

REGISTRATION NO. 7090-A, B FILED 1425

RECORD 17282 FILED 1425

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INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

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REGISTRATION NO. 17282-A, B, C FILED 1425

April 10, 1991

APR 11 1991 -12 30 PM

INTERSTATE COMMERCE COMMISSION

Mr. Robert Peters
Agency Department
Federal Document Retrieval
810 First Street
Suite 600
Washington, DC 20001

1-101A010

11 12 29 PM '91

Re: Fleet Credit Corporation

Dear Rob:

Pursuant to instructions from your office, I am enclosing the following documents for recording in the order indicated with the Interstate Commerce Commission on Thursday, April 11, 1991:

1. Agreement Terminating Lease between Unionbanc Leasing Corporation as Lessor and Beazer West, Inc. (formerly known as Gifford-Hill & Company) as Lessee - 2 original copies.
2. Bill of Sale dated March 30, 1990 from Beazer West, Inc. (formerly known as Gifford-Hill & Company) as Seller and Fleet Credit Corporation as Buyer - 2 original copies.
- ✓ 3. Agreement of Lease dated December 26, 1990 between Fleet Credit Corporation as Lessor and Beazer West as Lessee - 1 original and 1 copy.
4. Lease Schedule dated March 30, 1991 - 2 original copies.
5. Certificate of Acceptance dated March 30, 1991 between Beazer West, Inc. and Fleet Credit Corporation - 2 original copies.
6. Sublease Agreement dated December 26, 1990 between Beazer West, Inc. as Sublessor and Subsidiaries as Sublessee - 1 original and 1 copy.

Please record the enclosed documents as soon as possible on Thursday. The recordings must be cross-referenced between all of the parties listed for each document, including Gifford-Hill & Company when it is listed as a predecessor to Beazer West, Inc.

Documents to Mr. H. P. Peters

HINCKLEY, ALLEN, SNYDER & COMEN

Mr. Robert Peters

April 10, 1991

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After recordation, please do a search of the records under the names of Gifford-Hill & Company and Beazer West, Inc. through the most recent date as possible. Please telecopy the results of the search and evidence of the recordings to my attention at (401) 277-9600.

Originally recorded copies should be sent to me by federal express upon receipt. Call me immediately if you have any questions or if you encounter any problems.

Very truly yours,

Laurie C. Wilkins

Laurie C. Wilkins
Legal Assistant

Enclosures

cc: Elizabeth M. Myers
James S. Judd

FEDERAL EXPRESS #7111279685

FC028660 ABO

RECORDED IN 17282
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INTERSTATE COMMERCE COMMISSION

AGREEMENT AND LEASE

THIS AGREEMENT AND LEASE, dated as of ^{December} ~~November~~ 26, 1990, between FLEET CREDIT CORPORATION a Rhode Island Corporation ("Lessor"), and BEAZER WEST, INC., a Delaware corporation ("Lessee");

WITNESSETH THAT:

WHEREAS, Lessee has requested that Lessor purchase and lease to Lessee the personal property described in Lease Schedules from time to time made a part hereof, and Lessor is willing to do so upon the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto, in consideration of their mutual covenants hereinafter set forth and intending to be legally bound hereby, agree as follows:

ARTICLE I. Certain Definitions

In addition to the words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings, respectively, unless the context hereof clearly otherwise requires:

"Acceptance Date" shall mean the Acceptance Date set forth on the Certificate of Acceptance with respect to a Group of Units.

"Additional Rent" shall mean any and all amounts, liabilities and obligations which Lessee assumes or agrees to pay hereunder pursuant to Section 4.3. of this Agreement or otherwise, other than Basic Rent and Interim Rent.

"Agreement" shall mean this Agreement and Lease, as amended or supplemented from time to time, and shall include each Lease Schedule and each Certificate of Acceptance executed and delivered from time to time pursuant to this Agreement. Each reference herein to "this Agreement," "herein," "hereunder," "hereof," or other like words shall include this Agreement, each Lease Schedule, each such Certificate of Acceptance and any annex, exhibit or schedule attached hereto or thereto.

"Assignee" means any assignee of all or part of any Lease Schedule hereunder from Lessor and any assignee of such Assignee, as more fully described in Article XV hereof.

"Base Lease Term" shall mean, with respect to a Group of Units, the 60 month period for a particular Group under the applicable Lease Schedule, beginning on the Base Lease Term Commencement Date for such Group, as set forth in the Certificate of Acceptance with respect thereto.

"Base Lease Term Commencement Date" with respect to a Unit shall mean the last day of the calendar quarter in which such Unit is delivered and accepted for lease hereunder pursuant to Article III of this Agreement.

"Basic Rent" shall mean the amount payable as Basic Rent by Lessee pursuant to Section 4.2. of this Agreement.

"Certificate of Acceptance" shall mean the certificates of Lessee substantially in the form of Exhibit B hereto executed and delivered from time to time under this Agreement, with respect to Units set forth in a corresponding Lease Schedule.

"Change of Control Event" shall mean an Event of Default of the nature specified in Section 14.1 (j) of this Agreement.

"Default" and "Event of Default" shall mean any of the events described in Section 14.1. hereof.

"Equipment" shall mean all the Units described in the respective Lease Schedules and Certificates of Acceptance executed and delivered from time to time under this Agreement.

"Facilities Agreement" shall mean the \$2,300,000,000 Facilities Agreement dated January 17, 1989, among Beazer PLC, Beazer Inc., BNS Acquisitions Inc., Beazer Materials and Services Inc. (formerly Koppers Company, Inc.) and Gifford Hill & Company, Inc., as Original Borrowers (as such term is defined therein); the guarantors named therein, CitiCorp Investment Bank Limited, National Westminster Bank PLC, Barclays Bank PLC, Mellon Securities Limited and CitiCorp Investment Bank Limited, as Agent (as such term is defined therein), as amended.

"Final Delivery Date" shall mean September 30, 1991.

"Group" shall mean those Units having the same Base Lease Term Commencement Date under a Lease Schedule hereto.

"Guarantors" shall mean Beazer PLC, a public limited company formed pursuant to the laws of England and having its principal office in Beazer House, Lower Bristol Road, Bath, Avon BA2 3EY, United Kingdom, Beazer Inc., a Delaware corporation and Beazer ~~America~~ USA America, Inc., a Delaware corporation.

"Guarantees" shall have the meaning assigned to that term in Section 6.3. of this Agreement.

"Initial Closing Date" shall have the meaning assigned thereto in Section 6.3. of this Agreement.

"Interim Lease Term" shall mean, for any Unit, the period of time extending from the date of acceptance of such Unit as indicated on the Certificate of Acceptance with respect thereto and ending on the date preceding the Base Lease Term Commencement Date with respect to such Unit.

"Interim Rent" shall mean the amount, if any, payable as Interim Rent by Lessee pursuant to Section 4.2. of this Agreement.

"Late Payment Rate" shall mean the lesser of 18% per annum or maximum rate permitted by law.

"Law" shall mean any law (including the common law), constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ decree or award of any Official Body.

"Lease Schedule" shall mean each Lease Schedule executed and delivered by Lessor and Lessee on or before the Final Delivery Date in the form attached as Exhibit A hereto.

"Lease Term Extension Option" shall have the meaning assigned to that term in Article XVII thereof.

"Lessor's Cost" shall mean the purchase price of each Unit to Lessor which shall be the invoice price therefor, plus any excise, sales and use taxes paid or payable by Lessor with respect to the purchase thereof, and plus any costs and expenses approved and paid by Lessor in connection with the delivery and installation thereof, all of which, in aggregate, shall not exceed \$28,800,000.

"Mandatory Purchase Requirement" shall have the meaning assigned thereto in Article XVII hereof.

"Maximum Commitment" means, with respect to Lessor, the sum of \$8,500,000 representing the aggregate Termination Values of all items of Equipment from time to time during the Term subject to Lease Schedules retained by Lessor; and, with respect to all Equipment subject to Lease Schedules hereunder, an aggregate original Equipment cost of \$28,800,000.

"Net Sales Price" shall have the meaning assigned to that term in Article XVII hereof.

