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ELIAS C. ALVORD (1942)  
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RECORDATION NO. **18911** FILED 1425  
JUL 22 1994 - 2 16 PM  
OF COUNSEL  
URBAN A. LESTER  
INTERSTATE COMMERCE COMMISSION

July 22, 1994

RECORDATION NO. **18911-A,B,C,D,E,F** FILED 1425  
JUL 22 1994 - 2 16 PM  
INTERSTATE COMMERCE COMMISSION

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) copies of a Master Equipment Lease Agreement, dated as of June 1, 1994, a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177, and two (2) copies of each of the following secondary documents related thereto: an Assignment and Assumption Agreement, dated as of July 21, 1994; Lease Schedule No. 1, dated as of July 21, 1994; Lease Schedule No. 2, dated as of July 21, 1994; Lease Schedule No. 3, dated as of July 21, 1994; Lease Schedule No. 4, dated as of July 21, 1994 and Lease Schedule No. 5, dated as of July 21, 1994.

The names and addresses of the parties to the enclosed documents are:

Master Equipment Lease Agreement

Lessor: Pitney Bowes Credit Corporation  
201 Merritt Seven  
Norwalk, Connecticut 06856  
  
Lessee: Minnesota Corn Processors  
400 West Main Street, Suite 201  
Marshall, Minnesota 56258

*Edward M. Lewis*

*counterpart*

Mr. Sidney L. Strickland, Jr.  
July 22, 1994  
Page Two

Assignment and Assumption

Assignor: Pitney Bowes Credit Corporation  
201 Merritt Seven  
Norwalk, Connecticut 06856

Assignee: Nationsbanc Leasing Corporation  
2300 Northlake Center Drive, Suite 300  
Tucker, Georgia 30084

Lease Schedule No. 1, 2, 3, 4 and 5

Lessor: Nationsbanc Leasing Corporation  
2300 Northlake Center Drive, Suite 300  
Tucker, Georgia 30084

Lessee: Minnesota Corn Processors  
400 West Main Street, Suite 201  
Marshall, Minnesota 56258

A description of the railroad equipment covered by the enclosed documents is attached as Schedule A to each of the aforesaid Lease Schedules.

Also enclosed is a check in the amount of \$126.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return one stamped copy of each of the enclosed documents to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/bg  
Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

JULY 22, 1994

ROBERT W. ALVORD  
ALVORD & ALVORD  
918 16TH ST., NW SUITE 200  
WASHINGTON DC 20006-2973

Dear MR. ALVORD:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/22/94 at 2:45PM, and assigned recordation number(s) 18911, 18911-A, B, C, D, E, F.

Sincerely yours,

Sidney L. Strickland, Jr.  
Secretary

Enclosure(s)

\$ 126.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one stamped on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



18911

RECORDATION NO. \_\_\_\_\_ FILED 1425

JUL 23 1994 2 12 PM

INTERSTATE COMMERCE COMMISSION

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**MASTER EQUIPMENT LEASE AGREEMENT**

Dated as of June 1, 1994

Between Pitney Bowes Credit Corporation

LESSOR

and

Minnesota Corn Processors

LESSEE

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Filed and Recorded with the  
Interstate Commerce Commission on  
\_\_\_\_\_, at  
\_\_\_\_\_ and given  
Recordation No. \_\_\_\_\_

## MASTER EQUIPMENT LEASE AGREEMENT

Master Equipment Lease Agreement made as of the 1st day of June 1994, between PITNEY BOWES CREDIT CORPORATION ("Lessor") with a place of business located at 201 Merritt Seven, Norwalk, Connecticut 06856-5151 and MINNESOTA CORN PROCESSORS ("Lessee") having its principal place of business located at 400 West Main Street, Suite 201, Marshall, Minnesota 56258-1236.

**1. LEASE AGREEMENT:** (a) Lessor hereby agrees to lease to Lessee and Lessee hereby agrees to rent from Lessor up to three hundred eighty-one (381) new fiberglass insulated tank railcars, or such other types of railcars identified by Lessee which Lessor, in its sole discretion, may approve ("Equipment"), manufactured, in the case of the aforementioned tank cars, by Trinity Industries, or with respect to such other railcars, by Trinity Industries or another manufacturer acceptable to Lessor ("Manufacturer"), described in Equipment Lease Schedule(s) which may from time to time be executed by Lessor and Lessee and attached hereto or incorporated herein by reference ("Schedules"), upon the terms and conditions set forth in this Lease, as supplemented by the terms and conditions set forth in the appropriate Schedule identifying such items of Equipment. All of the terms and conditions of this Lease shall govern the rights and obligations of Lessor and Lessee except as specifically modified in writing.

(b) An executed counterpart of this Lease (including any prior supplements, addenda or riders thereto) or a photocopy thereof, together with an executed original of any numbered Schedule and the related acceptance certificate and Stipulated Loss Values and Termination Values Addenda, in each case marked "Counterpart No. 1", shall be the original of the "lease" for the Equipment described in such Schedule and together they shall constitute a separate and enforceable lease (the "Lease"). All other executed counterparts of such numbered Schedule shall be marked and considered a "duplicate". To the extent this Lease constitutes chattel paper, as that term is defined in the Uniform Commercial Code under applicable law, no security interest in this Lease may be created through the transfer of possession of any counterpart other than Counterpart No. 1 of each numbered Schedule and the related acceptance certificate and Stipulated Loss Values and Termination Values Addenda.

**2. ACCEPTANCE; CONDITIONS PRECEDENT:** (a) The obligation of Lessor to pay for and lease any of the Equipment to Lessee hereunder shall be subject, on or as of each Delivery Date (as defined below) for such Equipment, to (i) Lessee's acceptance of such Equipment, as evidenced by Lessor's receipt of an acceptance certificate in form and substance acceptable to Lessor with respect thereto, plus the execution and delivery by Lessee of a Schedule in the form attached hereto, with all blanks filled in; (ii) Lessee's execution and delivery, at Lessee's expense, of such documents as Lessor may reasonably deem to be necessary or desirable (each in form and substance satisfactory to Lessor), including, without limitation, an opinion of Lessee's counsel, a certificate(s) of officers of Lessee, Uniform Commercial Code financing statements and other filings and publications as may be appropriate with respect to Lessor's interest in the Equipment including filings with the

United States Interstate Commerce Commission ("ICC"); (iii) there not having occurred, in Lessor's sole judgment, since March 31, 1994, any material adverse change in the financial condition of Lessee or in Lessee's ability to perform its obligations hereunder; (iv) there having occurred no change in applicable law that would have a material adverse impact on the transactions contemplated by this Lease (unless Lessor and Lessee shall have agreed upon appropriate adjustments and indemnities to compensate for such change); and (v) Lessee's representations and warranties contained in this Lease being true and accurate as if made on and as of such date, and Lessee's having performed and complied with all of its covenants and obligations hereunder and under any purchase agreement. Lessee's execution of any Schedule shall constitute its representation and warranty that there has been no material adverse change in its business or financial condition since the date referenced above in this Section 2.

