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August 21, 1997

RECORDATION NO. 20830 FILED

AUG 21 '97

1-31 AM

New Recordation No.

AUG 21

1 31 PM '97

RECEIVED  
SURFACE TRANSPORTATION  
BOARD

*Central Leasing - A.H. Korman*

Dear Mr. Williams:

On behalf of Central Leasing (U.S.A.) Inc., I submit for filing and recording under 49 U.S.C. § 11301 and the regulations applicable thereunder, counterparts of a primary document not previously recorded.

The primary document, to be recorded under a new Recordation No., is entitled Loan and Security Agreement ("Agreement") dated as of August 12, 1997, and covers, among other things, the granting by Borrower a security interest to Lender in the railroad rolling stock as identified in Schedule I thereto and in the lease thereof.

The parties to the above-mentioned Agreement are:

Central Leasing (U.S.A.) Inc. - LENDER (Mortgagee for indexing, white pages)  
29th Floor  
655 Third Avenue  
New York, NY 10017

ELM-Central Rail Leasing - BORROWER (Mortgagor for indexing, yellow pages)  
Company, L.P.  
Suite 112  
One Tiffany Point  
Bloomingdale, IL 60108

The units of equipment covered by the Agreement are twenty-four (24) tank cars, LCIX 2541-2548 and LCIX 2550-2565.

A short summary to be put in the STB Index Book as to the Agreement is as follows:

"Covers 24 tank cars in Schedule I namely LCIX2541-2548 and LCIX 2550-2565 and the lease thereof."

DONELAN, CLEARY, WOOD & MASER, P.C.

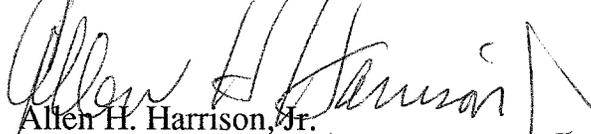
Honorable Vernon A. Williams  
August 21, 1997  
Page 2

Please enter an indexing reference under THIS filing saying: "See Recordation No. 15818 and subparts thereof."

Enclosed is a check in the amount of forty-eight (\$48.00) in payment of the filing fee and the fee for the above requested indexing.

Once the filing has been made, please return to bearer the stamped counterpart(s) of the document not required for filing purposes, together with the letter/fee receipt from the STB acknowledging the filing, and the two extra copies of this letter of transmittal.

Very truly yours,



Allen H. Harrison, Jr.  
Attorney for Central Leasing (U.S.A.) Inc.  
for the purpose of this filing.

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

*Enclosures*

BY HAND

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8.11.97

RECORDATION NO. 20830 FILED

AUG 21 '97

1-3:1AM

LOAN AND SECURITY AGREEMENT

between

ELM-Central Rail Leasing Company, L.P.,  
Borrower,

and

Central Leasing (U.S.A.) Inc.,  
Lender

Dated as of August 12, 1997

Filed and recorded with the Surface Transportation Board pursuant to Section 11303, Title 49,  
United States Code on \_\_\_\_\_, 1997 at \_\_\_\_\_, Recordation No.  
\_\_\_\_\_.

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SCHEDULE I	Description of Rail-cars
EXHIBIT A	Form of Note
EXHIBIT B	Form of Bill of Sale
EXHIBIT E	Form of Certificate of Cost

LOAN AND SECURITY AGREEMENT, dated as of August 12, 1997, between ELM-Central Rail Leasing Company, L.P., a Delaware limited partnership (the "Company"), with a place of business at Suite 112, One Tiffany Point, Bloomingdale, Illinois 60108, and Central Leasing (U.S.A.) Inc., a Delaware corporation (the "Lender"), with a principal place of business at 655 Third Avenue, 29th Floor, New York, New York 10017.

WITNESSETH :

WHEREAS, the Company is engaged in the business of purchasing and owning railroad Rail-cars for lease to others;

WHEREAS, the Company desires to obtain a loan from the Lender in order to finance the purchase price of twenty-four (24) Rail-cars to be purchased from State Street Boston Leasing Company, Inc. pursuant to the Purchase Agreement (as defined below), , which Rail-cars are subject to a Lease (as defined below);

WHEREAS, the Company will evidence its borrowing hereunder by the issuance of its promissory note which, together with the Company's obligations and liabilities under this Agreement, will be secured by, inter alia, a lien on and security interest in such Rail-cars and the rights of the Company under the Lease; and

WHEREAS, the Lender is agreeable to making the loan on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements contained herein, the parties hereto agree as follows:

SECTION 1. DEFINITIONS

1.1 Defined Terms. As used in this Agreement the following terms shall have the following meanings:

"Agreement" shall mean this Loan and Security Agreement, including all Schedules and all Exhibits hereto, as the same may from time to time be amended, supplemented or otherwise modified.

"Assignment" shall mean the Assignment of Master Equipment Lease Agreement No. 1 as Supplemented and Amended and Equipment Restatement, dated as of August 18, 1997, by and between Seller, as assignor, and the Company, as assignee, pursuant to which the Company will take assignment of the Lease..

"Business Day" shall mean any day other than a Saturday, a Sunday or a legal holiday under the laws of the State of New York.

"Casualty Occurrence" shall have the meaning specified in the Lease.

"Casualty Value" with respect to any Unit shall mean the amount obtained by multiplying the unpaid principal amount of the Note at the time Casualty Value is being determined by a fraction, the numerator of which is the Rail-car Cost of such Unit and the denominator of which is the aggregate Rail-car Costs of all Rail-cars which are then subject to the lien and security interest of this Agreement.

"Casualty Value Determination Date" shall have the meaning set forth in Subsection 6.14 (a) hereof.

"Collateral" shall mean the Rail-cars, the Lease, the moneys at any time in the Cash Collateral Account and all other property, interests and rights described or referred to in Subsection 5.1, 5.2 or 5.3 hereof or otherwise subjected to the lien and security interest created by this Agreement or intended so to be.

"Damaged Unit" shall mean any Unit which has suffered a Casualty Occurrence.

"Default" shall mean any of the events specified in Section 8 hereof, whether or not there has been satisfied any requirement in connection with such event for the giving of notice or the lapse of time, or both.

"Event of Default" shall mean any of the events specified in Section 8 hereof, provided that there has been satisfied any requirement in connection with such event for the giving of notice, or the lapse of time, or both.

"General Partner" shall mean the general partner of the Company, ELM Corporation, an Illinois corporation.

"Guarantor" shall mean Praxair, Inc., a Delaware corporation.

"Guaranty" shall mean the guaranty of the Lease provided by Guarantor, dated as of February 7, 1997.

"Installment Payment Date" shall mean each date on which an installment of principal and interest is due and payable under the Note.

"Lease" shall mean the Master Equipment Lease Agreement No. 1, dated as of September 9, 1988 (the "Initial Lease"), between Seller, as Lessor, and Praxair, Inc. (successor by merger to Liquid Carbonic Industries Corporation, a Delaware corporation, which was a successor by merger to Liquid Carbonic Carbon Dioxide Corporation, a Delaware corporation, the initially-named lessee), a Delaware corporation, as Lessee, as amended by Master Equipment Lease Agreement No. 1 Amendment, dated February 7, 1997, under which Seller has leased certain rail tank cars to Lessee pursuant to Rental Schedule No. 1 and Certificate of Inspection and Acceptance, dated as of September 9, 1988, together with all extensions, amendments, modifications, supplements and documents delivered in connection therewith or pursuant thereto, including a Guaranty entered into by the Guarantor (successor guarantor to the Initial

Lease guarantor, Liquid Carbonic Industries Corporation) prior to the merger of Liquid Carbonic Industries Corporation into the Guarantor on or about March 4, 1997.

"Lessee" shall mean Praxair, Inc. (successor by merger to Liquid Carbonic Industries Corporation, a Delaware corporation, which was a successor by merger to Liquid Carbonic Carbon Dioxide Corporation, a Delaware corporation, the initially-named lessee), a Delaware corporation.

"Lien" shall mean any mortgage, pledge, hypothecation, assignment, security interest, lien, charge or encumbrance, priority or other security agreement or arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any lease having substantially the same economic effect as a conditional sale or other title retention agreement, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

"Loan" shall mean the loan made by the Lender under this Agreement.

"Non-Removable Improvement" shall mean any addition or improvement incorporated in or installed on or attached to any Rail-car which is not readily removable without causing material damage to such Rail-car or without diminishing or impairing the utility or condition which such Rail-car would have had at the time of removal had such addition or improvement not been made.

"Note" shall mean the promissory note of the Company described in Subsection 2.3 hereof.