"Official Body" shall mean any government or political subdivision or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury or arbitrator, in each case whether foreign or domestic.

"Option Term" shall mean a period of 90 days commencing upon the date that Lessee has selected or is deemed to have selected the Lease Term Extension Option, as set forth in Article XVII hereof.

"Permitted Sublessee" shall have the meaning assigned thereto in Section 8.6. of this Agreement.

"Proposed Sale Date" for a particular Group shall mean the date which is the last day of the Base Lease Term or Option Term for such Group, as set forth in Article XVII hereof.

"Rent" shall mean Additional Rent, Basic Rent and Interim Rent, collectively.

"Rental Payment Date" shall mean the first calendar day of each month during any Interim Term, the Base Lease Term and any Option Term.

"Termination Value" shall mean, as of a date, with respect to each Unit the amount set forth in the Schedule of Termination Values with respect thereto.

"Term" shall mean the total period of time for which any one or more of the Units is leased hereunder. The Term for each Unit shall be composed of any Interim Lease Term, the Base Lease Term consisting of sixty months and any Option Term.

"Total Receipts" shall have the meaning assigned to that term in Article XVII hereof.

"Unit" shall mean each individual item of personal property described in any Certificate of Acceptance executed and delivered under this Agreement.

"Unmatured Default" shall mean an event, act or conditions which with notices or lapse of time or both would constitute an Event of Default.

ARTICLE II. Agreement to Lease

Lessor and Lessee agree that, from time to time on or before the Final Delivery Date, Lessor shall accept title to the respective Units and, simultaneously therewith, Lessor shall lease the Units to Lessee and Lessee shall hire same from Lessor all upon the terms and subject to the conditions of this Agreement.

ARTICLE III. Delivery and Acceptance

3.1. Delivery and Acceptance of Equipment. Lessee has contracted or will contract with the vendor or owner of each Unit (collectively, the "vendor") for delivery at the location set forth in the applicable Lease Schedule. Lessor shall not be liable for any failure or delay in obtaining, or in delivery of, any of the Units.

Forthwith upon delivery of each Unit, Lessee shall inspect and determine whether to accept same from the vendor. Lessor hereby appoints Lessee, as the authorized representative of Lessor, to accept delivery of each Unit from the vendor thereof.

Upon acceptance of delivery by Lessee, Lessee shall deliver a Certificate of Acceptance to Lessor with respect to such Units which shall, without further act, irrevocably constitute acceptance by Lessee and Lessor of such Unit for all purposes of this Agreement.

Lessee hereby acknowledges and represents and warrants to Lessor with respect to each Unit so accepted that (i) such Unit is of a size, design, capacity and manufacture selected by Lessee, (ii) such Unit conforms to the applicable description set forth in the Lease Schedule, and (iii) Lessee is satisfied that such Unit is suitable for its purposes; provided, however, that nothing contained in this Agreement or in any Certificate of Acceptance shall in any way diminish or otherwise affect any rights which Lessor or Lessee may have against the vendor or manufacturer of any Unit or any subcontractor of such vendor or manufacturer.

3.2. Certificate of Acceptance. Lessee shall promptly complete, execute and deliver to Lessor a Certificate of Acceptance with respect to each Unit so determined acceptable, and in conjunction shall take such other action as may be necessary to fulfill the applicable conditions specified in Article VI hereof.

ARTICLE IV. Term and Rent

4.1. Term. The Term with respect to each Unit shall commence on the date of acceptance by Lessee of such Unit accepted for lease hereunder, as evidenced by the execution and delivery by Lessee of the Certificate of Acceptance with respect thereto. Unless earlier terminated or extended in accordance with the express provisions hereof, the Term for each Unit shall expire on the date determined in accordance with the applicable Lease Schedule, and the Term hereof shall expire on the last date upon which any Unit is leased hereunder.

4.2. Basic Rent and Interim Rent. Lessee shall pay Lessor Interim Rent with respect to each Unit on each Rental Payment Date during the Interim Term for such Unit in an amount equal to the Basic Rent for any full month during the Interim Term and on a prorata basis for any partial month during the Interim Term.

Lessee shall pay Lessor Basic Rent in respect of each Unit on each Rental Payment Date during the Base Lease Term in equal installments calculated at the inception of the Term. The Lessor and Lessee acknowledge and agree that the interest rate applicable to this transaction is 11.71% per annum. The monthly Basic Rent shall be an amount equal to 1.778% (the "Rate Factor") of the Lessor's Cost of the Units subject to the Certificate of Acceptance with respect thereto for all Units accepted on or before January 15, 1991. Thereafter, the Rate Factor shall be increased or decreased by 0.600 basis points for each 10 (ten) basis point increase or decrease in the "Reference Rate", as hereinafter defined, from 8.33%.

The "Reference Rate" shall be the yield rate for Treasury Constant Maturities - 5 year term as published in the Federal Revenue Statistical Release next preceding the applicable Acceptance Date.

4.3. Additional Rent. The lease created pursuant to this Agreement is a "net" lease. Lessee shall pay as Additional Rent all amounts (in addition to Basic Rent and Interim Rent, if any) required to be paid under this Agreement and (except as expressly provided herein) all costs, taxes, assessments and other expenses of every character (whether seen or unforeseen and whether or not expressly provided for herein) relating to or arising in connection with the use, occupancy, ownership, maintenance, repair, replacement or reconstruction of any Unit during the Term and, to the extent expressly provided herein, thereafter. Lessee shall also pay to Lessor as Additional Rent interest at the Late Payment Rate on each overdue installment of Basic Rent (and Interim Rent, if any) and on each overdue payment of Additional Rent.

4.4. Payment of Rent. Each installment of Basic Rent (and Interim Rent, if any) shall be paid to Lessor at its office at 111 Westminster Street, Providence, Rhode Island, 02903, or as directed by Lessor, and all Additional Rent shall be paid directly to the person entitled thereto and if such person is Lessor at its office or as it directs as aforesaid. All payments of rent shall be made in funds immediately available on the due date and shall become due at 12:00 noon Pacific time on the Rental Payment Date when due.

4.5. No Set-Off. Lessee shall not be entitled to any abatement of Rent, reduction thereof or set-off, counterclaim, recoupment or defense against Rent, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever; nor except as otherwise expressly provided herein, shall this Lease terminate or the obligations of Lessee be otherwise affected by reason of any defect in the title, condition, design, operation or fitness for use of any Unit or damage to or loss of possession or loss of use or destruction of all or any of such Units from whatsoever cause and of whatever duration or any presently existing or hereafter created liens, encumbrances or rights of others with respect to any unit or the prohibition of or other restriction against Lessee's use of all or any such Unit or the interference with such use by any person or entity or the invalidity or unenforceability of lack of due authorization of this Agreement or any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessee, or for any combination of such cause or any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rent payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Agreement. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon

it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each payment of Rent made by Lessee hereunder shall be final, and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

ARTICLE V. Representations and Warranties

5.1. Lessor's Representations and Warranties. Lessor represents and warrants to Lessee that Lessor has received whatever title was conveyed to it by the vendor from which title to each Unit was received and that the Equipment is free of liens and encumbrances which may result from any claims in favor of any person claiming by, through or under Lessor, except to the extent that such liens or encumbrances arise from the failure of Lessee to perform any of Lessee's obligations hereunder. Lessor further represents and warrants that it has full power, legal right and authority to lease the Equipment to Lessee in accordance with the terms hereof. THE WARRANTIES OF LESSOR SET FORTH IN THE SECTION 5.1 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES OF LESSOR WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE EQUIPMENT PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE EQUIPMENT, but Lessor authorizes Lessee, at Lessee's expense, to assert during the Term, so long as no Event of Default or Unmatured Default shall have occurred and be continuing, all of Lessor's rights under any manufacturer's, vendor's or dealer's warranty with respect to the Equipment, and Lessor agrees to cooperate with Lessee in asserting such rights; provided, however, that Lessee shall not attempt to enforce such rights unless (i) Lessee shall first notify Lessor of Lessee's intention to enforce such rights and shall furnish to Lessor such information with respect thereto as Lessor may reasonably request and (ii) the enforcement of such rights does not, in Lessor's reasonable judgement, involve any danger of sale, forfeiture or loss of any Unit or create the danger of Lessor's incurring criminal liability or other liability for which indemnification by Lessee, satisfactory to Lessor and its counsel, of Lessor and its successors, assigns, representatives, directors, officers, employees, agents and servants is not provided. Any amount received by Lessee as payment under any warranty pursuant to the above authorization shall be applied to restore the Equipment to as good a condition as it was or should have been (but for defects giving rise to such payment under warranty) when delivered to Lessee hereunder, ordinary and reasonable wear and tear excepted, with the balance of such amount, if any, to be paid over to Lessee unless an Event of Default or Unmatured Default shall have occurred and be continuing. The provisions of this Section 5.1. have been negotiated and agreed to by the parties hereto and, except to the extent otherwise expressly provided in this Section 5.1., are intended to be a complete

negation and exclusion of any representations or warranties by Lessor, express or implied, whether arising pursuant to the Uniform Commercial Code or any similar law now or hereafter in effect, or otherwise.

