefor exceeds (y) the Maximum Indebtedness specified in Item 6 of Schedule A hereto plus any other amounts previously paid or payable with respect to prior Invoices pursuant to this clause (ii); and
>
> (b) in 34 semiannual instalments, as hereinafter provided, an amount equal to the excess of the aggregate Purchase Price of the Units in each Group over the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of Article 4.3.

Notwithstanding the provisions of subparagraph (a) above, the percentages set forth in clauses (i) and (ii) of such subparagraph (a) may vary from the percentages presently set forth in such subparagraph (a) in order to allow all Units to be subject to this Agreement without difference or distinction and to enable the Owner to receive its agreed-upon yield with respect to its investment in the Units at the least cost to the Lessee, provided that the sum of such percentages shall always equal 100% and that the ratio of Indebtedness to Purchase Price, after acceptance of all Units hereunder, shall not exceed 6.7 to 10.

4.4. The portion of the Purchase Price payable pursuant to subparagraph (b) of Article 4.3 (the Indebtedness) and interest on the unpaid balance thereof shall be payable on February 1 and August 1 of each year (or, if any such date is not a business day, on the last business day preceding

such date), commencing February 1, 1981 (as to interest only on such date), to and including February 1, 1998 (as to accrued interest and principal commencing August, 1981), each such date being called a Payment Date. The unpaid balance of the Indebtedness from time to time outstanding shall bear interest at the rate of 13-1/2% per annum, shall be payable, to the extent accrued and unpaid, on each Payment Date commencing on August 1, 1981, and shall be calculated so that the amount and allocation of principal and interest payable on each such Payment Date shall be substantially in proportion to the allocation set forth in Schedule C hereto (subject to Article 7 hereof) and the aggregate of such instalments of principal will completely amortize the Indebtedness. The Trustee will furnish to the Agent and the Lessee promptly after the last Closing Date a schedule showing the respective amounts of principal and interest payable on each Payment Date.

4.5. Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months, except that the interest payment due on February 1, 1981, as to any partial month shall be determined on an actual elapsed day basis.

4.6. The Trustee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid hereunder after the same shall have become due and payable pursuant to the terms hereof at the rate of 14-1/2% per annum or at the maximum rate of interest not prohibited by law, whichever is lesser (the Overdue Rate), anything herein to the contrary notwithstanding.

4.7. All payments provided for in this Agreement will 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, the Trustee will not have the privilege of prepaying any portion of the Indebtedness prior to the date it shall become due.

4.8. Notwithstanding any other provision of this Agreement (including Articles 13, 15 and 16) but not limiting the effect of Articles 21.1 and 21.3, the liability of the Trustee or any assignee of the Trustee for all payments to be made by it under this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the liabilities referred to in Article 21.4, and the payments to be made pursuant to subparagraph (a) of Article 4.3 (which

payments are to be made solely out of funds delivered to the Trustee for such purpose), shall not exceed an amount equal to, and shall be payable only out of, the Equipment Proceeds (as hereinafter defined). Except in the instances referred to in Article 21.4, the payments to be made by the Trustee or such assignee hereunder shall be made only to the extent that the Trustee or such assignee shall have actually received sufficient Equipment Proceeds to make such payments, and the Trustee and such assignee shall have no liability to make any payments under this Agreement except from the Equipment Proceeds. In addition, the Trustee or any such assignee (i) makes no representation or warranty with respect to, and shall not be liable for, the execution, validity, sufficiency or enforceability of the Lease (or any document relating thereto) insofar as it relates to the Lessee or to any of the Lessee's obligations thereunder; and (ii) shall not be liable for the performance or observance by the Lessee of any agreement, representation, indemnity, obligation or other undertaking under the Lease. The parties hereto agree that as to all such payments and other matters hereunder the Builder or the Agent will look solely to its rights under this Agreement against the Equipment and to its rights under the Lease against the Lessee and the Equipment. The term "Equipment Proceeds" shall mean (i) if an event of default specified in Article 15 shall have occurred and be continuing, so much of the following amounts as are indefeasibly received by the Trustee or such assignee at any time during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7) paid for or with respect to the Equipment pursuant to the Lease and any other payments received under Section 10 or any other provision of the Lease, and (b) all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Trustee or such assignee and as shall equal the principal portion of the Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and interest on the Indebtedness due and payable on or about 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; except that Equipment Proceeds shall not include (A) any amount referred to in the

foregoing clause (a) or (b) which shall be received by the Trustee or such assignee prior to the existence of an event of default and which shall exceed the sum required to discharge that principal portion of the Indebtedness (including such prepayments) and interest on the Indebtedness that shall be due and payable on or about the date on which amounts with respect such portion of the Indebtedness received by the Trustee or such assignee were required to be paid to it pursuant to the Lease, or which shall exceed any other payments due and payable under this Agreement at the time such amounts were payable under the Lease, and (B) amounts excluded from the definition of "Payments" contained in Paragraph 1 of the Lease Assignment. Notwithstanding anything to the contrary contained in this Agreement, if the Agent shall obtain a judgment against the Trustee upon a claim with respect to which the Trustee shall be liable other than as described in Article 21.4 and such judgment shall be in an amount in excess of the amounts payable by the Trustee pursuant to this paragraph, the Agent will limit its execution of such judgment in accordance with the limitations set forth or referred to in this paragraph, but nothing contained herein limiting the liability of the Trustee shall derogate from the right of the Agent to proceed against the Equipment for the full unpaid Trustee's Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder or to proceed against the Lessee under the Lease or the Consent.

ARTICLE 5. Security Title to the Equipment.

5.1. The Builder shall, and hereby does, retain a security title and security interest in the Equipment until all payments to be made by the Trustee under this Agreement shall have been made, 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. All parts installed on, and additions and replacements of, the Equipment (except as otherwise specifically provided in Section 10 of the Lease) shall constitute accessions to the Equipment and shall be subject to this Agreement and included in the term "Unit" or "Equipment" as used herein.

5.2. Except as otherwise specifically provided in Article 7, only when the Builder or its successors and assigns shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with accrued interest and all other payments as herein provided, shall absolute

right to the possession of, title to and property in the Equipment pass to and vest in the Trustee; such passage and vesting shall occur thereupon without further transfer or action by the Builder or its successors and assigns (including the Agent). The Builder or its successors or assigns (including the Agent), however, if so requested by the Trustee at that time and at the Trustee's expense, will (a) execute a bill or bills of sale for the Equipment releasing its security title to and security interest in the Equipment to the Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby, and deliver such bill or bills of sale to the Trustee, and (b) execute and deliver to the Trustee for filing, recording or depositing, in all necessary public offices, such 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. The Trustee hereby waives all rights, now existing or hereafter acquired, in or to the payment of any penalty or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law requiring the filing of the same, except for failure so to do within a reasonable time after written demand by the Trustee.

ARTICLE 6. Taxes.

