



U.S. Bank National Association MT  
P.O. Box 30678  
Billings, Montana 59115

RECORDATION NO. 24293 FILED

JAN 14 '03

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SURFACE TRANSPORTATION BOARD

December 30, 2002



Mr. Vernon A. Williams  
Office of the Secretary  
Surface Transportation Board  
1925 K. Street, N.W.  
Washington, DC 20423-0001

Dear Secretary Williams:

I have enclosed an original and one counterpart of the documents(s) described below, to be recorded pursuant to Section 11301 of Title 49 of the U.S. Code.

This document is a Railcar Mortgage, Security Agreement and Assignment of Leases, a primary document, dated December 30, 2002.

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

Mortgagor: Western Evergreen Investments, LLC  
5110 South Perry Park Road  
Sedalia, CO 80135

Mortgagee: U.S. Bank National Association  
P.O. Box 30678  
Billings, MT 59115

A description of the equipment covered by the document is attached hereto as Exhibit A. A copy of the COTCO, Inc. Tank Car Lease and Service Contract, Contract No. 01T, also covered by the document, is attached hereto as Exhibit B.

A fee of \$30.00 is enclosed. Please return the original and any extra copies not needed by the Board for recordation to U.S. Bank National Association.

A short summary of the document to appear in the index follows: Railcar Mortgage, Security Agreement and Assignment of Leases between Western Evergreen Investments, LLC (Mortgagor) whose address is 5110 South Perry Park Road, Sedalia, Colorado 80135, and U.S. Bank National Association (Mortgagee) whose address is P.O. Box 30678, Billings, Montana 59115, covering 37 railroad cars owned by Mortgagor.

Very truly yours,

Kathie Russell  
Commercial Loan Officer

Enclosure

SURFACE TRANSPORTATION BOARD

**RAILCAR MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES**

THIS RAILCAR MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES (this "Mortgage"), is made and dated as of the 30th day of December, 2002, by WESTERN EVERGREEN INVESTMENTS, LLC, a Nevada limited liability company, (the "Borrower"), to and for the benefit of U.S. BANK NATIONAL ASSOCIATION, a national banking association (the "Bank").

**RECITALS**

1. The Bank has agreed to extend credit to Borrower in the principal amount of \$1,407,500 (the "Term Loan") as provided in that certain Term Loan Agreement (the "Loan Agreement") and as evidenced by the Term Note (the "Note"), both of even date herewith. Capitalized terms used in this Collateral Assignment shall have the meanings given them in the Loan Agreement unless otherwise defined herein.
2. The purpose of the Term Loan is finance Borrower's purchase of thirty-seven (37) 30,000 gallon, general purpose, non-coiled, non-insulated tank cars for loading gasoline and diesel only more particularly described in Exhibit A hereto (the "Railcars") from COTCO, Inc. The Railcars are subject to that certain COTCO, Inc. Tank Car Lease and Service Contract, Contract No. 01T, a copy of which is attached hereto as Exhibit B (including Rider No. 1 and all other riders, amendments, continuations, substitutions and renewals thereof, the "Lease") between COTCO, Inc. and Valero Marketing and Supply Company, formerly known as Total Petroleum, Inc. ("Lessee").
3. In order to induce the Bank to make the Term Loan as herein described, and as security for the performance of Borrower's obligations under the Note, the Borrower has agreed to grant Bank a mortgage of the Railcars and to collaterally assign to the Bank all of its right, title and interest in and to the Lease.

**AGREEMENT**

For the good and valuable consideration, in money or money's worth, the receipt and sufficiency of which is hereby acknowledged, the Borrower hereby mortgages, covenants, warrants and agrees as follows:

1. Mortgage, Assignment and Grant of Security Interest. To secure (a) the prompt payment when due of the principal, interest and other amounts due under the Note, (b) the prompt performance and observance of all of the terms covenants, obligations, agreements and conditions to be performed or observed by the Borrower under this Mortgage and under the Note and Loan Agreement (collectively the "Loan Documents"), (c) any sums advanced for expenses or costs incurred by the Bank (or any receiver appointed under this Mortgage) which are made or incurred pursuant to, or permitted by, the terms of this Mortgage or the other Loan Documents, plus interest thereon at the default rate specified in the Note from the date of the advances or the incurring of such expenses or costs until reimbursed by the Borrower, and (d) any extensions, renewals or modifications of all such indebtedness described in subparagraphs (a) through (c) above whether or not the Borrower executes any agreement, instrument or documents relative to

such extensions, renewals or modifications (collectively the "Secured Obligations"), the Borrower does hereby mortgage, grant and warrant unto the Bank, and unto its successors and assigns, with power of sale, all right, title and interest, whether now owned or hereafter acquired, in and to (1) the Railcars, together with all replacements thereof and substitutions therefore, (2) all agreements, instruments or documents relating to the Railcars, (3) all leases and subleases of the Railcars, or any part thereof, now or hereafter existing or entered into, including, without limitation, the Lease, (4) all rents, issues and profits arising from the Railcars and all such leases and subleases, and (5) all after-acquired rights and interests in the foregoing properties, rights and interests (collectively the "Mortgaged Property"); and the Borrower does hereby grant, transfer and assign to the Bank, and grant a lien and security interest in favor of the Bank in and to, all attachments, accessories and parts to the Railcars, the proceeds of such collateral or any other personal property of a kind or character defined in or subject to the applicable provisions of the Uniform Commercial Code (the "Personal Property"), whether now owned or hereafter acquired in connection with Borrower's interests in the Railcars. To have and to hold the Mortgaged Property and Personal Property unto the Bank, and unto its successors and assigns, forever, to secure the Secured Obligations. The Bank shall not be liable in any respect for the performance of any covenant or obligation of the Borrower with respect to the Mortgaged Property. The Borrower shall pay when due and promptly perform and observe all of the Secured Obligations.

2. Representations and Warranties. The Borrower hereby represents and warrants to, and covenant with, the Bank that:

- (a) the Recitals contained in this Mortgage are true and correct in all respects;
- (b) the representations and warranties made by Borrower in the Loan Agreement are true and correct;
- (c) the Borrower has good and lawful right, power and authority to execute this Mortgage and to mortgage unto the Bank and to grant a lien and security interests to the Bank, in and to the Mortgaged Property, all as provided in this Mortgage; and
- (d) the execution and delivery of this Mortgage requires no authorization from any person or governmental entity, and upon execution and delivery by the Borrower will be binding upon the Borrower according to its terms and conditions.

3. Borrower's Affirmative Covenants. From and after execution of this Mortgage and until all of the Secured Obligations have been fully performed, observed, paid and satisfied, the Borrower shall, at the Borrower's expense:

- (a) keep and maintain the Mortgaged Property in good condition and repair and not commit or permit any waste thereon;
- (b) cause the Mortgaged Property to be operated in a good and workmanlike manner, in accordance with generally accepted

practices of the railroad industry and not in violation of any applicable federal, state or local laws, statutes, rules or regulations;

(c) cause to be paid, promptly and as and when due and payable, all expenses incurred in or arising from the operation, maintenance, occupation, inspection, protection, repair, replacement, or change of or to the Mortgaged Property;

(d) cause to be paid, promptly and as and when due and payable, all taxes, assessments and governmental charges legally imposed (collectively, "Impositions") upon the Mortgaged Property, before delinquency;

(e) cause the Mortgaged Property to be kept free and clear of all liens, charges and encumbrances of every character, kind and nature whatsoever, other than taxes constituting liens but not yet due and payable;

(f) carry with reputable insurance companies in amounts satisfactory to the Bank (i) comprehensive casualty insurance on the Mortgaged Property against loss or damage by fire, lightning, derailment, explosion or other similar risks and casualties, and (ii) comprehensive general liability insurance regarding the Mortgaged Property, the policies for which shall be acceptable to the Bank, shall name the Bank as an insured mortgagee regarding the casualty insurance and an additional insured regarding the liability insurance, shall contain an agreement by the insurer that the same shall not be canceled, terminated or amended, whether by lapse of time or otherwise, without at least thirty (30) days prior notice in writing to the Bank, and shall be delivered to the Bank;

(g) not sell, convey, mortgage, pledge or other dispose of or encumber the Mortgaged Property or any portion thereof; and

(h) permit the Bank or its agents to inspect the Mortgaged Property, and all parts thereof, for the purpose of investigating and appraising the condition and operation of the Mortgaged Property and the Personal Property.