5.2. Lessee's Representations and Warranties. Lessee represents and warrants that:

(a) Lessee is a corporation duly organized and existing in good standing under the laws of the state of its incorporation, and is duly qualified to do business in those jurisdictions (including each of those where the Equipment will be located) where the failure to so qualify would impair Lessee's ability to perform its obligations under this Agreement.

(b) Lessee has full power, authority and legal right to execute, deliver and perform in accordance with this Agreement. This Agreement has been duly authorized by all necessary corporate action on the part of Lessee; does not require the approval of, or the giving of notice to, any Federal, State, Local or Foreign governmental authority (except such as has already been given or obtained); does not contravene any law, governmental regulation or judicial or administrative order or decree binding on Lessee; and does not contravene Lessee's charter or by-laws or any indenture or agreement to which Lessee or the Guarantor is a party or by which it or its property is bound;

(c) This Agreement constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(d) There are no pending or threatened actions or proceedings against Lessee or any of its affiliates before any court, administrative agency or other tribunal or body which may materially adversely affect Lessee's financial condition or operations or which question the legality or validity of this Agreement or which may affect Lessee's ability to perform its obligations hereunder; and

(e) the balance sheet of Lessee as of the close of its most recent fiscal year and the earnings statement of Lessee for the fiscal year then ended have been furnished to Lessor and fairly present Lessee's financial condition as of such date and the results of its operations for such year, in accordance with generally accepted accounting principles consistently applied, and since such date there has been no material adverse change in such condition or operations.

ARTICLE VI. Conditions to Lessor's Obligations

6.1. Conditions. Lessor's duties and obligations under this Agreement are subject to the execution and delivery by Lessee

of a Certificate of Acceptance with respect to each Unit and to fulfillment of the applicable conditions precedent set forth in Sections 6.2. through 6.5. hereof, in each case in form, substance and manner reasonably satisfactory to Lessor and its counsel.

6.2. Accuracy of Representations and Warranties; No Default. The representations and warranties contained in Section 5.2. hereof and Section VI.A. of each Guaranty shall have been true and correct when made and shall be true and correct on and as of the date of delivery of each Certificate of Acceptance; on each such Acceptance Date no Event of Default and no Unmatured Default shall have occurred and be continuing.

6.3. Initial Acceptance. Prior to or simultaneously with delivery of the first Certificate of Acceptance (the "Initial Closing Date"), Lessee shall have furnished to Lessor:

(a) A copy of the resolutions of the Board of Directors (and if applicable the shareholders) of Lessee, certified as of the Initial Closing Date by the Secretary or and Assistant Secretary of Lessee, duly authorizing the lease of the Equipment hereunder and the execution, delivery and performance of this Agreement.

(b) A certificate of the Secretary or an Assistant Secretary of Lessee dated the Initial Closing Date as to the incumbency and signatures of the person or persons authorized to execute this Agreement and the other documents contemplated hereby on behalf of Lessee.

(c) An opinion of counsel for Lessee dated the Initial Closing Date as to the matters set forth in Section 5.2. other than subparagraph (e) thereof and as to such the matters as Lessor may reasonably request.

(d) The Guaranty Agreements (the "Guarantees") of each Guarantor dated as of the date hereof in substantially the form of Exhibit E hereto executed by each such Guarantor.

(e) A copy of the resolutions of the Board of Directors (and if applicable the shareholders) of each Guarantor, certified as of the Initial Closing Date by the Secretary or an Assistant Secretary of such Guarantor, duly authorizing the execution, delivery and performance of the applicable Guaranty.

(f) A certificate of the Secretary or an Assistant Secretary of each Guarantor dated the Initial Closing Date as to the matters set forth in Section VI.A (other than subparagraph (6) thereof) of the applicable Guaranty and as to such other matters as Lessor may reasonably request.

(g) An opinion of counsel for each Guarantor dated the Initial Closing Date as to the matters set forth in Section VI.A. (other than subparagraph (6) thereof) of the applicable Guaranty and to such other matters as the Lessor may reasonably request.

6.4. Each Acceptance. Prior to or simultaneously with with delivery of a Certificate of Acceptance, with respect to each Unit, Lessee shall have furnished to Lessor the following:

- (a) (i) A true and correct copy of all invoices and other contract documents, if any, relating to such Unit between the vendor thereof and Lessee,
 - (ii) An executed copy of an assignment of such purchase orders, invoices and other contract documents in substantially the form of Exhibit C hereto, and
 - (iii) Tender of an executed bill of sale for such Unit substantially in the form of Exhibit D hereto.
- (b) Evidence satisfactory to Lessor that Lessee has obtained insurance with respect to the Unit as required by Article X.
- (c) With respect to each Unit identified on Attachment 1 to the relevant Certificate of Acceptance as exempt for sales tax purposes, an exemption certificate.
- (d) Evidence satisfactory to Lessor that the security interest created hereby in each such Unit has been perfected, including without limitation with respect to each such Unit (i) evidence that a financing statement covering the same has been filed as required by the jurisdiction in which Lessee's chief executive office is located and where each Unit is located and (ii) if applicable evidence of compliance with Section 8.6. hereof.

6.5. Other Matters. All other legal proceedings and details relative to this Agreement shall be reasonably satisfactory to Lessor and its counsel, and Lessor shall have been furnished with original or certified copies of such other documents as it or its counsel may reasonably request.

6.6. Monthly Fundings. Certificates of Acceptance delivered by Lessee (a) on or before the 20th day of any month occurring prior to the Final Delivery Date and (b) on or after the 21st day of the preceding month shall be dated the last business day provided that the other conditions set forth in this Article VI shall have been met.

6.7. Maximum Commitment. Notwithstanding anything to the contrary contained in this Agreement, Lessor shall have no obligation to lease any Unit of Equipment to Lessee or pay the

vendor thereof if such payment would cause the Maximum Commitment to be exceeded whether with respect to the Lessor or the aggregate original Equipment cost of all Equipment then subject to this Agreement.

ARTICLE VII. Reports

7.1. Financial Reports. Lessee shall, as soon after the end of each fiscal year of Lessee as practicable (and in any event within 135 days thereafter), furnish to Lessor duplicate copies of Lessee's most recent financial reports, including Lessee's most recent annual report if published and balance sheet and profit and loss statement, certified by Lessee's chief financing or accounting officer. Interim statements, certified by the chief financial or accounting officer of Lessee, shall be furnished within fifteen days after their preparation by Lessee.