(b) Lessee agrees to cause the Manufacturer to issue to Lessor, on each Delivery Date, a bill of sale in form and substance satisfactory to Lessor, which bill of sale shall extend to Lessor the warranties and indemnities made by the Manufacturer in any purchase document or agreement with Lessee.

(c) Lessor hereby appoints Lessee to act on its behalf for the purpose of accepting items of Equipment when delivered by a Manufacturer. Subject to the satisfaction of the conditions set forth in this Section 2, Lessor will pay the Manufacturer the Lessor's Cost of each item of Equipment upon such delivery and acceptance (a "Delivery Date"). Lessee will give Lessor three (3) business days notice of each Delivery Date.

(d) Lessor shall not be required to accept any item of Equipment under this Lease after September 30, 1994, nor shall the aggregate Lessor's Cost of all Equipment accepted hereunder exceed \$20,000,000. The Lessor's Cost of the Equipment shown on each Schedule (other than the final Schedule) shall be no less than \$2,500,000.

**3. TERM:** The obligations under this Lease shall commence upon the written acceptance thereof by Lessor and shall end upon full performance and observance of each and every term, condition and covenant set forth in this Lease, each Schedule hereto and any extensions thereof. The Term of this Lease with respect to each item of Equipment will commence on the applicable Delivery Date and shall end on the day before the fifteenth (15th) anniversary of such date (the "Basic Term") unless terminated sooner as provided herein. The Term shall include any Renewal Term (as defined in Section 19 hereof) elected by Lessee under the provisions of this Lease.

**4. RENTAL PAYMENTS:** Rent during the Basic Term ("Basic Rent") shall be computed as set forth in Exhibit I hereto and shall be payable monthly, in advance, commencing on the Delivery Date and on each monthly anniversary thereof throughout the Basic Term. Rent during any elected Renewal Term ("Renewal Rent") shall be payable monthly in advance. Payments of Basic Rent and Renewal Rent may be collectively referred to herein as "Rental Payments". Such Rent shall be payable at the office of Lessor, 201 Merritt Seven, Norwalk, Connecticut 06856-5151 or at such office as Lessor may otherwise designate. The receipt of any check or

other item on account of any Rental Payment will not be considered as payment thereof until such check or other item is honored when presented for payment.

**5. DELIVERY AND INSTALLATION:** Lessee will select the type, quantity and Manufacturer of each item of Equipment designated in the appropriate Schedule and in reliance thereon such Equipment will then be ordered by Lessor from such Manufacturer or Lessor will accept an assignment of any existing purchase order therefor satisfactory in form and substance to Lessor. Lessor shall have no liability for any delivery or failure by the Manufacturer to meet any conditions contained in Lessee's agreement with the Manufacturer. Lessee, at its expense, will pay all transportation, packing, taxes, duties, insurance, installation, testing and other charges in connection with the delivery, installation and use of the Equipment.

**6. WARRANTIES:** LESSOR, NOT BEING THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT, INCLUDING, BUT NOT LIMITED TO: THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE; THE DESIGN OR CONDITION OF THE EQUIPMENT; THE QUALITY OR CAPACITY OF THE EQUIPMENT; THE WORKMANSHIP IN THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; PATENT INFRINGEMENT; OR LATENT DEFECTS. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages. Lessor shall have no obligation to install, erect, test, adjust, service, or maintain the Equipment. Lessee shall look to the manufacturer and/or seller for any claims related to the Equipment.

Lessor hereby acknowledges that any Manufacturer's and/or seller's warranties are for the benefit of both Lessor and Lessee. NOTWITHSTANDING THE FOREGOING, LESSEE'S OBLIGATIONS TO PAY THE RENTALS OR OTHERWISE UNDER THIS LEASE SHALL BE AND ARE ABSOLUTE AND UNCONDITIONAL.

To the extent permitted by the Manufacturer or seller, and provided Lessee is not in default under this Lease, Lessor shall make available to Lessee all Manufacturer's and/or seller's warranties with respect to Equipment.

**7. TITLE TO AND LOCATION OF EQUIPMENT:** Title to each item of Equipment leased hereunder shall remain with the Lessor at all times and the Lessee shall have no right, title or interest therein except as expressly set forth in this Lease. Lessee, at its expense, will protect and defend Lessor's title to the Equipment and will keep the Equipment free and clear from any and all claims, liens, encumbrances and legal processes except for those created by, through, or under Lessor. Lessor assumes no liability and makes no representation as to the treatment by Lessee of this Lease, the Equipment or the Rental Payments for financial statement or tax purposes.

All items of Equipment shall at all times be and remain personal property notwithstanding that any such Equipment may now or hereafter be

affixed to realty. The Equipment shall be delivered to the location specified in the Schedule with respect thereto. Without the prior approval of Lessor, the Equipment shall not be used in Mexico at any time nor shall the Equipment be used more than five percent (5%) in Canada (measured by time in Canada vs. time in the United States).

The Lessor shall be permitted to display notice of its ownership of the Equipment by affixing to each item of Equipment an identifying stencil or plate or any other indicia of ownership and Lessee will not alter, deface, cover or remove such ownership identification.

**8. USE OF EQUIPMENT, INSPECTION AND REPORTS:** Lessee may possess and use the Equipment in accordance with this Lease, provided that any such use is in conformity with all applicable laws, any insurance policies, and any warranties of the manufacturer with respect to the Equipment, and further provided that Lessee shall not use or permit the Equipment to be used to contain or transport any explosive, hazardous, toxic, dangerous or environmentally threatening waste, material or matter. Lessor shall have the right, upon reasonable prior notice to the Lessee and during the Lessee's regular business hours, to inspect the Equipment at the premises of the Lessee or to the extent reasonable wherever the Equipment may be located. Lessee shall promptly notify Lessor of all details arising out of any alleged encumbrances on the Equipment or any accident which may result in a claim against the Lessor allegedly resulting from the use or operation thereof. The Lessee will maintain or cause to be maintained all records, logs, reports, and compliance certificates relating to the care, use and maintenance of the Equipment and shall make such records available for inspection at Lessor's request and shall deliver such records to Lessor upon the return of the Equipment under Section 23 hereof. In addition, the Lessee will make available (or will cause to be made available) to the Lessor such information as the Lessor shall reasonably request from time to time in order to enable the Lessor to fulfill its Federal, state, local and foreign tax return obligations and shall furnish for inspection and copying such original records or copies of available records necessary to satisfy tax audit requirements and to conduct effectively any tax contest.

Except as otherwise permitted under Section 9 hereof, Lessee shall make no additions or modifications to any item of Equipment, except those required by Lessee's normal maintenance program, without Lessor's prior written consent, such consent not to be unreasonably withheld. Lessee agrees that, if requested by Lessor, it will, prior to the return of such item of Equipment to Lessor hereunder, remove any such addition or modification and restore the Equipment to its original condition as when first accepted by Lessee.