4. Assignment of Leases and Rents. As additional security for the Secured Obligations and without limiting the grant contained in Section 1 of this Mortgage, Borrower does hereby bargain, sell, assign and set over unto Bank, all leases, rents and any other rents, profits and other income of any kind which, whether before or after foreclosure or during the full period of redemption, shall accrue and be owing for the use of the Mortgaged Property or any part thereof, including, without limitation, the Lease. Prior to the occurrence of an Event of Default hereunder, Borrower may collect all rents under all leases. Borrower shall, at its own cost and expense, with respect to each lease:

- (a) faithfully abide by, perform and discharge each and every obligation, covenant and agreement to be performed by the lessor thereunder;
- (b) enforce or secure the performance of each and every material obligation, covenant, condition and agreement by the lessees thereunder to be performed;
- (c) not borrow against, pledge or further assign any rents due thereunder;
- (d) not permit the prepayment of any rents due for more than thirty (30) days in advance nor for more than the next accruing installment of rents, nor anticipate, discount, compromise, forgive or waive any such rents;
- (e) not waive, excuse, condone or in any manner release or discharge any tenants of or from the obligations, covenants, conditions and agreements with respect to the payment of rent or the maintenance of the Railcars by said lessees to be performed;
- (f) not permit any lessee to assign or sublet its interest therein unless required to do so by the terms thereof and then only if such assignment does not work to relieve the tenant of any liability for payment of and performance of its obligations thereunder;
- (g) not terminate or accept a surrender thereof or a discharge of the lessee unless required to do so by the terms thereof or unless Borrower and tenant shall have executed a new lease effective upon such termination for the same term of years at a rental not less than as provided in the terminated lease and on terms no less favorable to the lessor than as in the terminated lease;
- (h) not consent to a subordination of the interest of any lessee to any party other than Bank and then only if specifically consented to by Bank; and
- (i) not amend, modify or alter the obligations of the parties thereunder, excepting in the ordinary and prudent course of business with due regard for the security afforded Bank thereby and which does not in any way reduce the rent or diminish the term thereof or the obligations of the tenant thereunder or increase the term of the lease or impose additional obligations or burdens on the landlord.

If Borrower fails to perform, comply with or discharge any obligations of Borrower under any lease or if Bank becomes aware of or is notified by any tenant under any lease of a failure on the part of Borrower to so perform, comply with or discharge its obligations thereunder, Bank may, but shall not be obligated to, and without further demand upon Borrower, and without waiving or releasing Borrower from any obligation in this Mortgage contained, remedy such failure, and Borrower agrees to repay upon demand all sums incurred by Bank in remedying any such failure together with interest at the default rate specified in the Note. All such sums, together with

interest as aforesaid shall be part of the Secured Obligations and secured hereby, but no such advance shall be deemed to relieve Borrower from any default hereunder.

5. Tax and Insurance Deposits. In the Event of Default and upon Bank's reasonable request, Borrower shall deposit monthly with Bank 1/12<sup>th</sup> of the annual Impositions and premiums for insurance required hereby. If the amount of any Imposition or premium is not ascertainable, the deposit shall be made on the basis of Bank's estimate thereof, and, when such amount is fixed for the then-current year, Borrower shall promptly deposit any deficiency with Bank. All funds so deposited shall constitute part of the Mortgaged Property and secure the Secured Obligations. Such deposit shall be held by the Bank, or its nominee, in an interest bearing account and may be commingled by the Bank with its other funds. Such deposits shall be used by the Bank to pay such Impositions and insurance premiums when due. Upon the occurrence of an Event of Default Bank may apply any funds in said account as a receiver appointed as hereinafter provided or the court in an action to foreclose this Mortgage may direct.

6. Events of Default. The occurrence of any event of default under or breach of any of the Secured Obligations shall constitute an Event of Default under this Mortgage.