7.2. Annual Certificate. Lessee shall furnish to Lessor, concurrently with the delivery of the annual financial statements of Lessee required by Section 7.1. hereof, a certificate signed on behalf of Lessee by the chief financial or accounting officer of Lessee stating as of a recent date (but not more 135 days prior thereto);

- (a) The make, model and manufacturer's serial number of each Unit;
- (b) The manufacturer's serial number of any Unit that has become lost, destroyed, irreparably damaged or otherwise permanently rendered unfit or unavailable for use since the date of the previous report delivered pursuant to this Section 7.2. (or since the commencement of the Term in the case of the first such report);
- (c) That the Equipment has been kept in good order and repair or is then being repaired in accordance with Section 8.1. hereof;
- (d) That the location and identification requirements of Section 8.2. hereof have been complied with in the case of each Unit;
- (e) That Lessee has filed all personal property tax returns in respect of the Equipment required to be filed and has paid all taxes shown thereon to be due except for any such taxes that Lessee is contesting in good faith and with due diligence; and
- (f) That the signer of the certificate has made, or caused to be made by persons under his authority and direction, a reasonable investigation concerning the Equipment and Lessee's compliance with its obligations hereunder, and that no Event of Default has occurred and is continuing or, if

any Event of Default or Unmatured Default has occurred and is continuing, the nature thereof and the steps which Lessee has taken or is taking to cure the same.

7.3. Additional Reports. Upon the written request of Lessor at any time and from time to time, Lessee will also deliver to Lessor, within fifteen (15) days of such request, information, as of a date not earlier than the date of such request, called for by Section 7.2 (e). Lessee shall also furnish to the Lessor such additional information concerning the location, condition, use and operation of the Equipment and the financial condition and operations of Lessee as Lessor may reasonably request from time to time, and Lessee shall permit any person designated in writing by Lessor to visit and inspect the Equipment and the records maintained in connection therewith and to discuss the affairs, finances and accounts of Lessee with the principal officers of Lessee, all at such reasonable times and as often as Lessor may reasonably request, which shall be kept confidential by Lessor, except as to any Assignee or bonafide potential Assignee.

7.4. Accidents. In the event of an accident arising out of alleged or apparent defective design or manufacture or out of the use or operation of any Unit, Lessee shall promptly deliver to its insurance carriers all notices called for under each policy of insurance relating to such Unit. Concurrently with such filing and delivery, Lessee shall deliver to Lessor a copy of the notice so filed or delivered. Lessee shall also deliver to Lessor any additional information with respect to such accident, which Lessor shall reasonably request, and shall promptly make available to Lessor all correspondence, papers, notices and documents whatsoever received by Lessee in connection with any claim or demand involving or relating to any such accident. ✓

7.5. Tax Liens. Lessee shall notify Lessor in writing, within 30 days after any day on which any tax lien shall attach to any Unit, of such lien and of the location of such Unit on such day.

7.6. Movement of Equipment. Lessee shall deliver to Lessor quarterly, not more than 45 days after the end of each calendar quarter, a schedule showing the location of any Unit, as of the end of such calendar quarter, that has changed location since the immediately preceding such Schedule and specifying each change in location from that shown on the most recent such schedule. Lessee shall not move any Unit to any location outside the continental United States of America.

7.7. Insurance. Lessee shall provide Lessor annually with respect to each insurance policy required to be maintained pursuant to Article X. hereof and not less than 15 days prior to expiration date of each such policy, the certificate of any insurance broker or other evidence acceptable to Lessor that such policy has been extended or renewed for at least one year or that a replacement policy meeting the requirements hereof has been obtained and that

the premium payable under such extended, renewed or replacement policy has been paid.

ARTICLE VIII. Maintenance, Use and Operation

8.1. Maintenance and Operation. Lessee, at its own cost and expense, shall service, repair, maintain and overhaul each Unit in a manner so as to keep the same (i) in good, safe and reliable operating condition, repair and appearance as it was when delivered to Lessee hereunder, ordinary and reasonable wear and tear excepted, and (ii) in such condition as shall meet all applicable Federal, State or Local laws or regulations. Without limiting the foregoing, Lessee agrees to maintain each Unit to the same extent as a prudent individual would in the management of its own properties for the full useful life of a similar unit as if owned by Lessee and without reference to the remaining Term hereof; Lessee shall not use, operate or store any Unit in violation of this Agreement, or any instructions therefor furnished by the manufacturer or vendor thereof or of any applicable Federal, State or Local law or regulation; nor use or operate any Unit other than in a manner and for the use contemplated by the manufacturer thereof.

8.2. Location and Insignia. Lessee shall cause the Equipment to be located at all times only at such place or places as will comply with the conditions set forth in Section 7.6. and to remain at all times within its possession and control (except to the extent necessary or appropriate for purposes of compliance with the express provision of this Agreement). Lessee shall maintain on each Unit an insignia or identification requested by Lessor and shall not remove, or permit the removal of, such insignia or identification without the prior written consent of Lessor.

8.3. Supplies. Lessee shall pay for and provide all power, fuel and supplies consumed by and required for each Unit and all repairs, parts and supplies necessary therefor.

8.4. Accessories. Lessee shall not, without the prior written consent of Lessor, affix or install any accessory, equipment or device on any Unit if such addition will impair the value or the originally intended function or use of such Unit. All repairs, parts, supplies, accessories, equipment and devices furnished or affixed to the Equipment shall thereupon become the property of the Lessor (except such as may be removed without in any way affecting or impairing the value or the originally intended function or use of the Equipment). Immediately upon any replacement part becoming incorporated or installed in or attached to the Equipment, without further act, title to the removed part shall thereon vest in Lessee, free and clear of all rights of Lessor.

8.5. Personal Property. Lessee shall not, without the prior written consent of Lessor and subject to such conditions as Lessor may impose for its protection, affix or install any Unit to

or in any real property, it being the mutual intention of the parties that the Equipment at all times shall be and remain personal property of Lessor. Lessee shall take such steps as may be necessary to prevent any person from acquiring any rights in any Unit by reason of such Unit being claimed or deemed to be real property.

8.6. Sublease and Assignment. LESSEE SHALL NOT ASSIGN THE AGREEMENT OR SUBLEASE OR LET ANY UNIT; PROVIDED, HOWEVER, SO LONG AS NO EVENT OF DEFAULT OR UNMATURED DEFAULT SHALL HAVE OCCURRED AND BE CONTINUING, LESSEE MAY SUBLEASE OR OTHERWISE DELIVER POSSESSION OF UNITS TO LESSEE'S SUBSIDIARIES (THE "PERMITTED SUBLESSEE") IF AND ONLY IF (i) LESSEE AND SUCH PERMITTED SUBLESSEE ENTER INTO AN AGREEMENT IN SUBSTANTIALLY THE FORM OF EXHIBIT F HERETO (A "SUBSIDIARY AGREEMENT") WITH RESPECT TO SUCH UNITS, (ii) FINANCING STATEMENTS ON FORM UCC-1 ARE APPROPRIATELY FILED PRIOR TO OR CONTEMPORANEOUSLY WITH THE EARLIER OF THE TAKING POSSESSION OR CONTROL OF THE UNITS BY THE PERMITTED SUBLESSEE, OR THE EXECUTION OF THE SUBSIDIARY AGREEMENT AND (iii) COPIES OF THE DOCUMENTS REFERRED TO IN (i) AND (ii) ARE PROMPTLY DELIVERED TO LESSOR. SAID FINANCING STATEMENTS SHALL NAME THE PERMITTED SUBLESSEE AS THE "DEBTOR", LESSEE AS THE "SECURED PARTY", SHALL INDICATE THAT THE FILING IS A PROTECTIVE FILING ONLY, AND LESSOR SHALL BE THE ASSIGNEE THEREON.

8.7. Substitution. Lessee may from time to time, upon not less than 30 days prior written notice to the Lessor, substitute for any Unit a replacement Unit which shall be of value and utility no less than, and have a remaining useful life no shorter than, those of the Unit being replaced; provided that the requirements of Section 6.4 (d) shall be satisfied contemporaneously with any such substitution. At the request of the Lessor and the expense of Lessee, Lessee will provide Lessor with an appraisal of an independent appraiser satisfactory to Lessor that any proposed replacement Unit meets the requirements of this section. Upon any such replacement, title to the replaced Unit shall automatically vest in Lessee and, at the request and expense of Lessee, Lessor shall deliver to Lessee a bill of sale for such Unit transferring such Unit to Lessee, as is, where is, with all faults, except that Lessor shall warrant that it is delivering to Lessee whatever title was delivered to Lessor, free and clear of liens in favor of any person claiming by, through or under Lessor other than liens resulting from the failure of Lessee to perform its obligations hereunder.