6.1. The Trustee will pay, or cause to be paid, and indemnify, protect and hold the Agent and the Investors harmless from and against, all Taxes. The term "Taxes" means Impositions, as such term is defined in the Lease, but only if there shall be an Event of Default under the Lease by reason of the Lessee's failure to pay such Impositions, and all Federal, state, local or foreign taxes imposed on the Owner or the Trustee or imposed on or measured by the net income or excess profits of the Owner or the Trustee or imposed on or measured by the receipt of any indemnification payment required to be paid to the Agent or any Investor hereunder, and excluding, without limitation (i) Taxes of the United States of America or any state or political subdivision thereof imposed on or measured solely by the net income or excess profits of the Agent or an Investor, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Agreement, and (ii) any taxes imposed on or measured by any fees or compensation received by the Agent. If the Lease shall have been terminated or if an Event of Default shall exist thereunder

by reason of a default by the Lessee in the payment of any Imposition as required by Section 6(a) of the Lease, the Trustee shall pay such Imposition. The Trustee, however, shall not be required to pay any Taxes or any Imposition during the period it may be contesting the same in the manner provided in Section 6.2.

6.2. If claim shall be made against the Agent for any Taxes indemnified against under this Article 6, the Agent shall promptly notify the Trustee and the Lessee in a timely manner. If reasonably requested by the Trustee in writing, and so long as the Lessee shall be prohibited or impaired from doing so in its own name, the Agent, upon receipt of any indemnity reasonably satisfactory to it for all costs, expenses, losses, legal and accounting fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Trustee, shall contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if legally permissible (provided that the nonpayment thereof shall not adversely affect the interest of the Agent hereunder in the opinion of the Agent), (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 Agent; provided, however, that no proceeding or action 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 Agent in any such proceeding or action) without the prior written consent of the Agent. If the Agent shall obtain a refund of any part of such Taxes previously reimbursed by the Trustee in connection with any such contest or an amount representing interest thereon, the Agent shall pay the Trustee the amount of such refund or interest net of expenses, provided that no Default shall have occurred and be continuing.

6.3. If any report or return shall be 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 to show therein the interests of the Agent in the Equipment or shall promptly notify the Agent of such requirement and shall make such report or return in such manner as shall be reasonably satisfactory to the Agent. All costs and expenses (including legal and accounting fees) of preparing any such return or report shall be borne by the Trustee.

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

ARTICLE 7. Maintenance; Casualty Occurrences.

7.1. The Trustee, at its own cost and expense, shall maintain and service each Unit as provided in Section 7(a) of the Lease.

7.2. If any Unit shall suffer a Casualty Occurrence (as defined in Section 8 of the Lease), the Trustee, promptly after determining that such Unit has suffered a Casualty Occurrence, shall cause the Agent to be fully informed in regard thereto. On the Casualty Payment Date (as defined in Section 8 of the Lease) with respect to such Unit, the Trustee shall pay to the Agent, as of such date, an amount equal to the Casualty Value (as described in Article 7.4) of such Unit, and shall file, or cause to be filed, with the Agent a certificate setting forth such Casualty Value. Any money paid to the Agent pursuant to this Article 7.2 shall be applied (after the payment of the interest on and principal, if any, of the Indebtedness due on such date) to prepay without penalty or premium the instalments of the Indebtedness (ratably in accordance with the unpaid principal balance of each such instalment), together with all unpaid and accrued interest thereon. The Trustee will promptly furnish to the Agent and the Lessee a revised schedule of payments of principal and interest with respect to the Indebtedness thereafter to be made. In the event of the requisition for use by the United States Government or any other government or governmental entity of any Unit not constituting a Casualty Occurrence, the Trustee's obligations hereunder with respect to such Unit shall continue to the same extent as if such requisition had not occurred.

7.3. Upon payment by the Trustee to the Agent of the Casualty Value of any Unit having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such Unit shall pass to and vest in the Trustee, and the security interest of the Agent therein shall terminate, all without further transfer or action on the part of Trustee; and the Agent, 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 the Agent's security title and security interest, and the release of the Agent'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.

7.4. The Casualty Value of a Unit suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the Casualty Payment Date with respect to such Unit (without giving effect to any prepayment theretofore made under this Article with respect to any other Unit), plus interest accrued thereon but unpaid as of such Casualty Payment Date. For the purpose of this Article 7.4, each payment of the Purchase Price in respect of a Unit made pursuant to Article 4 shall be deemed to be a payment on each Unit in like proportion as the original Purchase Price of such Unit bears to the aggregate original Purchase Price of the Equipment.

7.5. The Trustee will cause the Equipment to be insured as provided in Section 7(b) of the Lease. If the Agent shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, subject to having received payment of the Casualty Value and provided no Default shall have occurred and be continuing, the Agent will pay such insurance proceeds or condemnation payments to the Trustee. All insurance proceeds and condemnation payments received by the Agent in respect of any Unit suffering damage or requisition that shall not constitute a Casualty Occurrence shall be paid, provided that no Default shall have occurred and be continuing, to the Trustee, in the case of damage upon proof satisfactory to the Agent that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with Article 7.1.

ARTICLE 8. Reports.

On or before April 30 in each year, commencing with the year 1981, the Trustee shall cause to be furnished to the Agent an accurate statement to the effect set forth in Section 9 of the Lease.

ARTICLE 9. Marking of Equipment.

9.1. The Trustee will cause each Unit to be kept numbered and marked as provided in Section 5 of the Lease. The Trustee will not permit any Unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon, and will replace or will cause to be replaced promptly any such markings which may be removed, defaced or destroyed. The Trustee will not permit the identification number of any Unit to be changed except in accordance with a statement of the new number or numbers to be substituted therefor, which statement previously

shall have been filed with the Agent and filed and deposited by the Trustee in all public offices where this Agreement shall have been filed and deposited.

9.2. Except as provided in Article 9.1, the Trustee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership, but any Unit may be lettered with the names, initials or other insignia customarily used by the lessee thereof or its affiliates.

ARTICLE 10. 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 respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in Section 10 of the Lease). If the Applicable Laws shall require any alteration, replacement, addition or modification of or to any Unit, the Trustee will conform such Unit therewith at its own expense. The Trustee or the Lessee, however, in good faith, may contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Agent, adversely affect the property or rights of the Agent under this Agreement.

ARTICLE 11. Possession and Use.

11.1. The Trustee, so long as no event of default shall have occurred and be continuing hereunder, shall be entitled, from and after delivery of the Equipment by the Builder to the Trustee, to the possession and use thereof, but only upon the terms and conditions of this Agreement.

11.2. The Builder and the Trustee agree that 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 Agent under this Agreement, all as and to the extent provided in the Lease, except to the extent that the Agent's rights to terminate the Lease or any of its other rights or remedies are expressly limited by Section 4 of the Lease or any other provision thereof. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Agent, and any such amendment or termination without such consent shall be void.

ARTICLE 12. Prohibition Against Liens.