"Obligations" shall have the meaning set forth in Section 5 hereof.

"Permitted Liens" shall mean, with respect to any Unit, (i) the rights of the Lessee under the Lease of such Unit, (ii) Liens for taxes which are not yet due or the payment of which is not at the time required to be made in accordance with the provisions of Subsection 6.4 hereof, and (iii) materialmen's, mechanics, repairmen's and other like Liens arising in the ordinary course of business securing obligations which are not more than 30 days overdue or the payment of which is not at the time required to be made in accordance with the provisions of Subsection 6.4 hereof.

"Person" shall mean an individual, partnership, corporation, joint venture, trust, unincorporated organization, or government or any agency or political subdivision thereof.

"Proceeds" shall have the meaning assigned to it under the Uniform Commercial Code of the State of New York and, in any event, shall include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Company from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to the Company from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of any of the Collateral by any governmental authority (or any Person acting under color of governmental authority), and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Purchase Agreement" shall mean the Equipment Lease Purchase Agreement, dated as of August 13, 1997, by and between the Company and Seller pursuant to which the Company shall purchase, or has purchased, the Rail-cars from Seller.

"Rail-cars" shall mean at any time the Rail-cars which are described in Schedule I hereto, together with (i) any and all other Rail-cars which are subjected to the lien and security interest of this Agreement or intended so to be, (ii) any and all parts, mechanisms, devices and replacements referred to in Subsection 6.17 hereof from time to time incorporated in or installed on or attached to any of such Rail-cars, (iii) any and all additions and improvements from time to time incorporated in or installed on or attached to any of such Rail-cars pursuant to requirement of law or governmental regulation and (iv) any and all Non-Removable Improvements.

"Rail-car Cost" shall mean, for each Unit (other than a Replacement Unit), the actual cost thereof to the Company including all inspection fees, the agent fee of Seller, and all applicable local or state sales taxes, and transportation charges as set forth in the Assignment with respect to such Unit. The "Rail-car Cost" of a Replacement Unit shall be the Rail-car Cost of the Unit which it replaced.

"Replacement Unit" shall have the meaning set forth in Subsection 6.14(c) hereof.

"Seller" shall mean State Street Boston Leasing Company, Inc., a Massachusetts corporation, having a place of business at 225 Franklin Street, Boston, Massachusetts 02101.

"Subsidiary" shall mean, when used with respect to any person, any corporation more than 50% of the issued and outstanding shares of Voting Stock of which at the time is owned or controlled, directly or indirectly, by such Person or by one or more other Subsidiaries of such Person.

"Unit" shall mean one of the Rail-cars.

"Voting Stock" of a corporation shall mean stock having ordinary voting power for the election of a majority of the board of directors, managers or trustees of such corporation, other than stock having such power only by reason of the happening of a contingency.

"Wholly-Owned Subsidiary" shall mean, when used with respect to any Person, any Subsidiary, all the issued and outstanding shares (except for directors' qualifying shares, if required by law) of Voting Stock of which at the time are owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

1.2 Use of Defined Terms. All terms defined in this Agreement shall have their defined meanings when used in the Note, or in any certificates, reports or other documents made or delivered pursuant hereto.

### 1.3 Other Definitional Provisions.

(a) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) Terms defined in the singular shall have a comparable meaning when used in the plural and vice versa.

## SECTION 2. AMOUNT AND TERMS OF LOAN

2.1 Commitment. Subject to the terms and conditions of this Agreement, the Lender agrees to make a loan to the Company on any Business Day from the date hereof to and including September 1, 1997, in a principal amount not to exceed that as specified by the Lender, within its sole discretion, to finance the aggregate purchase price of 24 Rail-cars to be purchased by the Company from the Seller, and which are subject to the Lease. The Company shall give the Lender at least five Business Days' prior written notice (effective upon receipt) of the borrowing hereunder.

2.2 Use of Proceeds. The Company will use the proceeds of the Loan solely to pay, or to reimburse, the Company for payments to be made, or made, by it with respect to the aggregate Rail-car Costs of the Rail-cars.

2.3 The Note. The Loan shall be evidenced by a secured promissory note of the Company substantially in the form of Exhibit A hereto, satisfactory to the Lender as to all terms and conditions, with appropriate insertions therein. The Note shall (a) be dated the date on which the Loan is made, (b) be in the principal amount of the Loan, (c) bear interest on the unpaid principal amount thereof from the date thereof at an interest rate per annum satisfactory to the Lender, within its sole discretion, for the calendar year 1997 (the "1997 Payments"), and, thereafter, shall bear interest on the unpaid principal amount thereof at an rate per annum satisfactory to the Lender, within its sole discretion (the "Remaining Payments"), provided that (i) the 1997 Payments shall be that of interest-only, and the Remaining Payments shall be that of interest and principal, and (ii) whenever any such unpaid principal amount shall become due and payable (whether at the stated maturity, by prepayment, by acceleration or otherwise), interest thereon shall thereafter be payable at the rate of 200 basis points in addition to the prime lending rate to its best commercial customers set by State Street Bank and Trust Company, Boston, Massachusetts, per annum until such overdue principal amount shall be paid in full.

2.4 Voluntary Prepayment Without Premium. On any one Installment Payment Date, the Company may, with the consent of the Lender, upon notice as provided in Subsection 2.6 hereof, prepay the then outstanding principal amount of the Note, provided that simultaneously with such prepayment the Company pays to the Lender accrued interest on the outstanding principal amount of the Note to the date of such prepayment. Except as otherwise provided in this Subsection 2.4, the Note may not be voluntarily prepaid.

2.5 **Casualty Occurrence Prepayment.** In the event that any Unit shall suffer a Casualty Occurrence and the Company shall not replace such Unit pursuant to Subsection 6.14 hereof, the Company will prepay the Note without premium in accordance with the provisions of said Subsection 6.14.

2.6 **Notice of Prepayment.** The Company shall give written notice to the Lender of any prepayment of the Note not less than 10 days nor more than 30 days before the date fixed for such prepayment, specifying (a) the date fixed for such prepayment (which shall be an Installment Payment Date if the prepayment is to be made pursuant to Subsection 2.4 hereof), (b) the Subsection hereof under which such prepayment is to be made, (c) the principal amount of the Note to be prepaid, and (d) the premium, if any, and accrued interest applicable to such prepayment. Such notice of prepayment shall also certify all facts which are conditions precedent to such prepayment, including, if such prepayment is to be made pursuant to Subsection 2.5 hereof, the calculations used in determining the unpaid principal amount of the Note to be prepaid. Upon the giving of such notice, the unpaid principal amount of the Note to be prepaid, together with the premium, if any, and accrued interest thereon, shall become due and payable on the date fixed for such prepayment.

2.7 **Adjustment of Installments.** In the event any partial prepayment of the Note is made pursuant to Subsection 2.4 or 2.5 hereof, each installment due and payable under the Note after such partial prepayment shall be reduced in the same proportion as then outstanding Principal amount of the Note shall have been reduced by such partial prepayment.

2.8 **Computation of Interest.** Interest on the Note shall be calculated on the basis of a 360-day year of twelve 30-day months. All payments (including prepayments) by the Company on account of the principal of, premium, if any, and interest on the Note shall be made to the Lender at its office at 655 Third Avenue, New York, New York 10017, or at such other place as the Lender shall notify the Company in writing, in lawful money of the United States of America. If any such payment becomes due and payable on a day that is not a Business Day, the maturity thereof shall be extended to the next succeeding Business Day.

2.9 **Release of Collateral.** Upon any prepayment of the Note pursuant to Subsection 2.4 hereof, the Lender will promptly execute and deliver to the Company such instruments as shall be necessary to release from the lien and security interest of this Agreement, without recourse to, or representation or warranty by, the Lender, that number of Units which is equal to the number (disregarding any fraction) obtained by multiplying the total number of Rail-cars which are then subject to the lien and security interest of this Agreement by a fraction, the numerator of which is the principal amount of the Note so prepaid and the denominator of which is the original principal amount of the Note. The Lender shall have the right to designate the Units to be released.

2.10 **Limitation on Liability.** The liability of the Company with respect to the payments specified in Section 2 hereof shall be non-recourse to the Company with respect to 80% of the Note principal and interest outstanding from time to time, such non-recourse portion shall be limited to the Rail-cars, the Lease and "income and proceeds therefrom," but the Company's

liability hereunder shall not be so limited in respect of (i) the remaining 20% of the Note principal and interest outstanding from time to time and (ii) any breach or inaccuracy of the representations and warranties contained in Section 3, and covenants contained in Section 6, of this Agreement. As used herein the phrase "income and proceeds therefrom" shall mean:

(i) all Rent (as defined in the Lease) and any other sums due or to become due under the Lease which have been assigned to Lender, including but not limited to all proceeds of insurance, or payments due as a result of a casualty occurrence or condemnation, and

(ii) any and all other payments or funds received by the Company or Lender for or with respect to the Rail-cars, including payments resulting from the sale or other disposition of the Rail-cars.