ARTICLE IX. Liens

Lessee will not permit any Unit to be subject to lien, security interest, charge or encumbrance whatsoever except (i) the respective rights of Lessor and Lessee as herein provided, (ii) liens asserted by any person claiming by, through or under Lessor and resulting from acts or omissions of Lessor, except to the extent that such liens, charges or encumbrances arise from the failure of Lessee to perform any of Lessee's obligations hereunder,

(iii) liens for taxes not yet due, (iv) the rights of any Permitted Sublessee under a Subsidiary Agreement.

ARTICLE X. Insurance

10.1. Physical Damage Insurance. At its own expense, Lessee shall maintain physical damage insurance on each Unit against fire and such other perils and in such amounts as are usually carried by corporations engaged in the same or similar business and similarly situated to Lessee; provided, however, that in no event shall the amount of such insurance (subject to a deductible of not more than (a) \$25,000 for heavy commercial trucks, and (b) \$100,000 for off-road vehicles per occurrence) at any time be less than the aggregate Termination Value of all Units then leased hereunder; and provided, further, that Lessee may self-insure physical damage insurance for light pick-up trucks and passenger cars. Lessor shall be listed as Loss Payee on all such policies.

10.2. Liability Insurance. At its own expense, Lessee shall maintain insurance protecting the interests of both Lessor and Lessee against liability for property damage to third persons and personal injury or death arising out of the maintenance use, operation and ownership of the Equipment, in such amounts as are usually carried by corporations engaged in the same or similar businesses and similarly situated to Lessee; provided, however, that in no event shall the amount of such insurance be less than \$15,000,000; and provided, further, that the insurer thereunder may cede reinsurance in an amount not greater than \$1,000,000 per occurrence to a subsidiary of Beazer PLC so long as prior written notice of the terms of such reinsurance shall be given to Lessor.

10.3. General Insurance Provisions. All insurance required by Sections 10.1. and 10.2. of this Agreement shall name the Lessor and Lessee as insured parties, shall be maintained with responsible insurance companies rated "A" or better by A.M. Best's and meeting such other reasonable standards as may from time to time be established by Lessor and shall provide that the coverage thereunder may be altered or cancelled only after not less than 30 days prior written notice to Lessor and that the Lessor's interest therein shall not be affected by any act or neglect on the part of the Lessee. Throughout the term, Lessee shall provide to Lessor, promptly upon Lessor's request, certificates of insurance and copies of all policies with respect to the coverages required hereunder.

10.4. Payment of Premium by Lessor. In the event that Lessee shall fail to obtain or maintain insurance in accordance with the provisions of this Agreement, Lessor shall have the right, but shall not be obligated, to obtain, and pay the premiums on, such insurance as Lessor deems necessary and Lessee shall, upon demand, reimburse Lessor in an amount equal to the amount of such premiums paid plus interest at the Late Payment Rate from the date of such payment to the date of such reimbursement.

All payments hereunder, whether by check, draft or other instruments shall be payable jointly to Lessor and Lessee and Lessor and Lessee agree to cooperate with each other and inform each other about the filing, settlement or adjustment or any such claims.

ARTICLE XI. Assumption Of Risk; Indemnification; Survival

11.1. Assumption of Risk and Indemnification. Lessee does hereby assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Lessor and its successors, assigns, representatives, directors, officers, employees, agents and servants from and against, and does hereby agree to pay when due, as Additional Rent, all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including legal fees and expenses, of whatsoever kind or nature, whether seen or unforeseen, imposed upon, incurred by or with respect to or asserted against any Unit, Lessor or its successors, assigns, representatives, directors, officers, employees, agents or servants, in any way relating to or arising out of the manufacture, purchase, acceptance or rejection, ownership, delivery, lease, use, possession, operation, condition, repair, replacement, reconstruction, return or other disposition of any Unit, including without limitation those in any way relating to or arising out of or alleged to arise out of (i) any latent or other defects whether or not discoverable by Lessor or Lessee, (ii) any claim for patent, trademark or copyright infringement, (iii) any claim based on strict liability in tort and (iv) any and all license fees, assessments and sales, use, rent, property and other taxes now or hereafter imposed by any Federal, State or Local government upon any Unit or its use or payments hereunder, or upon this Agreement (excluding, however, taxes, fees and other charges based upon or measured by Lessor's net income, together with interest and penalties with respect thereto), whether the same shall be payable by or billed or assessed to Lessor or Lessee, together with any penalties or interest in connection therewith; provided, however, that nothing in this Section 11.1. shall be construed so as to require Lessee to indemnify Lessor for its own negligence (provided that Lessor shall not be deemed negligent for performing or failing to perform any act or obligation of Lessee hereunder), willful misconduct, or breach of obligations. Lessee shall be obligated under this Section 11.1. irrespective of whether Lessor or any of its successors, assigns, representatives, directors, officers, employees, agents or servants shall also be indemnified with respect to the same matter under any other agreement by any other person. In the event Lessee is required to make any payment under this Section 11.1., Lessee shall pay to Lessor an amount which after deduction of all taxes required to be paid by Lessor or any other person indemnified hereunder in respect of the receipt of such payment (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of such other taxes) shall be equal to the amount of such payment.

Lessee and Lessor each agree to give the other, promptly upon obtaining knowledge thereof, written notice of any claim or liability hereunder indemnified against; provided, however, that the failure to give such notice shall affect, impair or diminish Lessee's obligation under this 11.1. only and only to the extent of any damage caused to Lessor by such failure. Lessee shall not have any obligation to indemnify Lessor for any matter occurring subsequent to the termination of this Agreement except to the extent that it relates to or results from (i) an act or event occurring prior to such termination or (ii) a breach by Lessee of its obligations hereunder even if such breach occurs after such termination. Lessor shall permit Lessee, at Lessee's expense, to contest any taxes, fees or other charges or related penalties for which indemnification is provided hereunder so long as Lessor, in its reasonable judgement, does not, as a result thereof, risk criminal or other liability for which adequate indemnification may not be provided. Lessee will keep Lessor fully informed as to the status of any such contest.

11.2. Survival of Obligations. This Article XI. shall become and be effective and in full force and effect from the date of this Agreement (even though no Equipment may have been accepted by Lessee and even though the Term may not have commenced) and shall remain in effect notwithstanding the expiration or other termination of the Term insofar as it relates to an event or state of facts which occurred or existed or which is alleged to have occurred or existed prior to such expiration or termination, or a breach by Lessee after such expiration or termination.

ARTICLE XII. Damage to Property

12.1. Duty to Notify. In event any Unit shall be lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever, or title thereto shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise (herein referred to as an "Event of Loss"), Lessee shall promptly notify Lessor as to the circumstances and time of such event.

12.2. Termination Value. Effective upon the happening of an Event of Loss with respect to any Unit. Lessee shall become obligated, without demand or notice, to pay to Lessor on the Rental Payment Date next following such Event of Loss an amount equal to the Termination Value for such Unit as of such Rental Payment Date together with all Basic Rent Due on such Rental Payment Date. The obligation of Lessee to pay Basic Rent for such Unit shall cease when such Termination value and Basic Rent payment has been made and such Unit shall cease to be part of the Equipment leased hereunder, effective as of such payment. Upon request of Lessee, Lessor will execute and deliver an appropriate document cancelling or amending the Lease Schedule and Certificate of Acceptance pursuant to which such Unit was leased under this Agreement, but Lessor's failure to do so shall not affect Lessee's obligations under this Agreement, and Lessor will transfer to Lessee, without

recourse or warranty, all of Lessor's right, title and interest, if any, in and to such Unit.

12.3. Insurance and Condemnation Proceeds. Any and all insurance or other payments received by Lessor or Lessee (except under any insurance policy maintained pursuant to Section 10.2. hereof) as a result of any Event of Loss of a Unit shall be paid to or retained by Lessor and applied against Lessee's obligation to pay the Termination Value.