12.1. The Trustee, as soon as possible, will pay, or satisfy and discharge, any claim arising against, through or under the Trustee, the Owner or their respective successors or assigns (other than the Agent or the Lessee) which, if unpaid, might constitute or become a lien, charge, security interest or other encumbrance upon or with respect to any Unit, or the interest of the Agent therein, or the Trustee's interests in the Lease and the payments due and to become due thereunder. The Trustee shall not be required to pay or discharge any such lien, charge, security interest or other encumbrance so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment or nondischarge thereof shall not adversely affect the title or interests of the Agent in or to the Equipment or otherwise under this Agreement in the reasonable opinion of the Agent.

12.2. 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.

12.3. Except as provided in Article 12.4, Articles 12.1 and 12.2 shall be subject to the limitations set forth in Article 4.8 and to Article 21.

12.4. The Trustee will pay and discharge all taxes, assessments, claims, liens, charges, security interests or other encumbrances: (i) which shall attach to or encumber, or if unpaid might attach to or encumber, any Unit, the Lessor's interest in the Lease or the rentals or other payments made or to be made under the Lease; (ii) which shall be claimed by any party from, through or under the Trustee (other than the Agent), or, to the extent that funds shall be delivered to the Trustee for such purpose, from, through or under the Owner or its successors or assigns; and (iii) which shall arise other than out of the ownership of the Equipment, the administration of the Trust Estate or the transactions contemplated by the Trust Agreement or the Trust Documents* (including liens for gross receipts taxes, taxes measured by net income, excess profits taxes and similar taxes arising out of the receipt of the rentals and other payments under the Lease and any other proceeds from the Equipment to the extent that funds for the payment thereof are delivered

* as defined in the Trust Agreement

to the Trustee for such purpose). The foregoing covenant may also be enforced against the Trustee by the Lessee and its successors and assigns. The Trustee, however, shall not be required to pay or discharge any such tax, assessment, claim, lien, charge, security interest or other encumbrance so long as (i) the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in a reasonable, diligent manner, and (ii) the nonpayment or nondischarge thereof, in the reasonable opinion of the Agent, shall not and will not adversely affect the security interest of the Agent in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments made or to be made thereunder.

ARTICLE 13. Indemnities and Warranties.

13.1. The Trustee shall pay, and protect, indemnify and hold harmless the Agent, the Builder, the Investors and their respective successors, assigns, agents and servants (each of the Agent, the Builder and an Investor, and its successors, assigns, agents and servants, is called an Indemnified Person) from and against, all claims, causes of action, losses, damages, liabilities, expenses (including reasonable fees and expenses of attorneys) and costs (including claims, causes of action, losses, damages, liabilities, expenses and costs, both for strict liability in tort, and for negligence, either active or passive, which shall not have occurred because of a wrongful act of such Indemnified Party) incurred in any manner by or for the account of any of them by reason or as the result of any act or omission (whether negligent or otherwise) of the Trustee or the Owner (the Indemnified Events); but the Trustee shall not be required to pay, protect, indemnify or hold harmless the Builder for (i) any losses, damages, injuries, liabilities, claims and demands whatsoever arising 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 (ii) any matter covered by the Builder's warranty of material and workmanship and patent indemnification set forth in Schedule A hereto. If any action, suit or proceeding shall be brought against any Indemnified Person in connection with any Indemnified Event, the Trustee, at its expense, may, and upon such Indemnified Person's request will, 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 will not be unreasonably withheld. If the Trustee shall fail so to do upon such request, the Trustee shall pay all costs and expenses

(including, without limitation, reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. If the Trustee shall be required to make any payment under this Article 13, 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 of America 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 Agent and the Trustee, upon obtaining knowledge thereof, will give each other written notice of any Indemnified Event in a timely manner. Upon the payment in full by the Trustee of any indemnity contained in this Article 13 and provided that no Default shall have occurred and be continuing, (i) the Trustee shall be subrogated to any right of such Indemnified Person in respect of the Indemnified Event against which indemnity has been given, and (ii) any payments received by such Indemnified Person from any person (other than the Trustee) as a result of any Indemnified Event with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease 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.

13.2. None of the indemnities in Article 13 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. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the Agent's security interest in, the Equipment, as provided in Article 5, or the termination of this Agreement in any manner whatsoever.

13.3. The Trustee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder (except as provided in Article 21) in the event of, any damage to or loss of any Unit from and after acceptance of delivery thereof by the Trustee.

13.4. The Builder represents and warrants to the Trustee and its successors and assigns that, at the time of delivery and acceptance of each Unit hereunder (i) the Trustee will have good and marketable title to such Unit, free and clear of all claims, liens, security interests and other encumbrances of any nature arising from, through or under Builder, except only the rights of the Builder and the Agent hereunder and the rights of the Lessee under the Lease; and (ii) such Unit will be new railroad equipment, will not incorporate any used components and will not have been used by any person so as to preclude the "original use" of such Unit (as such term is defined in Article 1) from commencing with the Trustee.

13.5. The Builder represents that it is not entering into this Agreement, or into any other transaction contemplated by the Participation Agreement, directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974, as amended.

13.6. The agreements of the parties relating to the Builders' warranties of material and workmanship, the agreements of the parties relating to patent indemnification and the Builder's limitation of liability are set forth in Items 3 and 4 of Schedule A hereto.

13.7. The Builder represents and warrants to the Trustee and 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 a legal and valid agreement which is binding upon and enforceable against the Builder in accordance with its terms.

13.8. If the Lease shall have been terminated or if an Event of Default shall exist thereunder by reason of a default by the Lessee in the payment of any Indemnified Matter (as defined in Section 10(c) of the Lease), the Trustee shall pay, and protect, indemnify and hold harmless each Indemnified Person from and against, all Indemnified Matters or such Indemnified Matter, as the case may be, as though the Indemnified Matters or such Indemnified Matter were an Indemnified Event.

ARTICLE 14. Assignment.

14.1. The Trustee will neither transfer the right to possession of any Unit except as contemplated in Article 11, nor sell, assign, transfer or otherwise dispose of its rights under this Agreement, unless such sale, transfer, assignment or disposition (i) is made expressly subject in all respects to the rights and remedies of the Agent hereunder (including, without limitation, rights and remedies against the Trustee), (ii) is made to a bank or trust company having capital and surplus aggregating at least $50,000,000, and such bank or trust company shall expressly assume, in writing and in form reasonably satisfactory to the Agent, the obligations of the Trustee under this Agreement, and (iii) shall include all Units then subject to this Agreement. No such transfer, sale, assignment or disposition to an affiliate of the Trustee shall relieve in any manner the Trustee as primary obligor hereunder.

14.2. Any right, benefit or advantage of the Builder under this Agreement, including the right to receive the payments herein provided to be made by the Trustee, may be assigned to the Agent and by the Agent, and may be reassigned by any assignee at any time and from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any obligation of the Builder to construct and sell the Equipment to the Trustee in accordance herewith or to respond to the Builder's warranties and indemnities referred to in Article 13, or relieve the Trustee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13, Schedule A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

14.3. Upon any such assignment, the assignor shall give written notice to the Trustee and the Lessee, together with a copy of such assignment, stating the identity and post office address of the assignee. Such assignee, by virtue of such assignment, shall acquire 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, to the extent so assigned, shall be made to the assignee at such address as it may direct.