7. Remedies Upon Default. If an Event of Default shall have occurred and shall be continuing, the Bank shall be entitled to exercise all rights and remedies of a Bank or secured party under all applicable law and all rights and remedies available to it under the Secured Obligations or this Mortgage, including, without limitation, the following rights and remedies:

(a) to commence a suit or suits in equity or at law, whether for a foreclosure hereunder or for the sale of the Mortgaged Property, or for the specific performance of this Mortgage or any of the Secured Obligations, or in the aid of the execution of any power of sale herein granted, or for the appointment of a receiver pending any foreclosure hereunder or any sale of the Mortgaged Property, or for the enforcement of any other appropriate legal or equitable remedy;

(b) to sell, to the extent permitted by law, at one or more sales, as an entirety or in parcels, as the Bank may elect, the real property constituting a part of the Mortgaged Property, at such place or places and otherwise in such manner and upon such notice as may be required by law, or, in the absence of any such requirement as the Bank may deem appropriate and make conveyances to the purchaser or purchasers;

(c) to exercise all rights and remedies granted by law, and particularly by the Uniform Commercial Code, including but not limited to the right to take possession of all personal property constituting a part of the Mortgaged Property, and for this purpose the Bank may enter upon any premises on which any of such Personal Property is situated and take possession of and operate such Personal Property (or any portion thereof) or remove it

therefrom, and the Borrower shall, upon demand by the Bank, assemble such personal property and make it available to the Bank at a place to be designed by the Bank which is reasonably convenient to all parties, and the Bank shall only be obligated to give the Borrower reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition of such personal property is to be made, and any requirement of sending reasonable notice shall be made if the notice is mailed by registered or certified mail, postage prepaid, to the Borrower at the address shown in the first paragraph of this Mortgage at least ten (10) days before the time of the sale or disposition;

(d) at any time from and after commencement of an action to foreclose this Mortgage, to have a receiver for the Mortgaged Property appointed, which appointment may be made either before or after any foreclosure sale, without notice and without regard to the sufficiency of the security to discharge the Secured Obligations, which receiver shall have the power to take and hold possession of the Railcars, and to hold, use, administer, manage and operate the same to the extent that the Borrower shall be at the time entitled and in its place and stead and the right to collect, receive and receipt for all revenues, proceeds, rents, profits and issues generated by the Mortgaged Property; and

(e) to exercise and enforce any and all other rights or remedies available to the Bank in equity, at law, by agreement or otherwise, including without limitation entry of a judgment for any deficiency due Bank of the disposition of the Mortgaged Property as provided herein.

The Borrower shall reimburse the Bank upon demand for all costs and expenses incurred by the Bank in protecting and enforcing the Bank's rights and remedies under this Mortgage, including court costs and attorneys' fees, plus interest thereon at the default rate specified in the Note from the date so paid or incurred until reimbursed by the Borrower.

8. Application of Proceeds. All amounts received by the Bank under this Mortgage shall be applied by the Bank as follows:

(a) first, to payment of the costs and expenses incurred by the Bank in connection with any taking of possession, or in any sale or advertisement of the Mortgaged Property, and of any conveyances of the Mortgaged Property, and court costs, compensation of agents and employees and attorneys' fees, including, without limitation, any expenses incurred in bankruptcy or insolvency proceedings;

(b) second, to payment or repayment of all amounts owed on the Secured Obligations, in such order as the Bank shall determine; and

(c) third, the balance (if any) of such proceeds shall be paid to the Borrower, or its successors and assigns, or as a court of competent jurisdiction may direct.

9. Bank's Right to Perform. If the Borrower shall fail to perform any act required to be performed by it under this Mortgage, the Bank, without notice to or demand upon the Borrower, and without waiving or releasing any obligation or breach or default, may (but shall not be under any obligation to) at any time thereafter perform such act for the account and at the expenses of the Borrower, as in the opinion of the Bank, may be necessary or appropriate. All such sums so paid by the Bank and all costs and expenses (including, without limitation, attorneys' fees and court costs so incurred, together with interest thereon at the default rate specified in the Note from the date so paid or incurred until reimbursed by the Borrower, shall be secured by this Mortgage and shall be paid by the Borrower to the Bank on demand.