Lessee shall, on or before each April 30 during the Term, submit to Lessor a report, as of the preceding December 31, listing, by car number, each item of Equipment then subject to this Lease, the status of such item, identifying those items of Equipment which have been removed from service and the reason(s) therefor, the date of such removal, and the expected date of return to service. Such report shall be certified by a responsible officer of Lessee.

Lessee shall not use or permit the Equipment to be used to contain or transport any hazardous, toxic, dangerous or environmentally threatening waste, material or matter.

**9. OPERATING RULES AND REGULATIONS:** Lessee agrees to comply with all local, state and Federal governmental laws, regulations and requirements relating to the operation and/or use of the Equipment, including the Interchange Rules and all other rules of the Association of American Railroads ("AAR"), Federal Railroad Administration ("FRA"), and the ICC or any successors thereto. In case any equipment or appliance on any Equipment shall be required to be changed or replaced, or any additional or other equipment or appliance is required to be installed on such Equipment in order to comply with such laws, regulations, requirements and rules, Lessee agrees to make such changes, additions and replacements promptly at its own expense and title thereto shall be immediately vested in Lessor.

**10. FURTHER ASSURANCES:** Lessee shall execute and deliver to Lessor upon Lessor's request such instruments and assurances as Lessor in the reasonable exercise of its discretion deems necessary for the confirmation or perfection of this Lease and Lessor's rights hereunder. In furtherance thereof, Lessor may file or record this Lease or a financing statement with respect thereto so as to give notice to any interested parties. The Lessor is authorized to file a financing statement concerning the Equipment signed only by the Lessor in accordance with the Uniform Commercial Code or one signed by Lessor as Lessee's attorney in fact. Any such filing or recording shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code. Lessor, at Lessee's expense, will cause this Lease to be filed in accordance with 49 U.S.C. Section 11303(a) with the ICC.

**11. RISKS OF LOSS:** All risk of loss, damage, theft or destruction to each item of Equipment shall be borne by the Lessee. No such loss, damage, theft or destruction of the Equipment, in whole or in part, shall impair the obligations of Lessee under this Lease all of which shall continue in full force and effect, Lessee shall promptly notify Lessor of any such loss, damage or theft and, at Lessor's option, shall either (a) place the affected Equipment in good repair, condition and working order or (b) pay the Lessor the amount covering such affected Equipment set forth in Addendum "A" - Stipulated Loss Values plus all other amounts then due and payable, less the net amount of the recovery, if any, actually received by Lessor from insurance or otherwise for such loss, damage, theft or destruction. Any such payment of Stipulated Loss Value shall be made within ten (10) days after Lessor notifies Lessee that Lessor elects the option described in clause (b) above. The Stipulated Loss Value payable shall be the Stipulated Loss Value computed as of the month in which such item of Equipment was damaged, destroyed or lost, less any payment(s) of Basic Rent or Renewal Rent made by Lessee with respect to such item of Equipment for any month after the month in which such damage, destruction or loss occurred. After compliance with the foregoing to Lessor's satisfaction and provided Lessee is not in default under this Lease, Lessee shall be subrogated to Lessor's rights with respect to any insurance policies or claims for reimbursement by others with respect to such loss, damage, theft or destruction, and Lessee shall

be entitled to receive and retain any amounts paid in settlement by any railroad or user as a result of such loss, damage, theft or destruction.

**12. INSURANCE:**

(a) General Liability and Property Damage Insurance. Lessee represents and warrants that it will maintain in effect at its own expense (i) comprehensive general liability insurance, including death, bodily injury and property damage, in an amount not less than \$5,000,000 combined single limit coverage in the aggregate and (ii) such other property damage insurance (exclusive of manufacturer's product liability insurance) with respect to the Equipment as is of the type and in the amount as specified in each Schedule. All insurance provided for in this Section shall be effected with insurance companies satisfactory to Lessor and similar to those insurers who customarily provide public liability insurance to Lessee's industry.

(b) Insurance Against Loss or Damage to Equipment. Lessee represents and warrants that it will provide all-risk insurance covering the Equipment including fire and explosion, and lightning and electrical damage, provided that such insurance shall at all times while the Equipment is subject to this Lease be in an amount which, when paid, will be not less than the Stipulated Loss Value of the Equipment from time to time.

(c) Lessor as Additional Insured; Notice. Any policies of insurance carried in accordance with this Section and any policies taken out in substitution or replacement for any such policies shall name Lessor, as owner of the Equipment, as additional named insured thereunder, and, with respect to insurance carried in accordance with paragraph (b), said policies shall be made payable to Lessor as loss payee. Lessee shall furnish certificates to Lessor as proof of such insurance and shall provide for at least thirty (30) days written notice of cancellation to Lessor.

**13. EXPENSES, FEES AND TAXES:** (a) In addition to the Rental Payments, Lessee shall pay promptly when due, all costs, expenses, fees, charges and taxes (including sales, use, excise, personal property, ad valorem, documentary, gross receipts, stamp, income withholding and other taxes), all of the foregoing being herein collectively called "Impositions" incurred in connection with the titling, licensing, registration, use, rental, shipment, transportation, delivery, purchase, ownership or operation of the Equipment, and on or relating to this Lease and any Schedule. With respect to sales tax, Lessor represents to Lessee that it has submitted a valid resale exemption certificate to Seller and Seller has invoiced Lessor for the cost of the cars net of any sales tax. In case any report or return is required to be filed with respect to any taxes, Lessee will, to the extent legally permissible, file such report or return or notify Lessor in writing to the extent Lessor must file such report or return in sufficient time for Lessor to make such filing of the required report or return. All reports and returns filed by Lessee will be in Lessee's name and account number and will show Lessor as owner of the Equipment. To the extent reasonably requested by Lessor, Lessee will promptly supply Lessor a copy of such reports or returns. Lessee shall promptly reimburse Lessor for any taxes charged to or assessed against

Lessor, except for taxes based on or measured by the net income of Lessor that are imposed by (1) the United States of America or (2) any State of the United States of America or any political subdivision of any such state in which Lessor is subject to Impositions as the result of business or transactions unrelated to this Lease.

(b) If Lessee should fail to pay any of the costs, expenses, fees, charges and taxes for which Lessee is liable hereunder, Lessor may, but shall not be required to, pay the same for the account of Lessee, provided however, that if Lessee is contesting in good faith such costs, expenses, fees, charges and taxes, and provided adequate reserves have been established or an acceptable bond obtained, as determined by Lessor, and further provided that Lessor in its sole discretion does not believe that such contest will impair its title to and interest in the Equipment nor will it impact the economics of this transaction, then Lessor shall not pay the same for the account of Lessee. Lessee shall reimburse Lessor, upon demand, as additional rental hereunder, for the full amount of any costs, expenses, taxes or other charges paid by Lessor which constitute an obligation of Lessee hereunder.