14.4. The Trustee acknowledges that this Agreement will be assigned to the Agent as provided in the Purchase 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 Builder or the Agent hereunder, and for the purpose of inducing such acquisition, that the rights of an assignee to the entire unpaid 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 arising out of any breach of any obligation of the Builder with respect to the Equipment or the 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 or the Lessee by the Builder. All such obligations, howsoever arising, shall be and remain enforceable by the Trustee or the Lessee, as the case may be, against and only against the Builder.

ARTICLE 15. Defaults.

15.1. If any of the following events of default shall occur and be continuing:

(a) the Trustee shall fail to pay in full any sum payable by the Trustee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 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;

(b) default shall be made in the observance or performance of any other condition or agreement of the Trustee (irrespective of the provisions of Article 4 or 21 or any other provision of this Agreement limiting the liability of the Trustee) or the Lessee, whether contained herein or in any other agreement (including the Participation Agreement) relating to the financing of the Equipment (other than the Lease), and such default shall continue for 30 days after written notice from the secured party hereunder (Secured Party) to the Trustee and the Lessee specifying the default and demanding that the same be remedied;

(c) a petition for reorganization under any provision of Title 11 of the United States Code, as now constituted or as may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then

only so long as such stay shall continue in force or such ineffectiveness shall continue), all the Lessee's obligations under the Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with provisions of 11 U.S.C. Section 1168, or any successor provision, as the same may hereafter be amended;

(d) any other proceeding shall be commenced by or against the Trustee or the Lessee for any relief which includes, or might result in, any modification of an obligation of the Trustee hereunder or of the Lessee under the Lease or the Consent under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Trustee under this Agreement or of the Lessee under the Lease and the Consent, as the case may be, shall not have been and shall not continue to have been duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Trustee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

(e) 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 or use of any Unit; and the Trustee shall, for more than 30 days after demand in writing by Secured Party, fail to secure a reassignment or retransfer to the Trustee of such assignment, interest or right; or

(f) an Event of Default (as defined in the Lease) shall have occurred; provided, however, that any Event of Default under clause (a)(i) of Section 11 of the Lease shall not be deemed to be an event of default hereunder if, (i) within the 10 business day period provided by clause (i) of this Article 15.1, the Trustee shall make payment of all amounts in default under such clause and all other amounts then due

hereunder, and (ii) not more than four such Events of Default shall have occurred and been cured directly or indirectly by the Trustee and not more than two such Events of Default so cured shall have occurred consecutively;

then at any time after the occurrence of such an event of default and so long as such event of default is continuing, Secured Party, upon written notice of such event to the Trustee, the Owner and the Lessee (such notice is called a Declaration of Default), and upon compliance with any legal requirements then in force and applicable to such action by Secured Party, may (I) cause the Lease to terminate (except to the extent Secured Party's right to terminate the Lease is expressly limited by Section 4 of the Lease or any other provision thereof) effective 30 days after such notice if the Trustee shall have failed to pay or cause to be paid to Secured Party prior to the expiration of such 30-day period the entire unpaid Indebtedness, together with interest thereon then accrued and unpaid and all other amounts then payable hereunder, but the Lessee shall remain liable as provided in the Lease, and (II) declare the entire unpaid Indebtedness, together with the interest thereon then accrued and unpaid, to be immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of the Indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate. Upon a Declaration of Default, subject to Article 4, Secured Party shall be entitled to recover judgment for the entire unpaid balance of the Indebtedness so payable, with interest as aforesaid, subject to Articles 4.8 and 21, and to collect such judgment out of the Equipment Proceeds wherever situated. If an officer or employee in the Trustee's Corporate Trust Department shall have actual knowledge of an event which constitutes, or with the giving of notice, lapse of time or both would constitute, an event of default hereunder, the Trustee shall notify Secured Party promptly thereof.

15.2. Secured Party, at its election, may 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, the Owner and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been had no such event of default occurred and no Declaration of Default or notice of termination of the Lease been made or given. Nevertheless, the Trustee expressly agrees that time is of the essence of this Agreement, and that no such waiver, rescission or

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

15.3. Upon payment in whole of the Indebtedness, together with accrued interest thereon to the date of such payment and all other sums due hereunder, absolute right to the possession of, title to and property in the Equipment shall thereupon pass to and vest in the Trustee as provided in Article 5; and the Trustee shall have the right to give the directions to Secured Party provided for in the fourth sentence of Paragraph 11(e) and the first sentence of Paragraph 11(k) of the Participation Agreement.

ARTICLE 16. Remedies.

16.1. At any time during the continuance of a Declaration of Default, but subject to the Lessee's right to possession, if any, as provided in Section 4 of the Lease and to applicable laws, Secured Party may take or cause to be taken, by its agent or agents, immediate possession of the Equipment or any portion thereof, without liability to return to the Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from the possession and use of the Trustee or any other person. For such purpose, Secured Party or its agents may enter upon any premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services, aids, available trackage and other facilities or means of the Trustee and the Lessee.

16.2. If Secured Party shall have taken possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to Secured Party, the Trustee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, by causing prompt telegraphic or written notice to be given to the Association of American Railroads and each railroad to which any Unit has been interchanged or which may have possession thereof to return such Unit) cause the Equipment to be placed upon such storage tracks of the Lessee or any of its affiliates as Secured Party reasonably may designate;

(b) permit Secured Party to store the Equipment on such tracks at the risk of the Trustee without charge for insurance, rent or storage until the Equipment has been sold, leased or otherwise disposed of by Secured Party; and

(c) cause the Equipment to be transported to any reasonable place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by Secured Party.

During the storage period, the Trustee, at its own cost and expense, shall insure (to the same extent as provided in Section 7 of the Lease), maintain and keep each such Unit in good order and repair (to the same extent as provided in Article 7.1) and will permit the inspection of the Equipment by Secured Party and its designees (including Secured Party's representatives or those of prospective purchasers, lessees and users).

16.3. The foregoing covenants to deliver the Equipment and furnish facilities as hereinbefore provided are of the essence of this Agreement; upon application to any court of equity having jurisdiction, Secured Party shall be entitled to a decree against the Trustee requiring specific performance hereof. The Trustee hereby expressly waives all claims against Secured Party and its agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner.