Notwithstanding the limitation on liability of the Company otherwise herein contained, the obligation of the Company to pay the principal of and interest on the Loan and all other amounts payable to the Lender hereunder shall be fully enforceable (by appropriate proceedings against the Company in law or in equity or otherwise) against the Company's right, title and interest in the Rail-cars, the Lease, the Rent and any other assigned sums due or to become due under the Lease, and nothing contained herein limiting the liability of the Company shall derogate from the right of the Lender to enforce its security interest in the Rail-cars or the Lease for the unpaid principal of and interest on the Loan and all other amounts payable to the Lender hereunder and under the Note, including, without limitation, the right to accelerate the maturity of payments on the Loan as provided herein upon an event of default hereunder and to proceed against the Lessee under the Lease and to realize upon the Rail-cars.

### SECTION 3. REPRESENTATIONS AND WARRANTIES

In order to induce the Lender to enter into this Agreement and to make the Loan, the Company represents and warrants to the Lender that:

3.1 Legal Existence and Business. The Company is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware. Neither the conduct of its business nor the ownership or lease of its properties requires the Company to qualify to do business as a foreign corporation under the laws of any jurisdiction. The Company presently is engaged solely in the business of purchasing, leasing and managing railroad cars.

3.2 Power and Authorization; Enforceability; Consents. The Company has full power, authority and legal right to own its properties and to conduct its business as now conducted and presently proposed to be conducted by it and to execute, deliver and perform this Agreement, the Note and the Lease and to borrow under this Agreement on the terms and conditions hereof, to grant the lien and security interest provided for in this Agreement and to take such action as may be necessary to complete the transactions contemplated by this Agreement, the Note and the Lease, and the Company has taken all necessary action to

authorize the borrowing on the terms and conditions of this Agreement and the grant of the lien and security interest provided for in this Agreement and to authorize the execution, delivery and performance of this Agreement, the Note and the Lease. This Agreement has been duly authorized, executed and delivered by the Company and constitutes, and the Note has been duly authorized by the Company and when executed and delivered by the Company will constitute, a legal, valid and binding obligation of the Company enforceable in accordance with its terms. No consent of any other party, and no consent, license, permit, approval or authorization of, exemption by, or registration or declaration with, any governmental authority is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement and the Note except for the filing of this Agreement with the Surface Transportation Board and the filing of a financing statement with respect to the Lender's security interest in the Lease in the office of the Secretary of State of Delaware.

3.3 No Legal Bar. The execution, delivery and performance by the Company of this Agreement, the Note and the Lease will not violate any provision of any existing law or regulation to which the Company is subject or of any order, judgment, award or decree of any court, arbitrator or governmental authority applicable to the Company or of the Agreement of Limited Partnership of the Company or of any mortgage, indenture, contract or other agreement to which the Company is a party or which is or purports to be binding upon the Company or any of its properties or assets, and will not constitute a default thereunder, and (except as contemplated by this Agreement) will not result in the creation or imposition of any Lien on any of the properties or assets of the Company. The Company is not in default in the performance or observance of any of the obligations, covenants or conditions contained in any bond, debenture or note, or in any mortgage, deed of trust, indenture or loan agreement, of the Company.

3.4 No Material Litigation. There are no actions, suits or proceedings (whether or not purportedly on behalf of the Company) pending or, to the knowledge of the Company, threatened against the Company or any of its properties or assets in any court or before any arbitrator of any kind or before or by any governmental body, which (i) relate to any of the Collateral or to any of the transactions contemplated by this Agreement, or (ii) would, if adversely determined, materially impair the right or ability of the Company to carry on its business substantially as now conducted and presently proposed to be conducted, or (iii) would, if adversely determined, have a material adverse effect on the operating results or on the condition, financial or other, of the Company. The Company is not in default with respect to any order, judgment, award, decree, rule or regulation of any court, arbitrator or governmental body.

3.5 No Default. No Default or Event of Default has occurred and is continuing under this Agreement.

3.6 Payment of Taxes. The Company has filed all federal, state and local tax returns and declarations of estimated tax which are required to be filed and has paid all taxes which have become due pursuant to such returns and declarations or pursuant to any assessments made against it, and the Company has no knowledge of any deficiency or additional assessment in connection therewith not adequately provided for on the books of the Company. In the opinion

of the Company, all tax liabilities of the Company were adequately provided for as of (insert appropriate date), and are now so provided for, on the books of the Company.

3.7 Force Majeure. Since September 13, 1996, the business, operations, properties and assets of the Company have not been materially and adversely affected in any way as the result of any fire, explosion, earthquake, disaster, accident, labor disturbance, requisition or taking of property by governmental authority, flood, drought, embargo, riot, civil disturbance, uprising, activity of armed forces, or act of God or the public enemy.

3.8 Burdensome Provisions. The Company is not a party to any agreement or instrument, or subject to any charter or other corporate restriction or to any judgment, order, writ, injunction, decree, award, rule or regulation, which does or will materially and adversely affect the business, operations, properties or assets or the condition, financial or other, of the Company.

3.9. The Lease.

(a) To the best of the Company's knowledge, the Lease, including the Guaranty, has been duly authorized, executed and delivered by the Lessee, and the Guarantor, as the case may be, thereunder and constitutes a valid and binding obligation of the Lessee, and the Guarantor, as the case may be, enforceable in accordance with its terms. No consent of any other party and no consent, license, permit, approval or authorization of, exemption by, or registration or declaration with, any governmental authority is required to be obtained, effected or given in connection with the execution, delivery and performance of the Lease, including the Guaranty, by the Lessee and the Guarantor, as the case may be, except for the filing of the Lease with the Surface Transportation Board and the meeting of the required submission, and acceptance, of rail tank car sale documents required by the Association of American Railroads, all which will have been duly effected on or before the making of the Loan hereunder and will be in full force and effect at all times thereafter.

(b) Neither the Company nor (to the best of the Company's knowledge) the Lessee under the Lease, nor the Guarantor under the Guaranty, is in default in the performance or observance of any covenant, term or condition contained in the Lease, or the Guaranty, as the case may be, and no event has occurred and no condition exists which constitutes, or which with the lapse of time or the giving of notice or both would constitute, a default under the Lease or the Guaranty. The Company has fully performed all of its obligations under the Lease, and the right, title and interest of the Company in, to and under the Lease, including the Guaranty, is not subject to any defense, offset, counterclaim or claim, nor have any of the foregoing been asserted or alleged against the Company as to the Lease, including the Guaranty. The Company has not received any payment of rent or any other amount under the Lease.

3.10 Title to Rail-cars; Specifications. At the time of the making of the Loan by the Lender under this Agreement (i) the Company will have good and valid title to, and will be the lawful owner of, each Unit described in Schedule I hereto, free and clear of all Liens whatsoever except the lien and security interest created by this Agreement and (ii) each Unit will conform

to all Department of Transportation and Surface Transportation Board requirements and specifications and to all standards recommended by the Association of American Railroads, in each case applicable to railroad equipment of the same type as such Unit.

3.11 First Lien. Upon the filing of this Agreement and the Lease in the manner prescribed in Section 11303, Title 49, United States Code and in the related regulations of the Surface Transportation Board, and the filing of a financing statement with respect to the Lender's security interest in the Lease in the office of the Secretary of State of Delaware, this Agreement will constitute a legal, valid and perfected first lien on and first priority security interest in each of the Units (and any Proceeds thereof), the Lease (and the Proceeds thereof) and the Cash Collateral Account, as security for the Obligations, free and clear of all other Liens whatsoever. No security agreement, financing statement, equivalent security or lien instrument or continuation statement covering all or any part of the Collateral is on file or of record with the Surface Transportation Board or with any other public office, except such as may have been filed by or on behalf of the Company in favor of the Lender pursuant to this Agreement.

3.12 Principal Office. The principal place of business, the chief executive office and the place at which the books and records of the Company are kept is 8811 Andros Lane, Port Richey, Florida 34668.