**14. LESSOR'S PERFORMANCE OF LESSEE'S OBLIGATIONS:** If Lessee shall fail to duly and promptly perform any of its obligations under this Lease with respect to the Equipment, Lessor may (at its option) perform any act or make any payment which Lessor deems necessary for the maintenance and preservation of the Equipment and Lessor's title thereto, including payments for satisfaction of liens, repairs, taxes, levies and insurance and all sums so paid or incurred by Lessor, together with interest as provided below, and any reasonable legal fees incurred by Lessor in connection therewith shall be additional rent under this Lease and payable by Lessee to Lessor on demand. The performance of any act or payment by Lessor as aforesaid shall not be deemed a waiver or release of any obligation or default on the part of the Lessee.

**15. LATE CHARGES:** Should Lessee fail to duly pay any part of any Rental Payment or other sum to be paid to Lessor under this Lease, then Lessee shall pay interest on such delinquent payment from the due date until paid at a per annum rate of 2% plus the NationsBank of Georgia, N.A. Prime Rate, said interest rate not to exceed the highest legal contract rate of interest.

**16. INDEMNIFICATION:** Lessee assumes liability for, and hereby agrees to indemnify, protect and keep harmless Lessor, its agents, employees, officers, directors, successors and assigns from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorney's fees, of whatsoever kind and nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by Lessee or Lessor), operation, ownership, selection, delivery, leasing or return of any item of Equipment, regardless of where, how and by whom operated, or any failure on the part of Lessee to perform or comply with any conditions of this Lease. The parties agree that the indemnification obligations of Lessee under this Section 16 shall not extend to any matters that result from the gross negligence or willful misconduct of Lessor or any organization acting by, of or through the Lessor. The indemnities and assumptions of liabilities

and obligations herein provided for shall be made on an after-tax basis and shall continue in full force and effect notwithstanding the expiration or other termination of this Lease. Lessee is an independent contractor and nothing contained in this Lease shall authorize Lessee or any other person to operate any item of Equipment so as to incur or impose any liability or obligation for or on behalf of Lessor.

**17. NO OFFSET:** This Lease is a net lease and all Rental Payments shall be paid when due by Lessee irrespective of any set-off, counterclaim, recoupment, defense or other right which Lessee may have against Lessor, the Manufacturer, or any other party for any reason whatsoever.

**18. PURCHASE OPTION:** (a) Upon the expiration of the Basic Term of this Lease with respect to any Schedule or, if elected, any Renewal Term described in Section 19 hereof, Lessee shall have the option to purchase or otherwise acquire title or ownership of all, but not less than all, of the Equipment described on such Schedule and then subject to the Lease, provided (a) Lessee is not in default under this Lease, and (b) any such purchase option is exercised by Lessee's written notice to Lessor, at Lessor's address stated above, not earlier than 270 days nor later than 180 days prior to the end of such Basic Term or Renewal Term, as the case may be, and (c) the purchase price shall be payable in immediately available funds on the last day of such Basic Term or Renewal Term in an amount equal to the fair market value of the Equipment then subject to this Lease. "Fair Market Value" ("FMV") shall be determined on the basis of, and shall be equal in amount to, the value which one would obtain in an arm's-length transaction between an informed and willing buyer-user (other than a Lessee currently in possession and a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal of Equipment from its location of current use shall not be a deduction from such value. In the event Lessee purchases the Equipment, Lessee shall be responsible for all applicable sales tax and, after payment in full thereof, Lessor shall pass title to Lessee AS IS -- WHERE IS, WITHOUT RECOURSE OR WARRANTY, except a warranty that the Equipment is free and clear of all liens and encumbrances by, of or through Lessor.

(b) In the event the FMV is not agreed upon by Lessee and Lessor, it shall be determined by the average of three (3) independent appraisals by parties which shall include two parties, one selected by Lessee and one selected by Lessor and a third mutually selected by the appraisers selected by Lessee and Lessor. The fees and expenses of all such appraisers shall be borne equally by Lessor and Lessee, unless Lessee elects not to purchase the Equipment as provided in the next sentence, in which case, such fees and expenses shall be paid by Lessee. In the event that Lessee chooses not to purchase the Equipment after determination of FMV, Lessee shall provide Lessor with at least 180 days written notice that Lessee has rescinded the election to purchase and the Lease shall continue in full force and effect from the date of such notice.

**19. RENEWAL:** So long as no Event of Default shall have occurred and be continuing, Lessee may, by written notice delivered to Lessor at least 180 days (but not more than 270 days) prior to expiration of the Basic Term or any Renewal Term of any Schedule, renew the Term for all,

but not less than all, items of Equipment described on such Schedule and then subject to this Lease for a period specified in such notice (a "Renewal Term"). All provisions of this Lease shall be applicable during any Renewal Term except that (a) Lessee shall pay, in the manner as provided in Section 4 hereof, Renewal Rent equal to the fair market rental value of such Equipment; and (b) the Stipulated Loss Value of each item of the Equipment during any Renewal Term shall be determined by Lessor as of the last Rental Payment date occurring in the Basic Term based on the then fair market value of such items of Equipment, declining on a straight-line basis over the remaining useful life of such item of Equipment. If Lessee fails to return the Equipment at the end of the Basic Term or any Renewal Term, and does not exercise its renewal option or purchase option as aforesaid, then Lessee shall pay Rent to Lessor monthly at the rate applicable during the Basic Term until the Equipment is returned to Lessor, provided, that no item of Equipment shall be loaded for revenue service after the last day of the Basic Term or Renewal Term, whichever is applicable, and provided, further, that Lessee shall be required to return each item of Equipment no later than the third monthly anniversary of the expiration of the Basic Term, or the Renewal Term, as the case may be. Any renewal option stated as "fair market rental value" for Equipment shall be determined on the basis of, and shall be equal in amount to, the value which one would obtain in an arm's-length transaction between an informed and willing lessee-user and an informed and willing lessor under no compulsion to lease and, in such determination, the Equipment shall be assumed to be in the condition in which it is required to be returned under Section 22 of this Lease. In the event that fair market rental value is not agreed upon by Lessee and Lessor, it shall be determined by the average of three (3) independent appraisals by parties which shall include two parties, one selected by Lessee and one selected by Lessor, and a third mutually selected by the appraisers selected by Lessee and Lessor. The fees and expenses of all such appraisers shall be borne equally by Lessor and Lessee.

**20. ASSIGNMENT BY LESSEE:** Without Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may not, by operation of law or otherwise, (a) assign, transfer, pledge, hypothecate or otherwise dispose of this Lease or any interest therein or (b) sublet or lend the Equipment or permit same to be used by anyone other than Lessee or Lessee's employees, provided, however, that Lessee may trip lease the Equipment to its customers in the normal course of Lessee's business. Irrespective of any permitted sublease or trip lease, Lessee agrees to remain primarily liable to Lessor under all terms and conditions of this Lease.