16.4. At any time during the continuance of a Declaration of Default, Secured Party (after retaking possession of the Equipment as hereinbefore in this Article 16 provided), at its election and upon such notice as is hereinafter set forth, may retain the Equipment in satisfaction of the Indebtedness and make such disposition thereof as Secured Party shall deem fit. Written notice of Secured Party's election to retain the Equipment shall be given to the Trustee and the Lessee by telegram or registered mail, and to any other persons to whom the law may require notice, within 60 days after such Declaration of Default (or any shorter period prescribed by law). If Secured Party shall elect to retain the Equipment and no objection shall be made thereto within the 30-day period described in clause (ii) below, the Trustee's rights in the Equipment shall thereupon terminate, and all payments made by the Trustee or for its account may be retained by Secured Party as compensation for the use of the Equipment; provided, however, that (i) if the Trustee, before the expiration of the 30-day period described below, shall pay or cause to be paid to Secured Party the total unpaid balance of the Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee; and (ii) if the Trustee, the Lessee or any other persons notified pursuant to

this Article 16 shall object in writing to Secured Party within 30 days from the receipt of notice of Secured Party's election to retain the Equipment, then Secured Party may not so retain the Equipment, and 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 Secured Party 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 this Article 16.

16.5. At any time during the continuance of a Declaration of Default (but not prior to the expiration of the 30-day period after making such Declaration of Default to the Trustee, the Owner and the Lessee if an Event of Default under the Lease shall constitute the only basis for an event of default pursuant to Article 15), 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, Secured Party may sell the Equipment, or one or more Units, free from any and all claims of the Trustee, the Lessee (except that such sale shall be subject to the rights of the Lessee under the Lease, if any, if the conditions specified in the second sentence of Section 4(b) of the Lease are then satisfied) 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 Secured Party may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Trustee shall tender full payment of the total unpaid balance of the Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of Secured Party in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and Secured Party's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees the Equipment shall pass to and vest in the Trustee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by Secured Party in retaking possession, of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to Secured Party under this Agreement.

16.6. Any sale hereunder may be held or conducted at New York, New York, or Chicago, Illinois, at such time or times as Secured Party may specify (unless Secured Party shall specify a different place or places, in which case the sale shall be held at such place or places as Secured Party 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 Secured Party may determine, so long as such sale shall meet all requirements of law.

16.7. Secured Party, the Trustee and (so long as an Event of Default is not continuing under the Lease) the Lessee may bid for and become the purchaser of any Unit so offered for sale. The Trustee and the Lessee shall be given written notice of such sale or the making of a contract for such sale not less than 10 business days prior thereto by telegram or registered mail. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has been published in a newspaper of general circulation or a sale where fewer than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Trustee and (to the extent provided above) the Lessee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intended purchaser or a better price. If Secured Party shall be the purchaser of the Equipment, it shall not be accountable to the Trustee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16); and in payment of the purchase price therefor, Secured Party shall be entitled to have credited on account thereof all or any part of sums due to Secured Party hereunder.

16.8. Each and every power and remedy hereby specifically given to Secured Party shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by Secured Party. 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 Secured Party 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

granted to the Trustee or the Lessee shall not otherwise alter or affect Secured Party's rights or the Trustee's obligations hereunder. Secured Party's acceptance of any payment after it shall have become due shall not be deemed to alter or affect the Trustee's obligations or Secured Party's rights hereunder with respect to any subsequent payments or default therein.

16.9. Subject to Article 16.4, if, after applying all sums of money realized by Secured Party under the remedies herein provided, there shall remain any amount due to it hereunder, the Trustee, subject to the limitations of Articles 4.8 and 21, shall pay the amount of such deficiency to Secured Party upon demand, together with interest thereon from the date of such demand to the date of payment at the Overdue Rate. If the Trustee shall fail to pay deficiency, Secured Party may bring suit therefor and, subject to the limitations of Articles 4.8 and 21, shall be entitled to recover a judgment therefor against the Trustee. If, after applying as aforesaid all sums realized by Secured Party, there shall remain a surplus in the possession of Secured Party, such surplus shall be paid to the Trustee.

16.10. The Trustee will pay all reasonable expenses, including attorneys' fees, incurred by Secured Party in enforcing its remedies hereunder. If Secured Party shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, Secured Party may recover in such suit reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

16.11. This Article 16 is subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable Laws.

17.1. 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 agreement and enforced as such.

17.2. 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, 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 Agent's rights under this Agreement and all rights of redemption.

ARTICLE 18. Recording.

The Trustee will cause this Agreement, the Lease, any assignments hereof and any amendments or supplements hereto or thereto to be filed in accordance with 49 U.S.C. Section 11303, and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada; and the Trustee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record all further instruments required by law or reasonably requested by the Agent for the purpose of properly protecting, to the satisfaction of counsel for the Agent, the Agent's interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Trustee will promptly furnish to the Agent certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Agent.

ARTICLE 19. Article Headings; Effect and Modification of Agreement.

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

19.2. Except for the Participation Agreement and the other documents contemplated therein, this Agreement exclusively and completely states the rights of the Builder, the Agent and the Trustee with respect to the Equipment and supersedes all other agreements, oral or written, between the Builder, the Agent and the Trustee 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 made in writing and signed by duly authorized agents of the Agent and the Trustee.

ARTICLE 20. Notice.

Any notice hereunder to any party designated below, except as otherwise provided, shall be deemed to be properly made if delivered by hand or mailed to it by registered mail (unless otherwise specifically required herein), postage prepaid, return receipt requested, at its address set forth below:

(a) to the Trustee, at Exchange National Bank of Chicago, 130 South La Salle Street, Chicago, Illinois 60690, Attention: Corporate Trust Department, with a copy to the Owner at its address specified below;

(b) to the Lessee, at 400 West Madison Street, Chicago, Illinois 60606, Attention: Assistant Vice President - Finance;

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

(d) to the Agent, at its address at 135 South La Salle Street, Chicago, Illinois 6060~~3~~, Attention: Corporate Trust Department; 90

(e) to the Owner at 1740 Broadway, Denver, Colorado 80217, Attention: Commercial Banking Officer; and

(f) to any assignee of the Agent or the Trustee, at such address as may have been furnished in writing to the Trustee or the Agent, as the case may be, by such assignee;

or at such other address as may have been furnished by such party to the other parties referred to above.

21. Immunities; Satisfaction of Undertakings.

21.1. No recourse shall be had in respect of any obligation due under this Agreement (including any referred to in Article 21.2) 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 law or 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.

21.2. The Trustee shall not be in default with respect to any of its obligations described in Article 16.2 (including provisions thereof with respect to insurance, maintenance and repair) or 16.10 or in Article 3, 7 (other than the second, third and fourth sentences of Article 7.2), 8, 9, 10 or 18 and shall have no liability for the failure of such obligation to be performed, except as hereinafter provided. If any of such obligations shall not be performed and an Event of Default shall exist under the Lease with respect to an obligation the performance of which by the Lessee would

alleviate the need for the Trustee to perform such obligation hereunder, the non-performance of such obligation by the Trustee shall constitute a default (but not, without the lapse of time or the making of a demand or both, an event of default as defined in Article 15.1) hereunder.