#### SECTION 4. CONDITIONS OF BORROWING

The obligation of the Lender to make the Loan hereunder shall be subject to the fulfillment, to the satisfaction of the Lender, of the following conditions precedent:

(a) The Company shall have executed and delivered to the Lender a Note meeting the requirements of Subsection 2.3 hereof;

(b) There shall have been delivered to the Lender evidence that this Agreement has been duly filed, registered and recorded with the Surface Transportation Board in accordance with Section 11303, Title 49, United States Code;

(c) All executed counterparts of the Lease in the possession of the Company or of any Person controlling, controlled by or under common control with the Company shall have been delivered to the Lender, and the Lender shall have received a certificate to the foregoing effect, dated the date of the Loan, and signed by a duly authorized officer of the General Partner of the Company;

(d) There shall have been delivered to the Lender evidence that the Lease has been duly filed, registered and recorded with the Surface Transportation Board in accordance with Section 11303, Title 49, United States Code and that a financing statement with respect to the Lender's security interest therein has been filed in the office of the Secretary of State of Delaware;

(e) The Lender shall have received a certificate of the Lessee, dated the date of the Loan, in which such Lessee acknowledges notice of the assignment to the Lender of all of the Company's right, title and interest in, to and under its respective Lease, (ii) agrees to make payment of all moneys under or arising out of such Lease directly to the Lender until such time as it shall have received notice from the Lender otherwise, (iii) agrees that each such payment shall be final and that such Lessee shall not seek to recover from the Lender for any reason whatsoever, any moneys paid by such Lessee to the Lender by virtue of this Agreement and that it will not seek recourse against the Lender by reason of this Agreement or such Lease, and (iv) certifies to the effect that such Lease is in full force and effect and constitutes a valid and binding agreement of such Lessee, enforceable in accordance with its terms;

(f) The representations and warranties contained in Section 3 hereof shall be true and correct on and as of the date of the making of the Loan with the same effect as if made on and as of such date, and no Default or Event of Default shall be in existence on the date of the making of the Loan or would occur as a result of the Loan;

(g) There shall have been delivered to the Lender a copy of the (i) warranty bill of sale from the Seller with respect to the Rail-cars, substantially in the form of Exhibit D hereto, transferring to the Company good title to the Rail-cars free and clear of all Liens and (ii) Assignment;

(h) There shall have been delivered to the Lender a Certificate of Cost with respect to the Rail-cars, substantially in the form of Exhibit E hereto, showing the principal amount of the Loan.;

(i) There shall have been delivered to the Lender evidence that insurance with respect to the Rail-cars, which indicates compliance by the Company with the provisions of Subsection 6.19 hereof, has been requested;

(j) There shall have been delivered to the Lender a certificate, dated the date of the Loan and signed by the President or any Vice President of the General Partner, to the same effect as paragraph (i) of this Section 4 and to the further effect that the Company has valid and legal title to, and is the lawful owner of, the Rail-cars, free and clear of all Liens except the lien and security interest created by this Agreement;

(k) There shall not have been, in the judgment of the Lender, any material adverse change in the financial condition or business operations of the Company, or the Lessee;

(l) There shall have been delivered to the Lender, an opinion of counsel for the Seller, dated the date of the Loan and addressed to the Lender and the Company, to the effect that (i) the Seller is a corporation duly organized, validly existing and in corporate good standing under the laws of its jurisdiction of incorporation; (ii) the Assignment with respect to the Rail-cars has been duly authorized, executed and delivered by the Seller and, assuming due authorization, execution and delivery thereof by the Company, constitutes a legal, valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency,

reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally; and (iii) the Seller's Bill of Sale relating to the Rail-cars has been duly authorized, executed and delivered by the Seller and is effective to transfer to the Company good and marketable title to the Rail-cars;

(m) The Lender shall have received any other documents, instruments or certificates that the Lender may reasonably request; and

(n) All legal matters in connection with the Loan and the security there for shall be satisfactory to the Lender.

## SECTION 5. GRANT OF LIEN AND SECURITY INTEREST

As collateral security for (a) the prompt and complete payment when due (whether at the stated maturity, by prepayment, by acceleration or otherwise) of the unpaid principal of, premium, if any, and interest on the Note, (b) the due and punctual payment and performance by the Company of all of its obligations and liabilities under or arising out of or in connection with this Agreement and (c) the prompt and complete payment when due (whether at the stated maturity, by prepayment, by acceleration or otherwise) of all other indebtedness, obligations and liabilities of the Company to the Lender, whether now existing or hereafter incurred (all of the foregoing being hereinafter called the "Obligations"), and in order to induce the Lender to make the Loans hereunder:

5.1 Rail-cars. The Company does hereby assign, convey, mortgage, pledge and transfer to the Lender, and does hereby grant to the Lender a continuing security interest in, all Rail-cars now owned or at any time hereafter acquired by the Company and any and all Proceeds thereof, provided that the Lender does not hereby consent to the sale or other disposal thereof.

5.2 The Lease.

(a) The Company does hereby assign, convey, mortgage, pledge and transfer to the Lender, and does hereby grant to the Lender a continuing security interest in, all of the right, title and interest of the Company in, to and under the Lease, including, without limitation, all right, title and interest of the Company in and to all rents, issues, profits, revenues and other income arising under the Lease and other moneys due and to become due to the Company under or arising out of the Lease, all accounts and general intangibles under or arising out of the Lease, all proceeds of the Lease and all claims for damages arising out of the breach of the Lease, the right of the Company to terminate the Lease and to compel performance of the terms and provisions thereof, and all chattel paper, contracts, instruments and other documents evidencing either of the Lease or any moneys due or to become due thereunder or related thereto. Each and every copy of each of the Lease which the Company directly or indirectly has in its control or possession shall have attached thereto a notice indicating the Lender's interest therein.

(b) The Company agrees that (i) it will specifically authorize and direct the Lessee under the Lease to make payment of all amounts due and to become due to the Company under or arising out of such Lease directly to an account of the Lender, to be maintained by the Lender, (ii) it will hold in trust any such amounts received by it and forthwith pay the same to the Lender, and (iii) it hereby irrevocably authorizes and empowers the Lender to ask, demand, receive, receipt and give acquittance for any and all such amounts which may be or become due and payable or remain unpaid to the Company by such Lessee at any time or times under or arising out of such Lease, to endorse any checks, drafts or other orders for the payment of money payable to the Company in payment therefor, and in the Lender's discretion to file any claims or take any action or proceedings either in its own name or in the name of the Company or otherwise which the Lender may deem to be necessary or advisable in the premises.

(c) It is expressly agreed by the Company that, anything herein to the contrary notwithstanding, the Company shall remain liable under the Lease to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof. The Lender shall not have any obligation or liability under the Lease by reason of or arising out of this Agreement or the assignment of the Lease to the Lender or the receipt by the Lender of any payment relating to the Lease pursuant hereto, nor shall the Lender be required or obligated in any manner to perform or fulfill any of the obligations of the Company under or pursuant to the Lease, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any performance by either Lessee under the Lease or to present or file any claim, or to take any action to enforce the observance of any obligations of the Lessee under the Lease.

## SECTION 6. COVENANTS

The Company hereby covenants and agrees that from the date of this Agreement and so long as any amount remains unpaid on account of the Note, unless the Lender shall otherwise consent in writing:

6.1 Financial Statements. The Company will furnish or cause to be furnished, or, in the case of paragraphs (b), use its best efforts to furnish or cause to be furnished, to the Lender, as requested:

(a) as soon as available, but not later than 120 following the end of the fiscal year of the Company, a certificate of the chief financial officer of the General Partner stating that, to the best of his knowledge after due inquiry, the Company has observed and performed each and every covenant and agreement of the Company contained in this Agreement, the Note and the Lease and that no Default or Event of Default has occurred during the period covered by such financial statements or is in existence on the date of such certificate or, if a Default or Event of Default has occurred or is in existence, specifying the same;

(b) as soon as available from the Lessee pursuant to the terms and condition of the Lease, a duplicate copy of each financial report of the Lessee; and

(c) such additional financial and other information with respect to the Company and, consistent with its best efforts, the Lessee, as the Lender may from time to time reasonably require.

## 6.2 Reports.

(a) On or before March 31 in each year, commencing with the year 1998, the Company shall furnish or cause to be furnished to the Lender a report, certified by an officer of the General Partner of the Company, (i) setting forth as of the preceding December 31 (A) the amount, description and identifying numbers of all Units then subject to this Agreement and (B) the amount, description and identifying numbers of all Units that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year (or since the date of this Agreement in the case of the first such report) and (ii) stating that, in the case of all Units repaired or repainted during the period covered by such report, the numbers and markings required by Subsection 6.19 hereof have been preserved or replaced.