ARTICLE XIII. Return of Property

13.1. General Return Provisions. Upon the return by Lessee to Lessor of any Unit of Equipment for any reason whatsoever, including any default by Lessee hereunder, Lessee shall return such Unit to Lessor or Lessor's designee in full compliance with all provisions of this Section. Lessee shall pay or reimburse Lessor for the cost of all repairs reasonably necessary to restore such Unit to the condition as required in this Article XIII.; provided that Lessor shall have given Lessee not less than 15 days prior written notice of its intention to incur such cost. Lessee shall return (at Lessee's cost) each Unit to Lessor at such location within 500 miles of its final location during the Term as shall be designated by Lessor or if the Unit is of a nature that so permits and if and only if Lessor shall so request, Lessee shall load the same at Lessee's expense on such carrier as Lessor shall designate and ship the same as directed by Lessor. The cost of the first 500 miles of shipping shall be at the expense of Lessee and the remainder at Lessor's expense. If Lessor so requests, Lessee will defer such return of any Unit and will, without expense to Lessor, store same at premises of Lessee used by Lessee for the storage of similar property and approved by Lessor, for a period not to exceed 180 days from the date of expiration or sooner termination of Term for such Unit, the obligations of Lessee during that interval in respect to the Units being that of reasonable care under all the circumstances and the risk of loss without fault of Lessee being that of Lessor; provided, however, that the foregoing shall not impose any responsibility for maintenance, overhaul, or any other expense during such storage. If Lessor so requests, Lessee shall continue to maintain insurance upon such Units in accordance with Article X. thereof and Lessor shall reimburse Lessee for the cost of such insurance allocable to such Units (provided that Lessee is not then in default). Upon redelivery of a Unit, (a) all maintenance records (including the hours at the time of maintenance), maintenance record jackets, repair orders, license plates, registration certificates and all other similar documents pertaining to the Unit in their entirety, if requested by Lessor, will be delivered to Lessor; (b) the Unit shall be free of all advertising or insignia placed thereon by Lessee; (c) the Unit shall be mechanically and structurally sound, capable of performing all functions for which the Unit was originally designed, in accordance with the manufacturer's design criteria and limitations, normal and reasonable wear and tear excepted.

13.2. Return Provisions for Motor Vehicles: With respect to any Unit which constitutes a motor vehicle, rolling stock or other mobile equipment, at least forty-five (45) days prior to the redelivery of such Unit to Lessor or a third party as provided above, Lessee shall (at its own expense) have a manufacturer, certified dealer (acceptable to Lessor) or other similarly qualified equipment maintenance provider (acceptable to Lessor) provide a written report on the results of a comprehensive physical inspection of such Unit, which shall include a certified oil sample report as well as a complete inspection of items 1 through 5 detailed below. All components must meet or exceed the manufacturer's minimum recommended specifications unless otherwise specified below. The Unit shall have been maintained substantially in accordance with a maintenance program that meets or exceeds the manufacturer's standard for compliance with its warranty regardless of whether with respect to such Unit, the manufacturer's warranty shall then be in effect. Upon redelivery, each Unit shall satisfy the following minimum standards:

1. Tires: All tires shall be of the same size, type and manufacturer (or similar quality manufacturer) as upon delivery to Lessee. Carcasses shall be clean with 50% tread or better ("clean" meaning no sidewall cuts and no section repairs). Tires may be retreads provided that they have an initial tread depth at least equal to that of the original tires.
2. Power Train: The power train assembly and brakes shall perform at rated capacity and have useful life remaining on all major component parts.
3. Undercarriage: The undercarriage shall have at least forty (40) percent average useful life remaining as measured by the manufacturer-dealer pursuant to manufacturer's recommendations.
4. Engine: The engine must have been maintained substantially in accordance with manufacturer's recommendations and in substantial conformance with requirements of the manufacturer's warranty, as the same may be amended from time to time. At the time of redelivery the engine must perform at rated capacity and have useful life remaining before the next overhaul or replacement as recommended by the engine manufacturer and published in standard maintenance manuals. Determination of satisfaction of these specifications shall be made by subjecting the engine to such tests as shall be reasonably determined by a qualified dealer to be necessary to determine compliance with this paragraph 4. All such tests shall be performed in accordance with the manufacturer's then recommended standards and procedure.
5. General Conditions: Each Unit shall be returned in the same configuration as originally received from the

manufacturer or dealer and, with respect to each Unit, the cost of necessary repairs for damages to exterior and interior materials (including door operation, floor damage, side and nose damage and cracked, chipped, or broken glass) may not exceed \$500. All operating components must be able to perform their function as originally intended, normal and reasonable wear and tear excepted. All mechanical and electrical equipment must be in proper operating condition, normal and responsible wear and tear excepted. The Unit shall be in compliance with all applicable Federal, State and Local safety standard and regulations as applicable thereto.

ARTICLE XIV. Defaults; Remedies

14.1. Defaults; Remedies. If during the Term of this Agreement one or more of the following events ("Events of Default") shall occur:

- (a) Default shall be made in the payment when due or any Rent herein provided and such default shall continue until the later of (i) 12:00 noon, Pacific time on the fifth day following the date upon which such Rent is due; or
- (b) Lessee shall attempt to remove, sell, transfer, encumber or sublet (except as expressly permitted under this Agreement) any Unit; or
- (c) Default shall be made in the observance or performance of any other covenants, conditions and agreements on the part of Lessee contained herein or on the part of the Guarantor contained in the Guaranty and such Default shall continue for ten days after written notice from the Lessor to the Lessee specifying the Default and demanding the same to be remedied; or
- (d) A proceeding shall have been instituted in a court having jurisdiction in the premises, seeking a decree or order (i) for relief in respect of Lessee or the Guarantor in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of Lessee or the Guarantor or of the property of either, or (iii) for the winding up or liquidation of the affairs of Lessee or the Guarantor; and either (I) any such proceeding shall remain undismissed or unstayed and in effect for a period of 90 consecutive days or (II) such court shall enter a decree or order granting the relief sought in such proceeding; or
- (e) Lessee or the Guarantor shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar

law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of Lessee or the Guarantor or for any substantial part of the property of either, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debt as they become due, or shall take any corporate action in furtherance of any of the foregoing; or

(f) Any borrowing (as defined in the Facilities Agreement) or material indebtedness of Lessee or Guarantor is not paid within any applicable grace period provided for in the original agreement relating thereto or any Borrowing or material indebtedness of Lessee or Guarantor is declared to be or otherwise become due and payable prior to its specified maturity by reason of a default or event of default (however described); for this purpose "material indebtedness" means any indebtedness the aggregate amount of which exceeds \$5,000,000 or its equivalent; or

(g) Lessee shall have knowledge that there has occurred and is continuing any condition, event, act or omission which it reasonably believes constitutes an Event of Default or an Unmatured Default, and shall fail promptly to notify Lessor of such condition, event, act or omission; or

(h) Any representation or warranty made by Lessee in this Agreement, or in any Lease Schedule or Certificate of Acceptance, or by any Guarantor in its Guaranty or any information furnished by Lessee or the Guarantor in any instrument, certificate or other document delivered by or on behalf of Lessee or the Guarantor pursuant hereto or thereto,, shall prove to be false and misleading in any material respect; or

(i) An event deemed an "Event of Default" under the Facilities Agreement or any successor thereto or replacement thereof, shall occur and be continuing; or

(j) Any person or group of connected persons (which does not have control at the date hereof) acquires control of Lessee or any Guarantor which shall include the holding of more than 25% of the voting rights attaching to shares in Lessee or the Guarantor, the power to appoint and/or remove all or the majority of the members of the Board of Directors of Lessee or the Guarantor, or otherwise to control or have the power to control the affairs and policies of Lessee or any Guarantor. "Connected person" shall be construed in accordance with Section 839 of the Income and Corporation Taxes Act 1988 of the United Kingdom; or Lessee shall terminate its existence by merger, consolidation or sale of all or substantially all of its assets or otherwise;

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

A. Proceed by appropriate court action or actions either at law or in equity to enforce performance by Lessee of the applicable duties and obligations of Lessee under this Agreement or to recover from Lessee any and all damages or expenses, including reasonable attorney fees, which Lessor shall have sustained by reason of Lessee's Default or on account of Lessor's enforcement of its remedies hereunder; or

B. By notice in writing to Lessee, terminate this Agreement, whereupon all right of Lessee to the use of the Equipment shall absolutely cease and terminate as though this Agreement had never been made, but Lessee shall deliver possession of the Equipment to Lessor in accordance with, and in the condition required by Article XIII, hereof and Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents and without notice to Lessee enter upon the premises of Lessee or other premises where the Units may be located and take possession of all or any such Units and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purpose whatever.