**21. ASSIGNMENT BY LESSOR:** For the purpose of providing funds for financing the purchase of the Equipment, or for any other purpose, Lessee agrees (a) that Lessor may assign, sell or encumber all or any other part of this Lease, the Equipment and the Rental Payments hereunder and (b) in the event of any such assignment of Rental Payments hereunder and written notice thereof to Lessee, to unconditionally pay directly to any such assignee all rentals and other sums due or to become due under this Lease and (c) that the Equipment leased hereunder may be mortgaged by Lessor under a chattel mortgage. In any such event, the right, title and interest of the mortgagee under any such chattel mortgage shall by the express terms of such chattel mortgage be subject to the leasehold

interest of Lessee in and to the Equipment hereunder. THE RIGHTS OF ANY SUCH ASSIGNEE SHALL NOT BE SUBJECT TO ANY DEFENSE, COUNTERCLAIM OR SET OFF WHICH LESSEE MAY HAVE AGAINST THE LESSOR.

**22. MAINTENANCE AND REPAIRS:** Lessee, at all times and at its own expense, shall maintain and service the Equipment, or cause the Equipment to be maintained and serviced, in good repair and operating condition, ordinary wear and tear from normal and proper use thereof alone excepted, so that the Equipment shall at all times comply with the applicable Interchange standards set for such Equipment by the AAR, or any successors thereto, and be and remain in good operating order and repair by industry standards and fit for the purposes for which the Equipment was designed. In any event, the Equipment shall at all times satisfy the criteria below:

(a) All damaged or broken parts will be repaired promptly according to AAR specifications and procedures;

(b) Exterior sides will be free of rust and corrosion and will be painted according to a standard paint scheme, free of any and all advertising and notices other than receiving numbers and Lessee's corporate identification;

(c) The Equipment will conform at all times to the operating regulations of the United States Department of Transportation, AAR, the FRA, or their successors, or those of any other government agency having jurisdiction over the use and operation of the Equipment; and

(d) The Equipment shall, at all times, be maintained in compliance with the Manufacturer's recommended maintenance procedures and policies. In any event, Lessee shall maintain the Equipment or cause the Equipment to be maintained on the same scheduling basis that Lessee employs for similar equipment, whether owned or leased.

**23. RETURN OF EQUIPMENT:** (a) Upon the expiration or earlier termination of the Basic Term or any Renewal Term as to any Schedule, unless Lessee shall have duly exercised any renewal or purchase option with respect thereto, Lessee will, at its expense, insure and deliver all but not less than all of the Equipment described on such Schedule and then subject to this Lease to Lessor at such location or locations in the continental United States as may be designated by Lessor in writing, for such disposition.

(b) All Equipment so delivered by Lessee to Lessor shall be returned to the designated location(s) in the same condition as when first accepted by Lessee, ordinary wear and tear resulting from the normal and proper use thereof alone excepted, in compliance with Sections 9 and 23 hereof, free of any special advertising, lettering or other marking, steam cleaned (interior and exterior) or, if consistent with industry practice, hot water washed (interior and exterior) and free of liquid and product residue, silt, sludge or other debris, with the lining in serviceable condition or, if requested by Lessor removed, and otherwise in the condition in which it is required to be maintained hereunder.

(c) Lessor or its representative will inspect the Equipment to verify that the units have been returned in compliance with the terms and conditions hereunder. Additional wear and tear beyond the extent permitted herein shall be deemed excessive wear and tear and Lessee, at its option, shall be responsible to either promptly make such repairs as are required to correct excessive wear and tear, or to forward the affected items of Equipment to a repair facility, which facility shall have been previously approved in writing by Lessor, for such repairs and pay the costs of such repairs at the then current market prices. Until such Equipment is returned to Lessor in proper condition, Lessee shall pay Rent therefor monthly at a rate equal to the Basic Rent payable during the Basic Term, provided, that no item of Equipment shall be loaded for revenue service after the last day of the Basic Term or Renewal Term, whichever is applicable, and provided, further, that the payment of such Rent shall not preclude Lessor from declaring Lessee to be in default under Section 24 as a result of Lessee's failure to return the Equipment in the condition and at the time required herein.

(d) In the Event of Default by Lessee under this Lease, Lessee will return all Equipment to Lessor in the same manner as set forth above.

**24. EVENTS OF DEFAULT:** Lessee shall be in default under this Lease upon the happening of any of the following events or conditions ("Events of Default"):

(a) Default by Lessee in payment of any installment of Rent or any other indebtedness or obligation now or hereafter owed by Lessee to Lessor under this Lease or otherwise and the continuance of such default for ten (10) consecutive days; or (b) default in the performance of any other obligation, covenant or liability contained in this Lease or any other agreement or document with Lessor, and the continuance of such default for ten (10) consecutive days after written notice thereof by Lessor to Lessee; or (c) any material warranty, representation or statement made or furnished to Lessor by or on behalf of Lessee proves to have been false in any material respect when made or furnished; or (d) attempted sale or encumbrance by Lessee of any of the Equipment, or the making of any levy, seizure or attachment thereof or thereon; or (e) dissolution, termination of existence, discontinuance of Lessee's business, insolvency, business failure, or appointment of a receiver of any part of the property of, or assignment for the benefit of creditors by Lessee or the commencement of any proceedings under any voluntary bankruptcy, reorganization or arrangement laws by or against Lessee; or (f) the institution of any involuntary bankruptcy proceedings against Lessee or the appointment of a receiver without Lessee's consent, and such proceedings or appointment continues and is ongoing for a period of sixty (60) days; or (g) Lessee shall default in the performance of any covenant contained in Section 35(a) hereof; or (h) Lessee shall use or permit the Equipment to be used to contain or transport any hazardous, toxic, dangerous or environmentally threatening waste, material or matter.

**25. REMEDIES OF LESSOR:** Upon the occurrence of any Event of Default and at any time thereafter (subject to any applicable grace provisions), Lessor may without any further notice exercise one or more