(b) The Company will prepare and deliver to the Lender within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lender) all reports (other than income tax returns), if any, relating to the maintenance, registration and operation of the Rail-cars required to be filed by the Lender with any federal, state or other regulatory agency by reason of the Lender's lien on and security interest in the Rail-cars or the Lease or the provisions of this Agreement.

6.3 Limitation on Fundamental Changes. The Company will not convey, sell, lease, transfer, pledge or otherwise dispose of, in one transaction or a series of related transactions, all or any substantial part of its properties, assets or business or change the form of organization of its business or liquidate or dissolve itself (or suffer any liquidation or dissolution). The Company will not enter into any transaction of merger or consolidation.

6.4 Payment of Taxes. The Company will promptly pay and discharge or cause to be paid and discharged, before the same shall become in default, all lawful taxes, assessments and governmental charges or levies imposed upon the Company, or upon any property, real, personal or mixed, belonging to the Company, or upon any part thereof, as well as all lawful claims for labor, materials and supplies which, if unpaid, might become a Lien upon any such property or any part thereof; provided, however, that the Company shall not be required to pay and discharge or to cause to be paid and discharged any such tax, assessment, charge, levy or claim so long as (i) the validity thereof shall be contested in good faith by appropriate proceedings, (ii) such proceedings do not involve any danger of the sale, forfeiture or loss of such property or any part thereof, and (iii) the Company shall have set aside on its books adequate reserves with respect thereto.

6.5 Conduct of Business; Maintenance of Existence. The Company will engage primarily in the business presently conducted by it, and will do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights and franchises necessary to

continue such business. The Company will qualify as a foreign limited partnership and remain in good standing under the laws of each jurisdiction in which it is required to be qualified by reason of the ownership of its assets or the conduct of its business.

6.6 Compliance with Laws and Rules. The Company will (i) comply, and use its best efforts to cause the Lessee and every user of the Rail-cars to comply, in all material respects (including, without limitation, with respect to the use, maintenance and operation of the Rail-cars) with all laws of the jurisdictions in which its or such Lessee's or such user's operations involving the Rail-cars may extend, with the interchange rules of the American Association of Railroads and with all lawful rules of the Department of Transportation, the Surface Transportation Board and any other governmental authority exercising any power or jurisdiction over the Rail-cars, to the extent that such laws or rules affect the title to, or the operation or use of, or the Lender's lien and security interest in, the Rail-cars, and in the event that such laws or rules require any alteration of, or any replacement or addition of or to any part on, any Unit, the Company will conform therewith at its own expense, and, (ii) comply in all material respects with all other applicable laws and regulations of any governmental authority relative to the conduct of its business or the ownership of its properties or assets, provided, however, that the Company may, in good faith, contest the validity or application of any such law or rule by appropriate proceedings which do not, in the opinion of the Lender, involve any danger of the sale, forfeiture or loss of the Rail-cars or any part thereof.

6.7 Maintenance of Properties. The Company will at all times maintain and keep, or cause to be maintained and kept, in good repair, working order and condition all property of the Company used or useful in the conduct of its business, and will from time to time make or cause to be made all needful and proper repairs, renewals, replacements, betterments and improvements thereto, so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

6.8 Principal Office. The Company will not change the location of its principal place of business, its chief executive office or the place at which its books and records are kept from the address specified in Subsection 3.13 hereof unless it shall have given the Lender at least 30 days prior written notice of such change, and the Company will at all times maintain its principal place of business, chief executive office and the place at which its books and records are kept within the United States of America.

6.9 Indemnities, etc.

(a) In any suit, proceedings or action brought by the Lender under the Lease or to enforce any provision thereof, the Company will save, indemnify and keep the Lender harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim, recoupment or reduction of liability whatsoever of the Lessee thereunder, arising out of a breach by the Company of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such Lessee from the Company, and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Lender.

(b) The Company agrees to indemnify and hold the Lender harmless against any and all liabilities, obligations, losses, damages, claims, suits, costs, expenses and disbursements (including reasonable legal fees and expenses) incurred by or asserted against the Lender with respect to claims for personal injury or property damage arising from its participation in the transactions contemplated by this Agreement, the Lease or the Note except for claims arising due to the gross negligence or willful misconduct of the Lender or its employees or agents.

6.10 Performance of the Lease. The Company will perform and comply in all material respects with all its obligations under the Lease and all other agreements to which it is a party or by which it is bound relating to the Collateral, and the Company will use its best efforts to cause each other party to any thereof to so perform and comply.

6.11 Preservation of Collateral.

(a) The Company will not create, permit or suffer to exist, and will defend the Collateral against and take such other action as is necessary to remove, any Lien, claim or right in or to the Collateral (other than the lien and security interest created by this Agreement and Permitted Liens), and will defend the right, title and interest of the Lender in and to the Company's rights under the Lease and rights in the Rail-cars and in and to the Proceeds thereof against the claims and demands of all other Persons whomsoever.

(b) The Company will advise the Lender promptly, in reasonable detail, of any Lien or claim made or asserted against any of the Collateral and of any event affecting the Lender's lien on and security interest in the Collateral.

6.12 Further Assurances; Recordation and Filing. The Company will, at its sole cost and expense, do, execute, acknowledge and deliver all further acts, supplements, mortgages, security agreements, conveyances, transfers and assurances necessary or advisable for the perfection and preservation of the lien and security interest created by this Agreement in the Collateral, whether now owned or hereafter acquired. The Company will cause this Agreement and any supplements hereto, and all financing and continuation statements and similar notices requested by the Lender or required by applicable law, at all times to be kept, recorded and filed at no expense to the Lender in such manner and in such places as may be required by law in order fully to preserve and protect the rights of the Lender hereunder.

6.13 STB Jurisdiction. The Company will not take or permit to be taken any action within its control which would subject it to the jurisdiction of the Surface Transportation Board as a "carrier", "railroad carrier" or "common carrier", as such terms are defined in Title 49, United States Code, if such jurisdiction will adversely affect the ability of the Company to perform its obligations under this Agreement, the Note or the Lease or adversely affect the validity or enforceability of this Agreement, the Note or the Lease.

6.14 Casualty Occurrence.

(a) In the event of a Casualty Occurrence with respect to any Unit, the Company

shall, promptly after it has knowledge of same, give the Lender written notice of such Casualty Occurrence, which notice shall (i) identify the Unit which has suffered the Casualty Occurrence, (ii) set forth the Casualty Value of such Damaged Unit (and the calculations used in the determination thereof) as of the date which is not less than 10 days nor more than 45 days after the date of such notice (the "Casualty Value Determination Date"), and (iii) specify whether the Company will, on the Casualty Value Determination Date, prepay the Note pursuant to paragraph (b) of this Subsection 6.14 or replace the Damaged Unit pursuant to paragraph (c) of this Subsection 6.14.

(b) If the notice given pursuant to paragraph (a) of this Subsection 6.14 specifies that the Company will prepay the Note on the Casualty Value Determination Date, the Company will, on such date, (i) prepay the Note in an aggregate principal amount equal to the Casualty Value of the Damaged Unit as of such date and (ii) pay the accrued interest on the principal amount so prepaid to the date of prepayment.

(c) If the notice given pursuant to paragraph (a) of this Subsection 6.14 specifies that the Company will replace the Damaged Unit, the Company will, on or prior to the Casualty Value Determination Date:

(i) replace the Damaged Unit with a Rail-car of the same type, which has a value and utility at least equal to, and which is in as good condition as, the Damaged Unit immediately prior to the Casualty Occurrence (assuming that such Damaged Unit was then in the condition required to be maintained by Subsection 6.15 hereof) and which is free and clear of all Liens other than Permitted Liens,

(ii) take all steps necessary to subject such replacement Rail-car (the "Replacement Unit") to the lien and security interest of this Agreement and to subject such Replacement Unit to the applicable Lease, and

(iii) deliver to the Lender such documents evidencing the foregoing as the Lender may reasonably request, including, without limitation, (A) a duly executed supplement to this Agreement, satisfactory in form and substance to Lender and its counsel, describing the Replacement Unit and subjecting the Replacement Unit to the lien and security interest of this Agreement, together with evidence that such supplement has been duly filed, registered and recorded with the Surface Transportation Board in accordance with Section 11303, Title 49, United States Code, (B) a duly executed schedule, satisfactory in form and substance to Lender and its counsel, subjecting the Replacement Unit to the applicable Lease together with evidence that such schedule has been duly filed, registered and recorded with the Surface Transportation Board in accordance with Section 11303, Title 49, United States Code, and (C) documents and opinions of counsel with respect thereto corresponding to those described in paragraphs (p), (q), and (r) of Section 4 hereof;

Upon the Company's compliance with the foregoing provisions of this Section 6.14, the Lender will, if no Default or Event of Default has occurred and is continuing, execute and deliver to the Company such instruments as shall be necessary to release such Damaged Unit from the lien and security interest of this Agreement (without recourse to, or representation or warranty by,

the Lender).