10. Cumulative Remedies and Waivers. Each right, power and remedy of the Bank provided for in this Mortgage or now or hereafter at any time existing law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy provided for in this Mortgage or now or hereafter at any time existing at law or in equity or by statute or otherwise, and the exercise by the Bank of any one or more such rights, powers or remedies, or the partial release thereof, shall not preclude the simultaneous or later exercise by the Bank of any or all of such other rights, powers or remedies. No failure or delay by the Bank to insist upon the strict performance of any term or condition, covenant or agreement of this Mortgage or to exercise any right, power or remedy under this Mortgage or consequent upon a breach hereof, shall constitute a waiver of any such term, condition, covenant, agreement, right, power or remedy or of any such breach, or preclude the Bank from exercising any such right, power or remedy at any later time or times.

11. Termination and Release. This Mortgage and rights and interest of the Bank hereunder shall terminate when all the Secured Obligations have been fully performed, observed, paid and satisfied. Upon termination as herein provided, the Bank shall release its rights and interest hereunder, all without recourse upon, or warranty by, the Bank and at the costs and expenses of the Borrower.

12. Miscellaneous. This Mortgage shall be governed by the laws of the State of Montana and the laws of the United States applicable to the interests granted herein. This Mortgage shall be binding upon, inure to the benefit of and be enforceable by the Borrower and the Bank and their respective successors and assigns.

[SIGNATURES AND ACKNOWLEDGEMENTS APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be duly executed as of the day and year first above written.

WESTERN EVERGREEN INVESTMENTS, LLC

By *R. Michael Price*  
R. Michael Price, Managing Member

By \_\_\_\_\_  
Donald M. Thompson, Managing Member

STATE OF MONTANA )

) ss.

COUNTY OF YELLOWSTONE )

The foregoing instrument was acknowledged before me this 2 day of <sup>Jan</sup> ~~December~~, 2003, by R. Michael Price as Managing Member of Western Evergreen Investments, LLC.



*Susan Hannon*  
Printed Name: Susan Hannon  
Notary Public for the State of Arizona  
Residing at Scottsdale, AZ  
My commission expires: Nov 12, 2004

STATE OF MONTANA )

) ss.

COUNTY OF YELLOWSTONE )

The foregoing instrument was acknowledged before me this \_\_\_ day of December, 2002, by Donald M. Thompson as Managing Member of Western Evergreen Investments, LLC.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

[SEAL]

IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be duly executed as of the day and year first above written.

WESTERN EVERGREEN INVESTMENTS, LLC

By \_\_\_\_\_  
R. Michael Price, Managing Member

By Donald M. Thompson  
Donald M. Thompson, Managing Member

STATE OF MONTANA )  
 ) ss.  
COUNTY OF YELLOWSTONE )

The foregoing instrument was acknowledged before me this \_\_\_ day of December, 2002, by R. Michael Price as Managing Member of Western Evergreen Investments, LLC.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

[SEAL]

STATE OF ~~MONTANA~~ Michigan )  
 ) ss.  
COUNTY OF YELLOWSTONE )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of ~~December, 2002,~~ January, 2003 by Donald M. Thompson as Managing Member of Western Evergreen Investments, LLC.

Genevieve M Patterson  
Printed Name: Genevieve M Patterson  
Notary Public for the State of Michigan  
Residing at Aultman Bay, Mich 49682  
My commission expires: 06-06-2006

[SEAL]