Upon such termination, Lessor shall have the right to recover forthwith from Lessee as damages for loss of the bargain and not as a penalty and as reasonable rent for the use of the Equipment and for the depreciation thereof, the sum of the following:

(1) an amount with respect to each Unit which represents the excess of the Termination Value of such Unit over one of the following, as Lessor may in its sole discretion elect: (x) in the event Lessor shall sell such Unit, the Net Sales Price obtained from such sale, (y) in the event Lessor shall re-lease such Unit, the net rents payable under the terms of such releasing for a period equal to the remaining term of this Agreement, discounted to the time of computation at a rate of 12% per annum, or (z) the fair market value of such Unit at the time of such termination;

(2) all due and unpaid Rent for the Equipment to the date of termination;

(3) an amount equal to accrued taxes and other amounts payable hereunder by Lessee with respect to the Equipment;

(4) all costs, expenses, losses and damages incurred or sustained by Lessor by reason of such Default; and

(5) interest at the Late Payment Rate on each of the foregoing from the date upon which such amounts were first payable which date, in the case of the amounts payable

pursuant to clause (1) above, shall be the date upon which the Event of Default which results in the termination of this Agreement first occurs.

If on the date of such termination or repossession, any Unit be damaged, lost, stolen or destroyed, or be subject to any levy seizure, assignment, application or sale for or by any creditor or governmental agency, Lessee shall remain liable for the Termination Value pertaining to such Unit less the amount of any insurance recovery received by Lessor in connection therewith.

14.2 Remedies Cumulative; Waiver of Requirements. The remedies in this Agreement provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing a law or in equity. TO THE EXTENT THAT SUCH WAIVER IS PERMITTED BY LAW, LESSEE HEREBY WAIVES ANY MANDATORY REQUIREMENTS OF LAW, NOW OR HEREAFTER IN EFFECT, WHICH MIGHT LIMIT OR MODIFY ANY OF THE REMEDIES HEREIN PROVIDED, INCLUDING WITHOUT LIMITATION ANY RIGHT WHICH LESSEE MAY HAVE TO NOTICE AND HEARING PRIOR TO THE REPOSSESSION AND SALE OR LEASING OF ANY UNIT.

ARTICLE XV. Assignment by Lessor

Lessee acknowledges and understands that the terms and conditions of this Agreement have been agreed to by Lessor in anticipation of its being able to assign its interest under this Agreement and in and to the Equipment leased hereunder to a bank or other lending institution or to others having an interest in the Equipment or this transaction, all or some of which will rely upon and be entitled to the benefit of the provision of this Article XV. Lessee agrees with Lessor and with such bank or other lending institution or such other party (for whose benefit this covenant is expressly made) and in consideration of the provisions hereof, as follows: (i) to recognize any such assignment, (ii) to accept the directions or demands of such Assignee in place of those of Lessor, (iii) to surrender the Equipment only to such Assignee, (iv) to pay all Rent payable hereunder and to do any and all things required of Lessee hereunder and not to terminate this Agreement, notwithstanding any default by Lessor or the existence of any other liability or obligation of any kind of character on the part of the Lessor to Lessee whether or not arising hereunder, and (v) not to require any Assignee of this Agreement to perform any duty, covenant or condition required to be performed by Lessor under the terms of this Agreement, all rights of Lessee in any such connection being hereby waived as to any and all of such Assignees; provided, however, that nothing contained in this Article XV. shall relieve Lessor from its obligations to Lessee hereunder. Except as provided in clause (v) of the preceding sentence, each reference herein to "Lessor" shall mean and include any such Assignee and any other person purchasing a participation in the rights and obligations of Lessor hereunder and accordingly, the rights, privileges and remedies granted to and created in favor of Lessor by this Agreement shall be for the pro rata benefit of any Assignee or participant in this Agreement.

ARTICLE XVI. Quiet Possession

So long as no Event of Default hereunder shall have occurred and be continuing, Lessor shall not do (nor suffer to be done by any person claiming by, through or under Lessor with respect to matters not related to the transactions contemplated by this Agreement) any act which will interfere with the right of Lessee peaceably and quietly to hold, possess and use the Equipment during the Term and in accordance with the provisions of this Agreement.

ARTICLE XVII. Lessee Options

So long as no Event of Default or Unmatured Default shall have occurred and be continuing, at the end of the Base Lease Term and the Option Term for a Group of Units, subject to the notice provisions herein below as such may be applicable, Lessee shall have the following options:

(a) to exercise the TRAC Option as more fully described in paragraph 2 below; or

(b) to exercise the Purchase Option as more fully described in paragraph 1 below;

provided that (i) if Lessee shall not have properly exercised either the TRAC Option or the Purchase Option at the end of the Base Lease Term with respect to a Group of Equipment, it shall be deemed to have exercised the Lease Term Extension Option as more fully described in paragraph 3 below with respect to such Group, (ii) Lessee must exercise either the TRAC Option or the Purchase Option at the end of the Option Term and (iii) if Lessee shall not have properly exercised either such option at the end of the Option Term with respect to a Group of Equipment, it will be deemed to have exercised the Mandatory Purchase Requirement set forth in paragraph 4 below with respect to such Group, (iv) Lessee's election to exercise either the TRAC Option or the Purchase Option for the first eligible Group shall be deemed to be the Lessee's election for all Groups.

1. Purchase Option. If no event of Default or Unmatured Default shall have occurred and be continuing, Lessee shall have the right (the "Purchase Option") to purchase all, but not less than all, Units of a particular Group of Equipment at the expiration of the Base Lease Term or the Option Term for said group at a price equal to the aggregate Termination Value of the Units comprising said Group ("the Purchase Option Price"). Lessee will give Lessor written notice 90 days prior to the end of such Term of its election to exercise the Purchase Option. Payment of the Purchase Option Price shall be made on the last day of the Base Lease Term at the place of payment specified in Section 4.4 of this Agreement in immediately available funds against delivery of a bill of sale transferring each Unit to Lessee as is, where is, and with

all faults, except that Lessor shall warrant that it is delivering to Lessee whatever title was delivered to Lessor free and clear of liens in favor of any person claiming by, through or under Lessor other than liens resulting from the failure of Lessee to perform its obligations hereunder. The Purchase Option Price shall bear interest for the period, if any, from the expiration of the Base Lease Term to the date of payment of the Purchase Option Price at the Late Payment Rate.

2. TRAC Option. If at the end either of the Base Lease Term or the Option Term, with respect to a Group of Equipment no Event of Default or Unmatured Default shall have occurred and be continuing, then during the ninety (90) day period immediately prior to the last day of such Term, as the case may be, for such Group, Lessor may, and Lessee shall, use their best efforts to obtain offers from third parties (which third parties shall not be Lessee or any person, corporation, partnership or other entity related to, affiliated with or owning an equity interest in, Lessee) for the cash purchase of Units in said Group (the "TRAC Option). In the event either Lessor or Lessee receives a bona fide offer to purchase said Group of Equipment, such party shall immediately, but in no event less than fifteen (15) business days prior to the Proposed Sale Date, certify to the other party in writing the amount of such offer and the name and address of the person or entity submitting such offer. No later than the Proposed Sale Date for such Group, Lessee shall (a) pay to Lessor accrued and unpaid Rent to and including the last day of the Base Lease Term or Option Term, as the case may be, for such Group and (b) deliver the Group of Equipment either (i) to the offeror, if any, which shall have submitted the highest offer, in which case, Lessor shall simultaneously therewith sell the Equipment on an "as is" basis, without recourse or warranty, for such cash to such offeror, or (ii) if directed in writing by the Lessor at least three (3) business days prior to the last day of the Base Lease Term, the Lessor, in which case the sale price referred to herein shall be deemed to be the amount of the highest offer; provided, however, that in the event that Lessee deems the offers inadequate and the Proposed Sale Date is the last day of the Base Lease Term (and not the Option Term) for such Group, Lessee may, by notice to Lessor, not less than ten (10) days prior to the Proposed Sale Date, exercise the Lease Term Extension Option with respect to such Group Equipment, in which event such Group of Equipment shall not be, or be deemed to be, sold. The total sale price realized at such sale shall be retained by Lessor and, in addition, on the date of such sale, the Basic Rent due under the Agreement shall be adjusted as follows:

(x) In the event that the sales price of the Group of Equipment received by Lessor after deducting all costs, expenses (including a commission to the Lessor equal to 3% of the sale price) and taxes, if any, in connection with such sale (the "Net Sales Price") exceeds the aggregate Termination Values for the Units in such Group as of the sale date, Lessor shall pay such excess to Lessee;

(y) In the event that the Net Sales Price of such Group is less than the aggregate Termination Values on the sale date, for the Units in such Group, Lessee shall pay to Lessor the amount of such deficiency. Any deficiency not paid when due shall bear interest at the Late Payment Rate.