6.15 Maintenance. The Company will, at no expense to the Lender, keep and maintain or cause to be kept and maintained, the Rail-cars in good repair, condition and working order, eligible for interchange with other railroads pursuant to Association of American Railroads Interchange Standards, and will cause to be furnished all parts, mechanisms, devices and servicing required there for so that the value, condition and operating efficiency thereof will at all times be maintained and preserved, ordinary wear and tear excepted.

6.16 Notice of Default; etc. The Company will promptly give written notice to the Lender of (a) the occurrence of any Default or Event of Default; (b) any litigation or proceedings relating to the Collateral; (c) any litigation or proceedings affecting the Company or any of its properties or assets which, if adversely determined, might have a material adverse effect upon the financial condition, business or operations of the Company; and (d) any dispute between the Company and any governmental regulatory body that might materially interfere with the normal business operations of the Company.

6.17 Books and Records. The Company will keep proper books of record and account in which full, true and correct entries in accordance with generally accepted accounting principles will be made of all dealings or transactions in relation to its business and activities.

6.18 Inspection. The Company and the General Partner will permit any person designated by the Lender to visit and inspect any of the properties, corporate books and financial records of the Company and to discuss the affairs, finances and accounts of the Company with the officers of the General Partner, all at such reasonable times and as often as the Lender may reasonably request.

6.19 Maintenance of Insurance.

(a) Upon the delivery of any Rail-cars the Company will promptly effect and maintain or cause to be effected and maintained with an insurance company reasonably satisfactory to the Lender, insurance policies (i) insuring each such Rail-cars against loss by fire, explosion, theft and such other casualties as are usually insured against by companies engaged in the same or a similar business and with coverage in an amount satisfactory to the Lender, and (ii) insuring the Company and the Lender against liability for personal injury and property damage caused by or relating to such Rail-cars or their use with coverage in the amount requested by the Lender, all such insurance policies to be in such form and to have such coverage as shall be reasonably satisfactory to the Lender, with losses payable to the Company and the Lender as their respective interests may appear.

(b) All insurance required by this Subsection 6.21 shall (i) be with the carriers designated above or other carriers acceptable to the Lender, (ii) name the Lender as an assured and loss-payee, as its interest may appear, (iii) provide for at least 30 days' prior written notice to the Lender before any cancellation, reduction in amount or change in coverage thereof shall be effective, (iv) contain a breach of warranty clause in favor of the Lender and (v) provide that the Lender shall have no obligation or liability for premiums,

commissions, assessments or calls in connection with such insurance.

(c) The Company shall, if so requested by the Lender, deliver to the Lender within a reasonable time and as often as the Lender may reasonably request a report of a reputable insurance broker with respect to the insurance on the Rail-cars.

## SECTION 7. POWER OF ATTORNEY

7.1 Appointment. The Company hereby irrevocably constitutes and appoints the Lender and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Company and in the name of the Company or in its own name, from time to time in the Lender's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, the Company hereby gives the Lender the power and right, on behalf of the Company, without notice to or assent by the Company, to do the following:

(a) (i) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral and (ii) to endorse any checks, drafts or other orders for the payment of money payable to the Company in connection with the Collateral;

(b) upon default by the Company in the performance of Subsection 6.4 or 6.19, the Lender may, but shall not be obligated to, (i) effect any insurance called for by the terms of Subsection 6.19 and pay all or any part of the premiums therefor and the costs thereof and (ii) pay and discharge any taxes, liens and encumbrances on the Collateral; and

(c) upon the occurrence and continuance of any Event of Default or of any Default specified in paragraph (g) of Section 8 hereof, (i) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with accounts and other documents relating to the Collateral; (ii) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any thereof and to enforce any other right in respect of any of the Collateral; (iii) to defend any suit, action or proceeding brought against the Company with respect to any of the Collateral; (iv) to settle, compromise or adjust any suit, action or proceeding described in clause (iii) above and, in connection therewith, to give such discharges or releases as the Lender may deem appropriate; and (v) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Lender were the absolute owner thereof for all purposes, and to do, at the Lender's option and the Company's expense, at any time or from time to time, all acts and things which the Lender deems necessary to protect, preserve or realize upon the Collateral and the Lender's security interest therein, in order to effect the intent of this Agreement, all as fully and effectively as the Company might do.

The Company hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

7.2 No Duty. The powers conferred on the Lender hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to the Company for any act or failure to act, except for its or their own gross negligence or willful misconduct.

7.3 Additional Rights.

(a) The Company authorizes the Lender, at any time and from time to time, (i) to communicate in its own name with regard to the assignment of the Lease and other matters related thereto and (ii) to execute, in connection with the sale provided for in Section 9(b) of this Agreement, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

(b) If the Company fails to perform or comply with any of its agreements contained herein, the Lender may itself perform or comply, or otherwise cause performance or compliance, with such agreement, and the expenses of the Lender incurred in connection with such performance or compliance, together with interest thereon at the rate of (18%) per annum, shall be payable by the Company to the Lender on demand and shall constitute part of the Obligations secured hereby.

## SECTION 8. EVENTS OF DEFAULT

If any of the following Events of Default shall occur and be continuing:

(a) Failure to pay any principal of, premium, if any, or interest on the Note when due and the continuance of such failure for 10 days after notice thereof shall have been given to the Company by the Lender;

(b) Any representation or warranty made by the Company in this Agreement or by the Company or any officer of the Company in any document, certificate or financial or other statement furnished at any time under or in connection with this Agreement, shall prove to have been untrue or inaccurate in any material respect at the time when made;

(c) The default by the Company in the observance or performance of any covenant contained in Subsection 5.2(b), 6.3, 6.11(a), 6.11(b), 6.14, 6.15, 6.19(a) or 6.19(b) hereof;

(d) The default by the Company in the observance or performance of any other covenant or agreement contained in this Agreement and the continuance of such default for

30 days after written notice, specifying such default, shall have been given to the Company by the Lender;

(e) The Company, the Lessee or the Guarantor shall breach or disaffirm any of its respective obligations under the Lease or the Lease shall cease to be in full force and effect;

(f) The default by the Company in any payment of principal of, or interest on, any obligation for borrowed money (other than the Note) or for the deferred purchase price of any property or asset or any obligation guaranteed by it or in respect of which it is liable, for a period equal to the period of grace, if any, applicable to such default, or in the performance or observance of any other term, condition or covenant contained in any such obligation or in any agreement or instrument relating thereto if the effect of such default is to cause, or to permit the holder or holders of such obligation (or a trustee or agent on behalf of such holder or holders) to cause, such obligation to become due and payable prior to its stated maturity or to realize upon any collateral given as security therefor, unless the aggregate amount of all such obligations as to which any such default shall have occurred does not exceed \$20,000;

(g) Filing by the Company of a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization, arrangement, readjustment of its debts or for any other relief under any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement, composition, readjustment of debt or other similar act or law of any jurisdiction, domestic or foreign, now or hereafter existing, or any action by the Company indicating its consent to, approval of, or acquiescence in, any such petition or proceeding; the application by the Company for, or the appointment by consent or acquiescence of, a receiver or trustee for the Company or for all or a substantial part of its property; the making by the Company of an assignment for the benefit of creditors; or the inability of the Company, or the admission by the Company in writing of its inability, to pay its debts as they mature;

(h) Filing of an involuntary petition against the Company in bankruptcy or seeking reorganization, arrangement, readjustment of its debts or for any other relief under any bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement, composition, readjustment of debt or other similar act or law of any jurisdiction, domestic or foreign, now or hereafter existing; or the involuntary appointment of a receiver or trustee of the Company or for all or a substantial part of its property; or the service on the Company of a warrant of attachment, execution or similar process against any substantial part of its property; and the continuance of any of such events for 60 days undismissed, unbonded or undischarged;

(i) Final judgment for the payment of money in excess of \$50,000 shall be rendered against the Company and the same shall remain undischarged for a period of 60 days during which execution shall not be effectively stayed; then, and in any such event, the Lender may exercise any and all remedies granted to it under this Agreement and under applicable law, and may further, by notice of default given to the Company declare the Note to be forthwith due and payable, whereupon the unpaid principal amount of the Note, together with accrued interest thereon, shall become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Note to the contrary notwithstanding.