21.3. Except as provided in Article 21.4, anything in this Agreement to the contrary notwithstanding, each representation, warranty, undertaking and agreement herein made by the financial institution acting as trustee under the Trust Agreement is made and intended not as a personal representation, warranty, undertaking or agreement by Exchange National Bank of Chicago or its successor trustees or cotrustees as the trustee under the Trust Agreement (the Bank) or for the purpose or with the intention of binding the Bank personally, but is made by the Trustee solely in its capacity as Trustee under the Trust Agreement, and is intended for the purpose of binding only the Trust Estate, as defined in the Trust Agreement. This Agreement is executed and delivered by the Bank solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement. Except as provided in Article 21.4, no personal liability hereunder is assumed by, or shall at any time be asserted or enforceable against, the Bank or the Owner on account of any representation, warranty, undertaking or agreement hereunder of the Trustee, express or implied, all such personal liability, if any, being expressly waived and released by Secured Party and by all persons claiming by, through or under Secured Party. Secured Party or any person claiming by, through or under Secured Party, however, may look to the Trust Estate for satisfaction of any claim made hereunder. The Trustee will not enter into any supplement or amendment to the Trust Agreement except as provided in Section 8.1 thereof.

21.4. The Trustee shall be liable in its individual capacity with respect (i) to its agreements contained in Article 12.4 and (ii) its wilful misconduct or gross negligence.

ARTICLE 22. Miscellaneous.

22.1. The Trustee warrants that its chief place of business is located at its address set forth in clause (a) of Article 20. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by 49 U.S.C. Section 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, 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.

22.2. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Agent pursuant to the Purchase Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. It shall not be necessary that any counterpart be signed by all parties hereto so long as each party hereto shall have executed and delivered one counterpart hereof.

22.3. Although for convenience this Agreement is dated as of the date first above written, 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.

22.4. This Agreement shall bind the Trustee, the Builder and their respective successors and assigns.

ARTICLE 23. Advances. If the Trustee shall fail to perform any of its obligations hereunder, Secured Party may perform the same (but shall not be required to do so) on behalf of the Trustee and shall be entitled to reimbursement by the Trustee for the cost of such performance, together with interest thereon at the Overdue Rate, from the date of the performance thereof by Secured Party until the Trustee shall have paid Secured Party in full.

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

FMC CORPORATION

By _____
Vice President

[Seal]

Attest: _____

EXCHANGE NATIONAL BANK OF CHICAGO
not in its individual capacity but solely as trustee under the Trust Agreement, dated as of October 2, 1980, between Exchange National Bank of Chicago and United Bank of Denver National Association

By _____
Authorized Officer

[Seal]

Attest: _____
ASSISTANT TRUST OFFICER

STATE OF ILLINOIS )
) ss.:
COUNTY OF COOK )

On this 24 day of November, 1980, before me personally appeared Daniel C. Smith, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that he executed the foregoing instrument as a free act and deed of said Corporation for the purposes set forth therein.

G. R. [illegible]
Notary Public

My Commission Expires:
10/24/83

[Notarial Seal]

STATE OF ILLINOIS )
) ss.:
COUNTY OF COOK )

On this 26 day of Nov., 1980, before me personally appeared MICHAEL D. GOODMAN, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of EXCHANGE NATIONAL BANK OF CHICAGO, 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 he executed the foregoing instrument as a free act and deed of said Corporation for the purposes set forth therein.

Lee Quintek
Notary Public

My Commission Expires:
10-27-84

[Notarial Seal]

SCHEDULE A

to

CONDITIONAL SALE AGREEMENT

Item 1: FMC Corporation, Marine & Rail Equipment Division, 4700 Northwest Front Avenue, P.O. Box 3616, Portland, Oregon 97208.

Item 2: The Equipment shall be settled for in not more than two Groups of Units, unless otherwise consented to by the Lessee.

Item 3: The Builder warrants to the Trustee, the Lessee, the Owner and the Agent that the Units will be built in accordance with the Specifications and with the other requirements, specifications and standards set forth or referred to in Article 1 of this Agreement; and warrants that the Units will be free from defects in design, material and workmanship. The Builder's obligations under this paragraph with respect to any Unit shall be limited to repairing or replacing any part or parts of any such Unit (returned, if the Builder requests, to its plant at Portland, Oregon) as to which written notice of defect has been given within five years after delivery of such Unit in case of design defects, or (ii) within one year after delivery of such Unit in case of all other defects.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITY ON THE PART OF THE BUILDER, EXCEPT AS SPECIFICALLY STATED HEREINAFTER, AND IN THIS AGREEMENT AND THE PARTICIPATION AGREEMENT. THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF ITS EQUIPMENT, EXCEPT FOR THE PATENT INDEMNIFICATION BELOW AND AS AFORESAID. THE BUILDER WILL NOT BE LIABLE FOR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE UNITS. CONSEQUENTIAL DAMAGES SHALL INCLUDE BUT NOT BE LIMITED TO (1) LOSS OF USE, INCOME OR PROFIT, (2) LOSS SUSTAINED AS THE RESULT OF INJURY OR DEATH TO ANY PERSON OR (3) LOSS OF OR DAMAGE TO PROPERTY (INCLUDING PROPERTY HANDLED OR TRANSPORTED IN THE UNITS).

The Builder agrees that the Trustee, the Owner, the Lessee and the successors and assigns of any therof, as well as the Builder, to the extent permitted by law, may take and prosecute claims against vendors of specialties purchased by the Builder for incorporation in the Equipment and not warranted hereunder for the breach of any warranty by such vendors with respect to such specialties. The Builder, the Owner, the Trustee and the Lessee agree, as a condition of their being a beneficiary or third party beneficiary hereof, to notify the others prior to the assertion of any claim by them against any such vendor of specialties.

If the Builder shall determine that it has no interest in any such claim asserted by the Trustee, the Owner or the Lessee, the Builder agrees to assign to the Trustee, the Owner or the Lessee, solely for the purpose of making and prosecuting any such claim, all rights which the Builder may have against such vendor for the breach of warranty or other representation respecting the Equipment.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement, nor any examination or acceptance of any Units as provided in Article 3, shall be deemed a waiver or modification by either the Trustee or the Lessee of any right under this Item 3.

It is further understood and agreed that the word "design(s)" as used herein and in Item 4 and the word "specialties" as used herein shall be deemed to include articles, materials, systems, formulae and processes.

Item 4: Except in case of designs, processes or combinations specified by the Lessee and not developed or purported to be developed by the Builder, and articles and materials specified by the Lessee and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless the Lessee, the Trustee, the Agent, the Investor and the Owner from and against any and all liability,

claims, demands, costs, charges and expenses, including royalty payments and reasonable attorneys' fees, in any manner imposed upon or accruing against the Lessee, the Trustee, the Agent, the Investor or the Owner because of the use in or about the construction or operation of any Unit of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. The Lessee, as a condition to its being a third party beneficiary hereof, likewise will indemnify, protect and hold harmless the Builder from and against any and all liability, claim, demand, cost, charge and expense, including royalty payments and reasonable attorney's fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any Unit of any design, process or combination specified by the Lessee and not developed or purported to be developed by the Builder, or article or material specified by the Lessee, which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Trustee, the Owner and the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the originator or seller or sellers of any design, process, combination, article or material specified by the Lessee and used by the Builder in or about the construction or operation of any Unit on the ground that such design, process, combination, article or material or operation infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee, the Owner and the Trustee all such further assurances as may be reasonably requested by the Trustee, the Owner and the Lessee more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Lessee, as a condition to its being a third party beneficiary hereof, will give notice to the Builder of any claim known to the Lessee on the basis of which liability may be charged against the Builder hereunder, and the Builder will give notice to the Lessee and the Trustee of any claim known to the Builder on the basis of which liability may be charged against the Lessee or the Trustee hereunder.