WESTERN EVERGREEN INVESTMENTS, LLC  
NOTARY PUBLIC  
MICHIGAN  
JAN 1, 2003

Exhibit A

**General American Transportation Corporation**

<b>Estimate Data Sheet</b>		<b>Build Order #/Date</b>	Inq. # 10069	07/13/86
<b>Estimate Date</b>		<b>Revision Number</b>		
<b>Model Number</b>	A11-29.2-O-ALCO-98-R	<b>Car Numbers</b>	TOTX 1000 through TOTX 1036	
<b>Customer</b>	TOTAL PETROLEUM	<b>Number of Cars</b>	37 Railcars	
<b>Shell Capacity</b>	29,749 Gallons	<b>Sized For</b>	Gasoline w/MTBE	
<b>Coil Displacement</b>	None	<b>Class Construction</b>	DOT 111A100W-1	
<b>Outage-2%</b>	595 Gallons	<b>Class Stencilled</b>	DOT 111A100W-1	
<b>Effective Capacity</b>	29,154 Gallons	<b>Est Light Weight</b>	88,000#	
<b>Weight/Gal</b>	6.709# Max	<b>Est Gross Weight</b>	263,000# Maximum	
		<b>Clearance Diagram</b>	Plate B	
<b>Dimensions</b>	110-1/4" ID x 57'-3-7/8" BBL x 81'-11" BH	<b>Heads</b>	2:1 Ellipsoidal, 7/16" Thick	
<b>Material</b>	ASTM A-516 Grade 70	<b>Shell</b>	7/16" Thick	
<b>Slope</b>	0.1762" Per Foot To Transv C-Line Tank	<b>Center Anchor</b>	None	
<b>Manway</b>	20" ID Hinged & Bolted	<b>Outage Scale</b>	Visual Gage; 316 SS	
<b>Manway Nozzle</b>	Fixed; Steel	<b>Discharge Pipe</b>	3" Sch 40 Pipe; 8ft; 304/316 SS Guide/Pad	
<b>Manway Cover</b>	Ductile Iron	<b>Discharge Conn</b>	3" Screwed Ball Valve; 6S Ball	
<b>Safety Valve</b>	2; 75#; Midland A-2085; 6-1/2" Stl Nzlz	<b>Air/Vapor Conn</b>	2" Screwed Ball Valve; 6S Ball	
<b>Protective Hsg</b>	14" Insert Type Stl Nozzle/Stl Cover	<b>Vac Relief Valve</b>	Midland A-209W	
<b>T-Well/T-Tale Pipe</b>	2; 2" Plug For Future Appl'n	<b>Aux Gage Device</b>	Midland B-612	
<b>Outlet Valve</b>	4" Internal Ball Valve w/SS Ball (Jamesbury 6R183-22HB-TT)	<b>Sump</b>	None	
	4" Nozzle, 4" x 2" Cap, 2" Plug	<b>Skid Protection</b>	Integral @ Bottom Outlet Adapter	
<b>Outlet Fittings</b>		<b>Safety Valve</b>	Teflon; O-Ring: Viton VG	
<b>Manway Cover</b>	Viton A	<b>Aux Gage Device</b>	Teflon	
<b>Diach Conn</b>	Teflon	<b>Outlet Valve</b>	Teflon	
<b>Air/Vapor Conn</b>	Teflon	<b>Outlet Nozzle/Cap</b>	Teflon	
<b>Vac Relief Valve</b>	Teflon			
	None	<b>Material</b>	N/A	
<b>Size/Approx Heat Area</b>	N/A	<b>Location</b>	N/A	
<b>Number of Lines</b>	N/A			
	None	<b>At Bolster</b>	N/A	
<b>Type</b>	N/A	<b>At Anchor</b>	N/A	
<b>Max Operating Temp</b>	N/A			
	None	<b>Supports</b>	N/A	
<b>Heads/Shell</b>	N/A			
<b>Top</b>	Div Type; Open Grtg; 10-1/8" x 6" Long w/ CS Safety Chains @ Openings; 2 Places	<b>End Platform</b>	At End Sil; Open Grating	
<b>Type</b>	22 Stub Sill	<b>Draft Gear</b>	AAR M-901-E	
<b>Sill Section</b>	AAR CZ-13 Section @ 51.2#; A-572-50	<b>Couplers/Yokes</b>	AAR 5E80DE/AAR Y40AE	
<b>Length: OSP/OCPF</b>	65'-2-1/2" / 67'-10"	<b>Air Brake Type</b>	ABDX/DB00; Body Mounted	
<b>Truck Centers</b>	64'-3-1/2"	<b>Handbrake</b>	Vertical Wheel w/Long Rel Handle	
<b>Overhang</b>	5'-5-1/2"	<b>Handrail</b>	1-1/4" Schedule 40 Pipe	
<b>Center Plate</b>	18" Low-Profile			
<b>Capacity</b>	100 Ton	<b>Brake Shoes</b>	AAR M-4 2" Thick H. F. Composition	
<b>Type</b>	Barber S-2-C Stabilized w/Tranadyne Wear Liner	<b>Brake Beam</b>	AAR #24 Unit Type w/Wear Eliminators	
<b>Wheels</b>	AAR H-36 or CH-36, Class C; 1 Wear	<b>Side Bearings</b>	Double Roller Type	
<b>Roller Bearings</b>	AAR NFL Type For 6-1/2" x 12"	<b>Spring Travel</b>	3-11/16" (7 Outer/6 Inner)	
<b>Interior</b>	Sweep Clean			
<b>Paint</b>	Direct To Metal Epoxy Black	<b>Stenciling</b>	AAR & DOT Decals, w/A.E.I. Transponder Tags	
	All Fittings & Nozzles Steel Unless Otherwise Noted			