3. Lease Term Extension Option. If no Event of Default or Unmatured Default shall have occurred and be continuing, and provided Lessee has not properly exercised either TRAC Option or the Purchase Option with respect thereto, Lessee shall, at the expiration of the Base Lease Term for a particular group of Equipment, lease all, but not less than all, of the Units making up said Group for an additional term of three months (the "Option Term") for a monthly payment of the original Basic Rental (the "Lease Term Extension Option"). Rent with respect to the Option Term shall be paid in equal installments monthly in advance on the Rental Payment Dates during such Option Term.

4. Mandatory Purchase Requirement. (a) At the end of an Option Term with respect to a Group of Equipment, unless Lessee shall have properly exercised the TRAC Option or the Purchase Option with respect thereto, and (b) upon the occurrence of a Change in Control Event, Lessee must purchase said Group in the case of (a), and all Groups in the case of (b), from Lessor at a price equal to the aggregate Termination Values of the Units comprising said Group or Groups, as the case may be (the "Mandatory Purchase Requirement"), on the last day of said Option Term in the case of (a), and on the Rental Payment Date next following the occurrence of the Change of Control Event (or such earlier date as Lessor shall specify) in the case of (b).

5. Early Purchase Option. If no Event of Default or Unmatured Default shall have occurred and be continuing, Lessee shall have the right (the "Early Purchase Option") to purchase all, but not less than all, the Units in a Group on any Rental Payment Date ("Early Purchase Date") at a price equal to the aggregate Termination Values of the Units in such Group (the "Early Purchase Option Price"). Lessee shall give Lessor written notice 90 days prior to the Early Purchase Date of its election to exercise the Early Purchase Option. Payment of the Purchase Option Price, together with all other amounts due on such date, including without limitation any installment of Basic Rent, shall be made on the Early Purchase Date at the place of payment specified in Section 4.4 of the Agreement in immediately available funds against delivery of a bill of sale transferring each Unit to Lessee as is, where is, and with all faults, except that Lessor shall warrant that it is delivering to Lessee whatever title was delivered to Lessor free and clear of liens in favor of any person claiming by, through or under Lessor other than liens resulting from the failure of Lessee to perform its obligations hereunder. The Termination Value shall bear interest for the period, if any, from the Early Purchase Date to the date of payment of the Early Purchase Option Price at the Late Payment Rate.

Lessee may exercise the Early Purchase Option with respect to less than all the Units, but not less than all of the Units in a Group.

ARTICLE XVIII. Further Assurances

Lessee and Lessor will promptly and duly execute and deliver to the other party hereto such further documents and assurances and take such further action as Lessor or Lessee may from time to time reasonably request in order to carry out more effectively the intent and purpose of this Agreement and to establish and protect rights and remedies created or intended to be created in favor of Lessor or Lessee hereunder, including, without limitation, if requested by Lessor or Lessee, in either case at the expense of Lessee, the execution and delivery of supplements or amendments hereto, in recordable form subjecting to this Agreement any replacement property and the recording or filing of counterparts hereof, or of financing statements with respect thereto in accordance with the laws of such jurisdiction as Lessor or Lessee may from time to time deem advisable.

ARTICLE XIX. Intention of Parties: Security Agreement

19.1 Security Agreement. It is the intention of the parties hereto that this Agreement has the purpose and function of creating a security interest in the Equipment, rather than that of creating a true leasehold interest in the Equipment. Consequently, this Agreement constitutes a "security agreement" within the meaning of Section 9-105 of the Uniform Commercial Code of the applicable jurisdiction (the "UCC"), and the Equipment includes all rights and interest, whether tangible or intangible, of Lessee in the Equipment. Lessee, by executing and delivering this Agreement, has created, and does hereby create, in favor of Lessor a security interest in and to the Equipment under the UCC. Lessee represents and warrants to and covenants with Lessor that Lessor has, and at all times throughout the Term hereof will have, a perfected first priority security interest in all of the Equipment, free and clear of all liens and encumbrances whatsoever, for this Lease and any Sublease.

19.2 Tax Benefits. It is also intention of the parties to this Agreement that any and all federal income tax benefits associated with the ownership of the Equipment be solely for the benefit of Lessee. Lessor agrees that it will not claim or attempt to claim any such benefits for its own account. Notwithstanding the foregoing, Lessee understands and agrees that Lessor makes no representations or warranties regarding either the effect of this Agreement in light of any relevant tax laws affecting either Lessee or Lessor, or the availability of any federal income tax benefits associated with the ownership of the Equipment.

ARTICLE XX. Miscellaneous

The obligations of Lessor (but not Lessee) hereunder shall be suspended to the extent that Lessor is hindered or prevented

from complying therewith because of labor disturbances (including strikes and lockouts), war, Acts of God, fires, storms, accidents, governmental regulations or interference or any cause whatever beyond its control. No obligation of Lessor hereunder shall survive the Term, and should Lessor permit the use of any Unit beyond such Term, the obligations of Lessee hereunder all shall continue and such permissive use shall not be construed as a renewal of the Term hereof nor as a waiver of any right or continuation of any obligation of Lessor hereunder, and Lessor may take possession of any such Unit at any time after the Term upon demand after five days' notice. Any cancellation or termination by Lessor pursuant to the provisions of this Agreement shall not release Lessee from any then outstanding obligations to Lessor hereunder. This Agreement constitutes the entire agreement between the parties and there are no warranties (in respect of the Equipment or otherwise), express or implied, or collateral or contemporaneous agreements that affect its import other than such as are contained herein. This Agreement may be modified, amended or mutually rescinded only by a written instrument executed by each of the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and, subject to Section 8.6 and Article XV hereof, their respective successors and assigns including, any Assignee. Lessee agrees to pay the out-of-pocket expenses of Lessor and any Assignees, including the reasonable fees and expenses of counsel for Lessor, incurred in connection with the negotiations, execution, delivery and closings under this Agreement, any amendments or supplements hereto and the enforcement of Lessor's rights hereunder. Time is of the essence of this Agreement. **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF RHODE ISLAND.** Any document required to be delivered hereunder in executed form or otherwise may be delivered by telecopier.

ARTICLE XXI. Notices

Any notices required or permitted under this Agreement or by law in respect of this Agreement, shall be in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class, postage prepaid, or when sent by telex, telecopy or prepaid telegraph, addressed to the party required to receive the same at the address set forth below such party's signature hereto, or to such other address as such party shall specify by like notice.

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

FLEET CREDIT CORPORATION,
Lessor

By: Allegis M. Smith

Title: Asst Vice President

Address: 111 Westminster Street
Providence, Rhode Island 02903
Attn:

BEAZER WEST, INC.
Lessee

By: Loyle Montgomery

Title: Senior Vice President,
General Counsel & Secretary

Address: Attn: Chief Financial Officer
2515 McKinney Ave.
Dallas, TX 75201

~~Attention: Vice President and~~
Attest:

Paul Bond

Title: Asst. Secy.

[CORPORATE SEAL]