Item 5: The Maximum Purchase Price referred to in Article 4 of this Agreement is $15,837,896.30.

Item 6: The Maximum Indebtedness referred to in Article 4 of this Agreement is the excess of $15,219,600.00 over the actual Indebtedness issued by the Trustee with respect to the railroad equipment beneficially owned by Exchange National Bank of Chicago pursuant to that certain Condiitonal Sale Agreement, dated as of October 1, 1980, between such bank and FMC Corporation.

Item 7: Schedule of Closing

| Date | Approximate Number of Units |
|---|---|
| December 29, 1980 | All Units delivered on or before December 16, 1980, but in any event all Units for which the Builder's Invoices have been presented and Acceptance Certificates have been delivered, and at the option of the Builder, the Trustee, the Agent and the Lessee, as many other Units delivered before December 29, 1980, as may feasibly be accommodated, but not to exceed 333. |
| Not later than January 30, 1981 | All Units not settled for on the previous Closing Date, the total number of Units to be settled for on both Closing Dates not to exceed 333. |

SCHEDULE B

TO

CONDITIONAL SALE AGREEMENT

| | | |
|---|---|---|
| 1. | Builder: | FMC Corporation |
| 2. | Type: | Railroad equipment, consisting of 4700 cu.ft. 100-ton covered steel hopper cars |
| 3. | Builder's Specifications: | R80-49, dated August 7, 1980, AAR Mech. Desig. (car-type code): L-153 |
| 4. | Builder's Plant Location: | Portland, Oregon |
| 5. | Quantity: | 333 Units |
| 6. | Identification Numbers: | CNW 178,767 through 179,099 |
| 7. | Unit Base Price: | $40,680.40 |
| 8. | Total Base Price: | The product of the Unit Base Price and the number of Units delivered and accepted hereunder. |
| 9. | Purchase Price: | The Purchase Price for any Unit shall mean the Unit Base Price for such Unit, plus any switching, storage, insurance and freight charges for such Unit, in each case accruing after November 14, 1980; such Purchase Price may be increased or decreased as otherwise may be agreed to in writing by the Builder and the Lessee. |
| 10. | Time and Place of Delivery: | From a date in November, 1980, subsequent to the execution, delivery and filing of this Agreement through March 31, 1981 at Builder's Plant Location specified above (or at such other place in Oregon agreed to in writing by the Builder and the Lessee) |

SCHEDULE C

Allocation Schedule of each $1,000,000
of 13-1/2% Indebtedness*
(1980 Acceptance)

| Instalment Number and Date | | Debt Service | Interest Payment | Principal Recovery | Principal Balance |
|---|---|---|---|---|---|
| (Interim Payment) | February 1, 1981 | $** | $** | 0 | $1,000,000.00 |
| 1 | August 1, 1981 | 70,385.48 | 67,500.00 | 2,885.48 | 997,114.52 |
| 2 | February 1, 1982 | 73,270.97 | 67,305.23 | 5,965.74 | 991,148.78 |
| 3 | August 1, 1982 | 73,270.97 | 66,902.54 | 6,368.43 | 984,780.35 |
| 4 | February 1, 1983 | 73,270.97 | 66,472.67 | 6,798.30 | 977,982.05 |
| 5 | August 1, 1983 | 73,270.97 | 66,013.79 | 7,257.18 | 970,724.87 |
| 6 | February 1, 1984 | 73,270.97 | 65,523.93 | 7,747.04 | 962,977.83 |
| 7 | August 1, 1984 | 73,270.97 | 65,001.00 | 8,269.97 | 954,707.86 |
| 8 | February 1, 1985 | 73,270.97 | 64,442.78 | 8,828.19 | 945,879.67 |
| 9 | August 1, 1985 | 73,270.97 | 63,846.88 | 9,424.09 | 936,455.58 |
| 10 | February 1, 1986 | 73,270.97 | 63,210.75 | 10,060.22 | 926,395.36 |
| 11 | August 1, 1986 | 73,270.97 | 62,531.69 | 10,739.28 | 915,656.08 |
| 12 | February 1, 1987 | 73,270.97 | 61,806.79 | 11,464.18 | 904,191.90 |
| 13 | August 1, 1987 | 73,270.97 | 61,032.95 | 12,238.02 | 891,953.88 |
| 14 | February 1, 1988 | 73,270.97 | 60,206.89 | 13,064.08 | 878,889.80 |
| 15 | August 1, 1988 | 73,270.97 | 59,325.06 | 13,945.91 | 864,943.89 |
| 16 | February 1, 1989 | 73,270.97 | 58,383.71 | 14,887.26 | 850,056.63 |
| 17 | August 1, 1989 | 73,270.97 | 57,378.82 | 15,892.15 | 834,164.48 |
| 18 | February 1, 1990 | 73,270.97 | 56,306.10 | 16,964.87 | 817,199.61 |
| 19 | August 1, 1990 | 73,270.97 | 55,160.97 | 18,110.00 | 799,089.61 |
| 20 | February 1, 1991 | 73,270.97 | 53,938.55 | 19,332.42 | 779,757.19 |
| 21 | August 1, 1991 | 89,553.39 | 52,633.61 | 36,919.78 | 742,837.41 |
| 22 | February 1, 1992 | 89,553.39 | 50,141.53 | 39,411.86 | 703,425.55 |
| 23 | August 1, 1992 | 89,553.39 | 47,481.22 | 42,072.17 | 661,353.38 |
| 24 | February 1, 1993 | 89,553.39 | 44,641.35 | 44,912.04 | 616,441.34 |
| 25 | August 1, 1993 | 89,553.39 | 41,609.79 | 47,943.60 | 568,497.74 |
| 26 | February 1, 1994 | 74,222.19 | 38,373.60 | 35,848.59 | 532,649.15 |
| 27 | August 1, 1994 | 81,739.02 | 35,953.82 | 45,785.20 | 486,863.95 |
| 28 | February 1, 1995 | 89,553.39 | 32,863.32 | 56,690.07 | 430,173.88 |
| 29 | August 1, 1995 | 89,553.39 | 29,036.74 | 60,516.65 | 369,657.23 |
| 30 | February 1, 1996 | 89,553.39 | 24,951.85 | 64,601.53 | 305,055.70 |
| 31 | August 1, 1996 | 89,553.39 | 20,591.26 | 68,962.13 | 236,093.57 |
| 32 | February 1, 1997 | 89,553.39 | 15,936.32 | 73,617.07 | 162,476.50 |
| 33 | August 1, 1997 | 89,553.39 | 10,967.16 | 78,586.23 | 83,890.27 |
| 34 | February 1, 1998 | 89,552.86 | 5,662.59 | 83,890.27 | .00 |
| | | --- | --- | --- | |
| | | 2693135.27*** | 1693135.27*** | 1000000.00 | |