of the following remedies as Lessor in its sole discretion shall elect: (a) declare all unpaid rentals due under this Lease, together with per diem rent from the date of the last regular rental installment to the date of such declaration, to be immediately due and payable; (b) terminate this Lease as to any or all items of Equipment; (c) take possession of the Equipment wherever found without any liability or suit, action or other proceeding by the Lessee and remove the same; (d) cause Lessee at its expense to promptly return the Equipment to Lessor and in the condition set forth in Section 23; (e) use, hold, sell, lease or otherwise dispose of the Equipment or any item thereof in a commercially reasonable manner without affecting the obligations of Lessee as provided in this Lease; (f) sell or lease the Equipment or any part thereof in a commercially reasonable manner, at public auction or by private sale or lease at such time or times and upon such terms as Lessor may determine, free and clear of any rights of Lessee and, if notice thereof is required by law, any notice in writing of any such sale or lease by Lessor to Lessee not less than ten (10) days prior to the date thereof shall constitute reasonable notice thereof to Lessee; (g) proceed by appropriate action either by law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; (h) exercise any and all rights accruing to a Lessor under any applicable law upon a default by a Lessee. In addition, Lessor shall be entitled to recover immediately as liquidated damages for loss of a bargain and not as a penalty an amount equal to the Stipulated Loss Value for Equipment (as set forth in Addendum "A" for the applicable Schedule) on the date of Lessor declaring this Lease in default, together with interest as provided in Section 15 hereof. After default at the request of Lessor and to the extent requested by Lessor, Lessee shall comply with the provisions of Section 23 of this Lease. Lessor may, but shall not be required to, sell Equipment at private or public sale, in bulk or in parcels, with or without notice, without having the Equipment present at the place of sale; or Lessor may, but shall not be required to, lease, otherwise dispose of or keep idle all or part of the Equipment; and Lessor may use Lessee's premises for any or all of the foregoing without liability for rent, costs or otherwise. The proceeds of sale, lease or other disposition, if any, shall be applied (1) to all Lessor's costs, charges and expenses incurred in enforcing this Lease and in taking, removing, holding, repairing and selling, leasing or otherwise disposing of Equipment; then, (2) to the extent not previously paid by Lessee, to pay Lessor the Stipulated Loss Value for Equipment and all other sums, including any unpaid rent and any indemnification then remaining unpaid thereon; then (3) to reimburse to Lessee any Stipulated Loss Value previously paid directly by Lessee to Lessor as liquidated damages; (4) any surplus shall be retained by Lessor; Lessee shall pay any deficiency in (1) and (2) forthwith. In no event shall Lessor be obligated to sell, lease or otherwise dispose of any item of repossessed Equipment. None of the remedies under this Lease are intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to Lessor in law or in equity, provided however, in no event shall Lessor be entitled to reclaim an amount in excess of the Stipulated Loss Value plus all other amounts owing at the time of default plus the costs of collection. Any repossession or subsequent sale or lease by Lessor of any item of Equipment shall not bar an action for a deficiency as herein provided, and the bringing of an action or the entry of judgment against the Lessee

shall not bar the Lessor's right to repossess any or all items of Equipment. Lessee agrees to pay all costs and expenses of Lessor, including reasonable attorneys' fees, incurred with respect to the collection of any amounts payable hereunder and the enforcement of any of the provisions hereof, whether or not an action at law is commenced with respect hereto.

**26. SEVERABILITY:** Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition and unenforceable without invalidating the remaining provisions hereof. To the extent permitted by applicable law, Lessee hereby waives any provision of law which prohibits or renders unenforceable any provisions hereof in any respect.

**27. NOTICES:** Any notice or other communication given under this Lease shall be in writing and shall be sent by personal delivery, courier or certified United States mail to the following addresses or to such other address as either of the parties hereto may designate in writing to the other from time to time:

LESSOR:

Pitney Bowes Credit Corporation  
201 Merritt Seven  
Norwalk, CT 06856-5151  
Attn: Vice President, Operations

LESSEE:

Minnesota Corn Processors  
400 W. Main Street Ste. 201  
Marshall, MN 56258-1236  
Attn: President and General  
Manager

Any such notice or other communication shall be effective upon receipt or, if not actually delivered prior thereto, be deemed to have been delivered three (3) business days after the date when it shall have been mailed by certified mail, all charges prepaid.

**28. AMENDMENTS AND WAIVERS:** This instrument and the Schedules executed by Lessor and Lessee constitute the entire agreement between Lessor and Lessee with respect to the Equipment and the subject matter of this Lease. No term or provision of this Lease may be changed, waived, amended or terminated except by a written agreement signed by both Lessor and Lessee, except that Lessor may insert the serial number of any item of Equipment on the appropriate Schedule after delivery thereof. No express or implied waiver by Lessor of any Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default whether similar in kind or otherwise.

**29. CONSTRUCTION:** This Lease shall in all respects be governed by and construed in accordance with the laws of the State of New York. The titles of the sections of this Lease are for convenience only and shall not define or limit any of the terms or provisions hereof. Time is of the essence of this Lease in each of its provisions.

**30. PARTIES:** The provisions of this Lease shall be binding upon, and inure to the benefit of, the assigns, representatives and successors of the Lessor and Lessee.

**31. LESSEE'S QUIET ENJOYMENT:** So long as Lessee shall pay and perform all of its obligations and covenants hereunder, Lessor shall not disturb its quiet enjoyment and use of the Equipment for its intended purposes. By acceptance of any assignment of this Lease, any assignee hereof agrees, with and for the benefit of Lessee, that as long as Lessee shall perform all of its obligations and covenants hereunder, Lessee's quiet enjoyment and use of the Equipment for its intended purposes shall not be disturbed by such assignee or any party lawfully claiming by, through or under such assignee.

**32. EARLY TERMINATION:** (a) Provided that Lessee is not in default under this Lease or any other agreement between the Lessor and Lessee, Lessee shall at any time during the Basic Term on or after January 1, 2002, in accordance with the provisions set forth below, and upon no less than 180 days prior written notice to Lessor, (hereinafter called "180 Day Notice Period") have the right to terminate the Lease with respect to all, but not less than all of the Equipment described on a Schedule(s) and then subject to this Lease, if such Equipment has become economically obsolete or surplus to the Lessee's needs, provided however, no termination of any Schedule shall occur unless and until, during the 180 Day Notice Period (1) Lessee shall: (i) use its best efforts to obtain bids for the cash purchase of the Equipment at its fair market value, such bids to be ON AN AS-IS, WHERE-IS BASIS, WITHOUT RECOURSE OR WARRANTY TO LESSOR, (ii) certify to Lessor in writing the amount of the highest bid received by Lessee and the name and address of the party submitting such bid which bidder shall not be Lessee or any affiliate or agent of Lessee, and that the Equipment is in the condition required under Section 23 hereof (hereinafter called "Lessee's Certificate"), and (iii) pay Lessor in cash at the time of the closing of the sale contemplated by this Section 32, the amount, if any by which the applicable Termination Value (as provided in (c) below) exceeds the amount of the highest bid as stated in such Lessee's Certificate, and (2) the sale contemplated hereby shall have been consummated as hereinafter set forth.

(b) After Lessor's receipt of the Lessee's Certificate and payment required and provided the party identified as the highest bidder in Lessee's Certificate does not withdraw or modify its bid, Lessor, shall sell such Equipment WITHOUT RECOURSE OR WARRANTY, to the bidder identified in the Lessee's Certificate for cash in the amount of the full purchase price together with any taxes thereon; and thereupon Lessee shall deliver such Equipment to Lessor in accordance with the terms of this Lease. The total purchase price realized at such sale shall be retained by Lessor and in addition Lessee shall pay Lessor in cash upon demand all reasonable expenses incurred by Lessor in selling such Equipment (including all expenses, if any, incurred by Lessor in the transportation of the Equipment to the buyer).

(c) Lessee shall remain liable for all Rental Payments accruing under the applicable Schedule with respect to such Equipment through the date of Lessor's sale of such Equipment. Lessee thereafter shall be relieved of all obligations to pay Rent accruing after the date of such sale with respect to such Equipment and the Lease shall thereupon terminate with respect to such Equipment except for such obligations which by the terms of the Lease expressly survive the termination.