## SECTION 9. REMEDIES

If an Event of Default shall occur and be continuing:

(a) All payments received by the Company in connection with or arising out of any of the Collateral shall be held by the Company in trust for the Lender, shall be segregated from other funds of the Company and shall forthwith upon receipt by the Company be turned over to the Lender, in the same form as received by the Company (duly endorsed by the Company to the Lender, if required); any and all such payments so received by the Lender (whether from the Company or otherwise) may, in the sole discretion of the Lender, be held by the Lender as collateral security for the Obligations, and/or then or at any time thereafter applied in whole or in part by the Lender against all or any part of the Obligations then due in such order as the Lender shall elect. Any balance of such payments held by the Lender and remaining after payment in full of all the Obligations shall be paid over to the Company or to whomsoever may be lawfully entitled to receive the same;

(b) The Lender may exercise in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the Uniform Commercial Code of the State of New York. Without limiting the generality of the foregoing, the Company expressly agrees that in any such event the Lender, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon the Company or any other Person (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon the Collateral or any part thereof and may take possession of the Rail-cars and/or may forthwith sell, assign, give option or options to purchase, or sell, lease or otherwise dispose of and deliver the Collateral, or any part thereof, in any manner permitted by applicable law (or contract to do so) in one or more parcels at public or private sale or sales, at the office of any broker or at any of the Lender's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk, with the right of the Lender upon any such sale or sales, public or private, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in the Company, which right or equity of redemption is hereby expressly waived or released. If any notification of intended disposition of any of the Collateral is required by law, such notification shall be deemed reasonably and properly given if mailed at least fifteen (15) days before such disposition, by registered or certified mail, postage prepaid, addressed to the Company at the address set forth in Subsection 10.1 hereof. The Company further agrees, at the Lender's request, to collect the Rail-cars and make them available to the Lender as hereinafter provided. The Lender shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization and sale, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care, safekeeping or otherwise of any or all of the Collateral or in any way relating to the rights of the Lender hereunder, including reasonable attorney's fees and legal expenses, to the payment in whole or in part of the Obligations, in such order as the Lender may elect, the Company remaining

liable for any deficiency remaining unpaid after such application, and only after so applying such net proceeds and after the payment by the Lender of any other amount required by any provision of law, including Section 9-504(1)(c) of the Uniform Commercial Code of the State of New York, need the Lender account for the surplus, if any, to the Company. To the extent permitted by applicable law, the Company waives all claims, damages and demands against the Lender arising out of the repossession, retention or sale of the Collateral. The Company shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which the Lender is entitled, the Company also being liable for the fees of any attorneys employed by the Lender to collect such deficiency. The Company hereby waives presentment, demand, protest and any notice (to the extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral; and

(c) In the event that the Lender shall request that the Rail-cars be collected as provided in paragraph (b) of this Section 9, the Company shall, at its own risk and expense (i) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and to all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks as the Lender reasonably may designate; (ii) permit the Lender to store such Units on such tracks until such Units have been sold, leased or otherwise disposed of by the Lender; and (iii) transport the same to any connecting carrier for shipment, all as directed by the Lender. The assembling, delivery, storage and transporting of the Rail-cars as hereinbefore provided shall be at the expense and risk of the Company and are of the essence of this Agreement, and upon application to any court of equity having jurisdiction in the premises the Lender shall be entitled to a decree against the Company requiring specific performance of the covenants of the Company so to assemble, deliver, store and transport the Rail-cars. During any storage period, the Company will, at its own cost and expense, maintain and keep the Rail-cars in good order and repair and will permit the Lender or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessor or manager of any Unit, to inspect the same. The Company hereby expressly waives any and all claims against the Lender and its agent or agents for damages of whatsoever nature in connection with any retaking of any Unit in any reasonable manner.

(d) Beyond the use of reasonable care in the custody thereof the Lender shall not have any duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of it or as to any income therefrom.

Notwithstanding any provision of this Agreement to the contrary, the Lender shall not, so long as either Lessee is not in default under its Lease, take any action which would interfere with such Lessee's rights under its Lease, including the right to the possession and use of the Boxcars subject thereto, except in accordance with the provisions of such Lease.

## SECTION 10. MISCELLANEOUS

10.1 Notices. All notices, requests and demands to or upon the respective parties to this

Agreement shall be in writing and shall be deemed to have been given or made when delivered by hand or deposited in the mail, by registered or certified mail, postage prepaid, addressed as follows or to such other address as may be hereafter designated in writing by the respective parties hereto:

The Company:

ELM-Central Rail Leasing Company, L.P.  
Suite 112  
One Tiffany Point  
Bloomington, Illinois 60108,1111  
Attention: Robert F. Mack, President

With a copy to:

Contino + Partners  
70 West Red Oak Lane  
White Plains, New York 10604  
Attention: Richard M. Contino

And a copy to:

ELM-Central Rail Leasing Company, L.P.  
P.O. Box 13  
Port Richey, Florida 34673

The Lender:

Central Leasing (U.S.A.) Inc.  
655 Third Avenue  
New York, New York 10017  
Attention: President

10.2 No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Lender, any right, power or privilege under this Agreement, the Note or any of the Collateral shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided herein and therein are cumulative and not exclusive of any rights or remedies provided by law.

10.3 Amendments and Waivers. The provisions of this Agreement may from time to time be amended, supplemented or otherwise modified or waived only by a written agreement signed by the Company and the Lender.

10.4 Successors. This Agreement shall be binding upon and inure to the benefit of the Company and the Lender and their respective successors and assigns, except that the

Company may not transfer or assign any of its rights hereunder without the prior written consent of the Lender.

10.5 Survival of Representations. All representations and warranties herein contained or made in writing in connection with this Agreement shall survive the execution and delivery of this Agreement and the making of the Loan hereunder and shall continue in full force and effect until all sums due and to become due hereunder and under the Note shall have been paid in full.

10.6 Construction. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

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

10.8 Counterparts. This Agreement may be executed by one or more of the parties hereto in any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

ELM-CENTRAL RAIL LEASING COMPANY, L.P., Borrower

BY: ELM CORPORATION, GENERAL PARTNER

By: 

Title: Executive Vice President

CENTRAL LEASING (U.S.A.) INC., Lender

By: 

Title: PRESIDENT

STATE OF New York )  
 : ss.:  
COUNTY OF Westchester )

On this 12<sup>th</sup> day of August, 1997, before me personally appeared Richard M. CONTINO, to me known, who, being duly sworn, did depose and say that he resides at 56 Siscoot Rd Pawling, NY, that he is E.V.P. of \_\_\_\_\_, one of the corporations described in and which executed the foregoing document; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such corporation's seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Martina E. Schettini  
Notary Public

(Notarial Seal)

MARTHA E. SCHEITINI  
Notary Public, State of New York  
No. 494832  
Qualified in Westchester County  
Commission Expires Jan. 27, 1999

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

On this 13<sup>th</sup> day of AUGUST, 1997, before me personally appeared HIDETOSHI OOKA, to me known, who, being duly sworn, did depose and say that he resides at 415 E 37TH ST. #29D NYC, NY 10016; that he is a PRESIDENT of CENTRAL LEASING (USA) INC., one of the corporations described in and which executed the foregoing document; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such corporation's seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Jeffrey R. Finn  
Notary Public

(Notarial Seal)

JEFFREY R. FINN  
Notary Public, State of New York  
No. 01F15030912  
Qualified in New York County  
Commission Expires July 25, 1998

SCHEDULE I

RAIL-CARS

TWENTY FOUR (24) Railroad Tankcars Manufactured By Union Tank Car Company, AAR Number 105A500W, with the following Identification Numbers:

LCIX 2541  
LCIX 2542  
LCIX 2543  
LCIX 2544  
LCIX 2545  
LCIX 2546  
LCIX 2547  
LCIX 2548  
LCIX 2550  
LCIX 2551  
LCIX 2552  
LCIX 2553

LCIX 2554  
LCIX 2555  
LCIX 2556  
LCIX 2557  
LCIX 2558  
LCIX 2559  
LCIX 2560  
LCIX 2561  
LCIX 2562  
LCIX 2563  
LCIX 2564  
LCIX 2565

EXHIBIT A

[Form of Note]

ELM-Central Rail Leasing Company, L.P.