* If the Owner shall have accepted any Units in 1980, this schedule will apply to all such Units. If Units are accepted both in 1980 and in 1981 by the Owner, the amortization schedule applicable to Units accepted by the Owner in 1980 will be blended with the amortization schedule applicable to Units accepted by the Owner in 1981 to achieve one blended schedule applicable to all Units accepted by the Owner, which schedule shall have the same economic effect as would have resulted had the two

original schedules not been blended. In no case shall this Schedule be amended to provide for Indebtedness having an average life of less than 12 years 9 months from November 1, 1980, or a ratio of Indebtedness to Purchase Price in excess of 6.7 to 10.

** Compute on the basis of interest for actual elapsed days.

*** Exclusive of Interim Interest Payment.

SCHEDULE C
Allocation Schedule of each $1,000,000
of 13-1/2% Indebtedness*
(1981 Acceptance)

| Instalment Number and Date | | Debt Service | Interest Payment | Principal Recovery | Principal Balance |
|---|---|---|---|---|---|
| (Interim Payment) | February 1, 1981 | $0 | $0 | $0 | $1,000,000.00 |
| 1 | August 1, 1981 | 73,954.79 | 67,500.00 | 6,454.79 | 993,545.21 |
| 2 | February 1, 1982 | 73,954.79 | 67,064.30 | 6,890.49 | 986,654.72 |
| 3 | August 1, 1982 | 73,954.79 | 66,599.19 | 7,355.60 | 979,299.12 |
| 4 | February 1, 1983 | 73,954.79 | 66,102.69 | 7,852.10 | 971,447.02 |
| 5 | August 1, 1983 | 73,954.79 | 65,572.67 | 8,382.12 | 963,064.90 |
| 6 | February 1, 1984 | 73,954.79 | 65,006.88 | 8,947.91 | 954,116.99 |
| 7 | August 1, 1984 | 73,954.79 | 64,402.90 | 9,551.89 | 944,565.10 |
| 8 | February 1, 1985 | 73,954.79 | 63,758.14 | 10,196.65 | 934,368.45 |
| 9 | August 1, 1985 | 73,954.79 | 63,069.87 | 10,884.92 | 923,483.53 |
| 10 | February 1, 1986 | 73,954.79 | 62,335.14 | 11,619.65 | 911,863.88 |
| 11 | August 1, 1986 | 73,954.79 | 61,550.81 | 12,403.98 | 899,459.90 |
| 12 | February 1, 1987 | 73,954.79 | 60,713.54 | 13,241.25 | 886,218.65 |
| 13 | August 1, 1987 | 73,954.79 | 59,819.76 | 14,135.03 | 872,083.62 |
| 14 | February 1, 1988 | 73,954.79 | 58,865.64 | 15,089.15 | 856,994.47 |
| 15 | August 1, 1988 | 73,954.79 | 57,847.13 | 16,107.66 | 840,886.81 |
| 16 | February 1, 1989 | 73,954.79 | 56,759.86 | 17,194.93 | 823,691.88 |
| 17 | August 1, 1989 | 73,954.79 | 55,599.20 | 18,355.59 | 805,336.29 |
| 18 | February 1, 1990 | 73,954.79 | 54,360.20 | 19,594.59 | 785,741.70 |
| 19 | August 1, 1990 | 73,954.79 | 53,037.56 | 20,917.23 | 764,824.47 |
| 20 | February 1, 1991 | 73,954.79 | 51,625.65 | 22,329.14 | 742,495.33 |
| 21 | August 1, 1991 | 90,389.19 | 50,118.43 | 40,270.76 | 702,224.57 |
| 22 | February 1, 1992 | 82,665.05 | 47,400.16 | 35,264.89 | 666,959.68 |
| 23 | August 1, 1992 | 75,808.42 | 45,019.78 | 30,788.64 | 636,171.04 |
| 24 | February 1, 1993 | 77,703.89 | 42,941.55 | 34,762.34 | 601,408.70 |
| 25 | August 1, 1993 | 66,619.27 | 40,595.09 | 26,024.18 | 575,384.52 |
| 26 | February 1, 1994 | 72,327.92 | 38,838.46 | 33,489.46 | 541,895.06 |
| 27 | August 1, 1994 | 87,064.79 | 36,577.92 | 50,486.87 | 491,408.19 |
| 28 | February 1, 1995 | 90,389.19 | 33,170.05 | 57,219.14 | 434,189.05 |
| 29 | August 1, 1995 | 90,389.19 | 29,307.76 | 61,081,43 | 373,107.62 |
| 30 | February 1, 1996 | 90,389.19 | 25,184.76 | 65,204.43 | 307,903.19 |
| 31 | August 1, 1996 | 90,389.19 | 20,783.47 | 69,605.72 | 238,297.47 |
| 32 | February 1, 1997 | 90,389.19 | 16,085.08 | 74,304.11 | 163,993.36 |
| 33 | August 1, 1997 | 90,389.19 | 11,069.55 | 79,319.64 | 84,673.72 |
| 34 | February 1, 1998 | 90,389.20 | 5,715.48 | 84,673.72 | .00 |
| | | --- | --- | --- | |
| | | 2,664,398.67 | 1,664,398.67 | 1000000.00 | |

* This schedule will apply only to the Owner and only if Units shall be accepted by the Owner in 1981 and the Weighted Average Closing Date (as defined in the Lease) for such Units shall be February 15, 1981 (i.e., this schedule assumes that all Units accepted in 1981 are settled for at a Closing occurring on February 15, 1981, that the Rental Factors under the Lease are 4.815216 for rental payments 1-20 and 5.885264 for payments 21-40 and that the

ratio of Indebtedness to Purchase Price is 6.511 to 10). This schedule will be amended if Units are accepted by the Owner both in 1980 and in 1981 and if Units accepted in 1981 have a Weighted Average Closing Date other than February 15, 1981. This schedule will be amended first to provide for the Weighted Average Closing Date adjustment, which may include a change in the ratio of Indebtedness to Purchase Price from 6.511 to 10. If Units are accepted both in 1980 and in 1981 by the Owner, the amortization schedule applicable to Units accepted by the Owner in 1980 will be blended with the amortization schedule applicable to Units accepted by the Owner in 1981 to achieve one blended schedule applicable to all Units accepted by the Owner, which schedule shall have the same economic effect as would have resulted had the two original schedules not been blended. In no case shall this schedule be amended to provide for Indebtedness being an average life of less than 12 years 9 months from November 1, 1980, or a ratio of Indebtedness to Purchase Price of more than 6.7 to 10.