Notwithstanding the foregoing, upon written notice to Lessee within the 180 Day Notice Period Lessor may elect not to sell such Equipment to the highest bidder identified in Lessee's Certificate. If Lessor elects the option stated in this paragraph it shall notify Lessee in writing of such election. In such event, Lessor shall require Lessee to deliver such Equipment to the Lessor in accordance with the terms of this Lease. Concurrently, Lessee will pay Lessor in cash the amount, if any, by which the applicable Termination Value (as provided on the Termination Value Table, attached as Addendum B to the Schedule being terminated), exceeds the amount of the highest bid as stated in Lessee's Certificate. Thereafter, Lessee shall (1) be relieved of all obligations to pay Rental Payments accruing under the Schedule with respect to such Equipment due and payable after the expiration of the 180 Day Notice Period, (2) remain liable (i) for Rental Payments due and not paid prior to the expiration of the 180 Day Notice Period under the Schedule with respect to such Equipment, and (ii) for all such obligations which, by the terms of this Lease, expressly survive the termination hereof and except as expressly provided above, the Lease shall terminate with respect to such Equipment.

(d) Notwithstanding the foregoing, Lessee may at its option, upon written notification given to Lessor prior to Lessor making commitment to sell or release the Equipment to a third party, elect to rescind Lessee's notice of termination with respect to such Equipment, whereupon the Schedule shall not terminate with respect to such Equipment pursuant to this Section 32, but shall, provided no default has occurred and is continuing hereunder and Lessor has not by reason thereof terminated the Schedule, continue in full force and effect as though no such notice of termination had been given by Lessee. Failure of Lessee to deliver Lessee's Certificate to Lessor prior to the expiration of the 180 Day Notice Period will be deemed conclusive evidence of Lessee's election to rescind its notice of termination. Lessee shall not be permitted to rescind more than two (2) notices given under this Section 32 with respect to any Schedule.

**33. TAX INDEMNITY:** (a) Lessee acknowledges that the Rental Payments provided for in Section 4 are computed on the assumptions that (i) the Lessor will be entitled to depreciation deductions, with respect to Lessor's Cost of each item of Equipment, allowed under Section 167(a) and 168(a) of the Internal Revenue Code of 1986 as in effect on the date hereof (the "Code"), utilizing the applicable (1) depreciation method provided in Section 168(b)(1)(A) and (B) of the Code; (2) convention described in Section 168(d)(1) of the Code; and (3) recovery period and classification of 7 years as determined under Section 168(c) and (e) of the Code, commencing in Lessor's current taxable year and cost recovery deductions or depreciation deductions for state or local income tax purposes, (ii) all amounts includable in the gross income of Lessor with respect to the Equipment will be treated as derived from or allocable to sources within the United States, and (iii) Lessor shall not be required to recognize any income under this Lease other than Rental Payments, in the amounts and at the times determined under Section 4 hereof, Stipulated Loss Value Payments, in the amounts and at the times determined pursuant to Section 11 hereof, Termination Value Payments or sales proceeds, in the amounts and at the times determined pursuant to Section 32 hereof, and amounts characterized as interest, when paid (the

events and characterizations described in clauses (i), (ii) and (iii) being hereinafter referred to as "Tax Benefits").

(b) Lessee represents, warrants and covenants that (i) it has not, and will not, at any time during the Term of the Lease, take any action or omit to take any action (whether or not the same is permitted or required hereunder) which, under the Code, will result in the loss, delay or adverse impact on Lessor with respect to all or any part of the Tax Benefits; (ii) all amounts includable in the gross income of Lessor with respect to the Equipment will be treated as derived from or allocable to sources within the United States; (iii) the Equipment will not be tax-exempt use property within the meaning of Section 168(h) of the Code; (iv) and on the applicable Delivery Date, no item of Equipment will require any improvements, modifications or additions (other than ancillary items of equipment of a kind that are customarily furnished by purchasers or lessees of property identical to the Equipment) in order for such Equipment to be rendered complete for its intended use by Lessee.

(c) If as a result of any act, omission, or misrepresentation of Lessee, Tax Benefits are claimed by the Internal Revenue Service to be lost, disallowed, eliminated, reduced, recaptured, compromised, delayed or otherwise made unavailable to Lessor, then Lessor shall promptly notify Lessee and, if requested by Lessee in writing, contest such disallowance, elimination or reduction in good faith, provided that Lessor shall have first received an opinion of independent tax counsel selected by Lessor and not unsatisfactory to Lessee, to the effect that there is a reasonable basis (consistent with ABA formal opinion 85-352) to contest such claim. If the contest is not completely successful so that any of the Tax Benefits are lost, disallowed, eliminated, reduced, recaptured, compromised with the consent of Lessee, delayed or otherwise made unavailable to Lessor as a result of any act, omission, or misrepresentation of Lessee, then Lessor shall be deemed to have experienced a "Loss". Lessee shall then become obligated to pay to Lessor as additional Rent, an amount in cash which is equal to that which provides Lessor with the same net after-tax yield that Lessor originally anticipated realizing from the transaction contemplated by this Lease prior to the Loss on a pro rata basis with each remaining Rental Payment due under the Lease. The first such payment shall not be due until Lessor has first provided Lessee with a written statement describing in reasonable detail such Loss and the computation of the amount so payable. The repair, replacement or destruction of any item of Equipment, not resulting for any reason in payment of any Stipulated Loss Value therefor, shall constitute the act of Lessee for purposes of this Section 33. In the event of a breach of the representation and warranty as stated in clause (b)(ii) above, if any item of income credit or deduction with respect to the Equipment shall not be treated as derived from, or allocable to, sources within the United States for a given taxable year (any such event hereinafter referred to as a "Foreign Loss"), then Lessee shall pay to Lessor as an Indemnity such amount as, after deduction of all taxes required to be paid by Lessor in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority of the United States, shall equal the sum of: (I) the excess of (x) the foreign tax credits which Lessor would have been entitled to for such year had no such Foreign Loss occurred over (y) the