\$ \_\_\_\_\_

New York, New York  
August \_\_\_\_\_, 1997

FOR VALUE RECEIVED, ELM-Central Rail Leasing Company, L.P., a Delaware limited partnership (the "Company"), hereby promises to pay to the order of Central Leasing (U.S.A.) Inc. at its office located at 655 Third Avenue, New York, New York 10017, in lawful money of the United States of America, the principal amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), and to pay interest on the unpaid principal amount hereof, in like money, from the date hereof as follows:

1. INTEREST -ONLY payments at the rate of \_\_\_\_\_% per annum (calculated on the basis of a 360-day year of twelve 30-day months), such interest to be due in and payable in 4 consecutive monthly installments on the last day of each month, commencing August 31, 1997, each such interest-only payment to be in the amount of \$ \_\_\_\_\_; and

2. PRINCIPAL AND INTEREST payments at the rate of \_\_\_\_\_% per annum (calculated on the basis of a 360-day year of twelve 30-day months), such principal and interest to be due and payable in \_\_\_\_\_ consecutive monthly installments on the last day of each month, commencing December 31, 1997. Each of the 1st through the 131st such installments of principal and interest shall be a payment of principal and interest in the amount of \$ \_\_\_\_\_ and the 132nd such installment shall be a payment of principal and interest in the amount of \$ \_\_\_\_\_, provided that, in any event, the 132nd such installment shall be in amount sufficient to pay in full all accrued interest on, and the entire unpaid principal amount of, this Note, and provided further, with respect to such payments of principal and interest installments that in the event any partial prepayment of this Note is made pursuant to Subsection 2.4 or 2.5 of the Agreement referred to below, each installment due and payable on this Note after such partial prepayment shall be reduced in the same proportion as then outstanding principal amount of this Note shall have been reduced by such partial prepayment. Each principal and interest installment of this Note, when paid, shall be first applied to the payment of interest on the unpaid principal amount of this Note, and the balance thereof to the payment of principal. Interest on any overdue principal of and premium, if any, on this Note shall be payable from the due date thereof at the per annum rate of 200 basis points in addition to the prime lending rate to its best commercial customers set by State Street Bank and Trust Company, Boston, Massachusetts, for the period during which such principal or

premium shall be overdue.

If any installment of principal and/or interest, as the case may be, on this Note becomes due and payable on a Saturday, Sunday or legal holiday under the laws of the State of New York, the maturity thereof shall be extended to the next succeeding business day.

This Note is the Note of the Company issued pursuant to the Loan and Security Agreement dated as of August 12, 1997, between the Company and the payee hereof (herein, as the same may from time to time be amended, supplemented or otherwise modified, called the "Agreement"), and is entitled to the benefits thereof. As provided in the Agreement, this Note is subject to prepayment, in whole or in part, in certain cases without premium and in other cases with a premium as specified in the Agreement.

This Note is secured by the Collateral described in the Agreement. Reference is made to the Agreement for a description of the nature and extent of the security for this Note and the rights of the holder hereof with respect to such security.

This Note shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

Upon the occurrence of any one or more of the Events of Default specified in the Agreement, the amounts then remaining unpaid on this Note may be declared to be immediately due and payable as provided in the Agreement.

ELM-CENTRAL RAIL LEASING COMPANY, L.P.

By: ELM CORPORATION, General Partner

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Richard M. Contino  
Executive Vice President

EXHIBIT B

Form of

EQUIPMENT BILL OF SALE

STATE STREET BOSTON LEASING COMPANY, INC., a Massachusetts corporation, with a principal place of business at 225 Franklin Street, Boston, Massachusetts 02101 ("Seller"), for and in consideration of the sum of (\$1.00) one dollar received from ELM-CENTRAL RAIL LEASING COMPANY, L.P., a Delaware limited partnership, having a place of business at \_\_\_\_\_ ("Buyer"), the receipt and sufficiency of which is hereby acknowledged as payment in full for the purchase price of the equipment described an Annex A hereto (the "Equipment"), has bargained, sold, transferred, assigned, set over and conveyed, and by these presents does bargain, sell, transfer, assign, set over and convey unto Buyer, its successors and assigns forever all of the Equipment.

To HAVE AND TO HOLD, all and singular the Equipment unto the Buyer, its successors and assigns, for its and their own use and behoof forever.

Seller shall indemnify, defend and hold Buyer harmless from and against any and all claims or liabilities resulting from any misrepresentation by, or breach of warranty, covenant or agreement of Seller.

Seller, for itself and its successors and assigns, further covenants and agrees to do, execute and deliver, or to cause to be done, executed and delivered, all such further reasonable acts, transfers and assurances, for the better assuring, conveying and confirming unto Buyer and its successors and assigns, all and singular, the Equipment hereby bargained, sold, assigned, transferred, set over and conveyed as Buyer and its successors and assigns shall reasonably request.

Seller hereby warrants to Buyer, its successors and assigns, that at the time of this sale to Buyer, Seller is the lawful owner of the Equipment; that title to said Equipment is free from all prior claims, liens and encumbrances suffered by or through Seller; that Seller has good right to sell the same as aforesaid; and that Seller covenants that it will warrant and defend such title against all claims and demands whatsoever.

This Bill of Sale and the representations, warranties and covenants herein contained shall inure to the benefit of Buyer and its successors and assigns, shall be binding upon Seller and its successors and assigns, and shall survive the execution and delivery hereof.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed on the \_\_\_\_ day of \_\_\_\_\_, 1997.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Annex A  
to  
Equipment Bill of Sale

All equipment, including all reversionary rights to such equipment arising in favor of Seller under the Lease (defined below) upon the expiration or termination of the lease, covered by that certain Master Equipment Lease Agreement No. 1, dated as of September 9, 1988, between Seller, as Lessor, and Praxair, Inc. (successor by merger to Liquid Carbonic Industries Corporation, a Delaware corporation, which was a successor by merger to Liquid Carbonic Carbon Dioxide Corporation, a Delaware corporation, the initially-named lessee), a Delaware corporation, as Lessee (the "Lessee"), as amended by Master Equipment Lease Agreement No. 1 Amendment dated as of February 7, 1997 (collectively, the "Master Agreement"), under which Seller has leased certain rail tank cars to Lessee pursuant to Rental Schedule No. 1 and Certificate of Inspection and Acceptance (the "Schedule"), dated as of September 9, 1998, such Master Agreement and Schedule, together with all extensions, amendments, modifications, supplements and documents delivered in connection therewith or pursuant thereto [excluding the Excluded Payments (as defined in an Equipment Lease Purchase Agreement (the "Purchase Agreement"), dated as of August 18, 1997, between Seller and Purchaser)], collectively referred to as the "Lease," as follows:

Number of Units, Description and Identification Numbers:

TWENTY FOUR (24) Railroad Tankcars Manufactured By Union Tank Car Company, AAR Number 105A500W, with the following Identification Numbers:

LCIX 2541	LCIX 2554
LCIX 2542	LCIX 2555
LCIX 2543	LCIX 2556
LCIX 2544	LCIX 2557
LCIX 2545	LCIX 2558
LCIX 2546	LCIX 2559
LCIX 2547	LCIX 2560
LCIX 2548	LCIX 2561
LCIX 2550	LCIX 2562
LCIX 2551	LCIX 2563
LCIX 2552	LCIX 2564
LCIX 2553	LCIX 2565

EXHIBIT C

[Form of Certificate of Cost]

CERTIFICATE OF COST

Pursuant to paragraph k of Section 4 of the Loan and Security Agreement, dated as of August 12, 1997 (the "Agreement"), between ELM-Central Rail Leasing Company, L.P., and Central Leasing (U.S.A.) Inc.(the "Lender"), the undersigned hereby certifies that the Rail-car Costs (as defined in the Agreement) of the Rail-cars being partially financed with the proceeds of the loan being made by the Lender to the undersigned on the date hereof are as follows:

TWENTY FOUR (24) Railroad Tankcars Manufactured By Union Tank Car Company, AAR Number 105A500W, with the following Identification Numbers:

LCIX 2541  
LCIX 2542  
LCIX 2543  
LCIX 2544  
LCIX 2545  
LCIX 2546  
LCIX 2547  
LCIX 2548  
LCIX 2550  
LCIX 2551  
LCIX 2552  
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LCIX 2555  
LCIX 2556  
LCIX 2557  
LCIX 2558  
LCIX 2559  
LCIX 2560  
LCIX 2561  
LCIX 2562  
LCIX 2563  
LCIX 2564  
LCIX 2565

TOTAL RAIL-CAR COST: \$ \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Certificate this \_\_\_\_ day of August, 1997.

ELM-Central Rail Leasing Company, L.P.  
By: ELM CORPORATION, General Partner

By: \_\_\_\_\_  
Title: \_\_\_\_\_