Foreign tax credit to which Lessor was limited as a result of such Foreign Loss and (II) the amount of any interest, penalties or additions to tax payable as a result of such Foreign Loss. If as a result of any act or failure to act, the assumption set forth in Section 33(a)(iii) shall not be true (an "Income Inclusion"), Lessee shall pay to Lessor, as an adjustment to the remaining payments of Basic Rent then due under this Lease, an amount which will provide Lessor with the same after-tax yield that Lessor originally anticipated realizing from this Lease (computed by giving effect to any cost recovery or depreciation deductions Lessor may be entitled to as a result of any such recognition of income). The provisions of this Section 33 regarding determining the existence of a Loss and challenging a claimed Loss alleged by the IRS shall also apply for the same purposes with respect to an Income Inclusion. The provisions of this Section 33 regarding calculating the amount of and determining the payment schedule for a Loss shall also apply for the same purposes with respect to an Income Inclusion. Notwithstanding anything in this Lease, or any document associated with the transaction contemplated by this Lease, Lessee makes no representation to, nor warrants that, Lessor is entitled to the Tax Benefits unless the reason Lessor is not entitled to the Tax Benefits is a result of an act, omission or misrepresentation of Lessee and no additional payment will be due from Lessee to Lessor solely as the result of a change in existing law or interpretation thereof. Lessor shall not be required to contest any proposed Loss or Income Inclusion unless Lessor shall have received, at Lessee's expense, an opinion from Lessor's independent tax counsel that a reasonable basis exists for Lessee's position in opposition to such Loss or Income Inclusion, and Lessee has agreed in writing to indemnify Lessor for all expenses Lessor may incur in connection with such contest, such amounts to be payable upon written demand from Lessor. No such contest shall require Lessor to appeal any decision of the United States Tax Court, the United States Court of Claims, or any United States District Court, whichever forum Lessor may choose in its sole discretion. For purposes of this Section 33, the term "Lessor" shall include the affiliated taxpayer group within the meaning of Section 1504 of the Code of which Lessor is a member. The provisions of this Section 33 shall survive the expiration or earlier termination of this Lease.

**34. REPRESENTATIONS AND WARRANTIES OF LESSEE:** Lessee hereby represents, warrants and covenants that, with respect to this Lease and any related documents: (a) the execution, delivery and performance thereof by Lessee have been duly authorized by all necessary corporate action; (b) the individual executing such documents is duly authorized to do so; (c) the Lease and any related documents constitute legal, valid and binding agreements of Lessee enforceable in accordance with their respective terms subject, however, to applicable bankruptcy, insolvency, reorganization or similar laws affecting the rights of creditors generally, statutes of limitations and principles of equity; (d) Lessee

need not obtain the consent or approval of any party in order to enter into this Lease or to perform Lessee's obligations hereunder; (e) Lessee is in good standing in the state of its incorporation and is qualified to do business in each state where it is necessary to be so qualified; (f) any and all financial statements or other information with respect to the Lessee supplied to Lessor in connection with this Lease and the transactions contemplated hereby are true and complete.

**35. SPECIAL COVENANTS:** (a) Lessee will not (i) enter into any transaction of merger or consolidation or any commitment with respect thereto unless Lessee is the surviving entity; and the tangible net worth of the surviving corporation is no less than the tangible net worth of Lessee immediately prior to such merger; (ii) liquidate or dissolve; (iii) sell, transfer, or otherwise dispose of all or any material portion of its assets; (iv) permit any substantial change in the ownership or control of its capital stock; or (v) change the form of organization of its business.

(b) Lessee will furnish to Lessor (i) as soon as available, but in any event not later than 120 days after the end of each fiscal year of Lessee, a consolidated balance sheet of Lessee as at the end of such fiscal year, and consolidated statements of income and changes in financial position of Lessee for such fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and audited by certified public accountants acceptable to Lessor; (ii) as soon as available, but in any event not later than 90 days after the end of each of the first three quarterly periods of each fiscal year of Lessee, a consolidated balance sheet of Lessee as at the end of such quarterly period and a consolidated statement of income of Lessee for such quarterly period and for the portion of the fiscal year then ended, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and certified by the chief financial officer of Lessee; and (iii) promptly, such additional financial and other information as Lessor may from time to time reasonably request.

LESSEE HEREBY ACKNOWLEDGES RECEIPT OF AN EXECUTED AND TRUE COPY OF THIS LEASE AND THAT IT IS NON-CANCELABLE FOR THE BASIC TERM EXCEPT AS PROVIDED FOR IN SECTION 32 - "EARLY TERMINATION" AS CONTAINED HEREIN.

**IN WITNESS WHEREOF,**  
the Lessor and Lessee have each caused this Lease to be duly executed on the dates set forth below.

LESSOR:  
PITNEY BOWES CREDIT CORPORATION

LESSEE:  
MINNESOTA CORN PROCESSORS

By: Matthew [Signature]

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

Title: MANAGER, OPERATIONS

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

Date: July 21, 1994

Date: \_\_\_\_\_

**35. SPECIAL COVENANTS:** (a) Lessee will not (i) enter into any transaction of merger or consolidation or any commitment with respect thereto unless Lessee is the surviving entity; and the tangible net worth of the surviving corporation is no less than the tangible net worth of Lessee immediately prior to such merger; (ii) liquidate or dissolve; (iii) sell, transfer, or otherwise dispose of all or any material portion of its assets; (iv) permit any substantial change in the ownership or control of its capital stock; or (v) change the form of organization of its business.

(b) Lessee will furnish to Lessor (i) as soon as available, but in any event not later than 120 days after the end of each fiscal year of Lessee, a consolidated balance sheet of Lessee as at the end of such fiscal year, and consolidated statements of income and changes in financial position of Lessee for such fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and audited by certified public accountants acceptable to Lessor; (ii) as soon as available, but in any event not later than 90 days after the end of each of the first three quarterly periods of each fiscal year of Lessee, a consolidated balance sheet of Lessee as at the end of such quarterly period and a consolidated statement of income of Lessee for such quarterly period and for the portion of the fiscal year then ended, all in reasonable detail, prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved and certified by the chief financial officer of Lessee; and (iii) promptly, such additional financial and other information as Lessor may from time to time reasonably request.

LESSEE HEREBY ACKNOWLEDGES RECEIPT OF AN EXECUTED AND TRUE COPY OF THIS LEASE AND THAT IT IS NON-CANCELABLE FOR THE BASIC TERM EXCEPT AS PROVIDED FOR IN SECTION 32 - "EARLY TERMINATION" AS CONTAINED HEREIN.

**IN WITNESS WHEREOF,**  
the Lessor and Lessee have each caused this Lease to be duly executed on the dates set forth below.

LESSOR:  
PITNEY BOWES CREDIT CORPORATION

LESSEE:  
MINNESOTA CORN PROCESSORS

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

By: Richard Johnson

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF Connecticut  
COUNTY OF Fairfield

SS.

On July 21, 1994 before me, Dell S. Lopato  
(Notary Name and Title)

personally appeared Matthew Donovan, Manager Operations  
personally known to me (or proved to me on the basis of satisfactory  
evidence) to be the person(s) whose name(s) is/are subscribed to  
within the instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies),  
and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal.

Signature: Dell S. Lopato

(Notarial Seal)

**DELL S. LOPATO**  
**NOTARY PUBLIC**  
My Commission Expires March 31, 1998.

STATE OF Minnesota  
COUNTY OF Lyon

SS.

On July 21, 1994 before me, Carol Ann Brown  
(Notary Name and Title)

personally appeared Richard Jorgensen  
personally known to me (or proved to me on the basis of satisfactory  
evidence) to be the person(s) whose name(s) is/are subscribed to  
within the instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies),  
and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal.

Signature: Carol Ann Brown

(Notarial Seal)