Exhibit B

March 15, 2002

Mrs. Susan Schaffer  
Valero Marketing and Supply Company  
One Valero Place  
San Antonio, TX 78212-3186  
Via email: [Susan\\_Lawrence-Schaffer@valero.com](mailto:Susan_Lawrence-Schaffer@valero.com)

Subject: Rider No. 1 - Thirty-seven (37), 30,000 gallon, General Purpose, Non-Coiled, Non Insulated Tank Cars for loading gasoline & diesel only

Dear Susan,

The term of Rider No. 1 will end March 21<sup>st</sup> 2002.

We offer a renewal with the following terms and rates beginning March 22<sup>nd</sup> 2002.

TERM: Three (3) Years RENTAL RATE: \$610.00 PCPM

If you do not confirm in writing the stated new term and rental rate by Thursday, March 21<sup>st</sup> 2002, we reserve the right to change this offer and will advise you in writing of our revised offering. If you do not wish to renew the lease, please contact our office for disposition instructions, understanding that, as stipulated in the Rider, a 60-day notice of release is required.

To confirm your acceptance of this renewal offer, please sign below and return one copy of this letter to our office by March 21<sup>st</sup> 2002. This letter will then constitute the revised term and rental rate for Rider No. 1 beginning March 22<sup>nd</sup> 2002; all other terms and conditions will remain in full force and effect as stated in Rider No. 1.

We thank you for your continuing business.

Cordially,

Ann-Marie Lowe  
Director of Transportation & Logistics

ACCEPTED:

BY: Mary Harrison Home

DATE: 4/2/02

Rate and Term: 610<sup>00</sup> per car - per month  
3 year lease

cc. TOM WOOD  
K10CTSA1128HC

⊕

COTCO, INC.

RIDER TO TANK CAR LEASE AND SERVICE CONTRACT

Rider No. 1

THIS RIDER between COTCO, Inc. and Total Petroleum, Inc. shall be subject to the terms and conditions hereof effective as of the 21st day of March, 1997.

1. Rental and Service Charges. The Cars subject to this Rider have monthly rental and service charges as follows:

<u>Number of Cars</u>	<u>Type</u>	<u>Car Numbers</u>	<u>Monthly Rental and Service Charge Per Car</u>
Thirty seven (37)	DOT111A100W1 30,000 Gallon General Purpose Non Coiled Non Insulated	TOTX 1000- TOTX 1036	\$625.00/Month

2. Term. Rental for each car shall begin on date of forwarding to Lessee. The "Effective Date" of this Rider shall be the 21st of March, 1997 and shall continue in effect through March 21st, 2002.

3. Lading. The Lessee will use the Cars only for the loading of gasoline and diesel.

4. Special Conditions. Total agrees to reimburse COTCO, Inc. for the repainting of the above cars at the termination of this agreement, Rider No. 1.

COTCO, Inc.  
"Lessor"

DATE 3-17-97

BY [Signature]  
PRESIDENT

TOTAL PETROLEUM, INC.  
"LESSEE"

DATE 3/21/97

BY [Signature]

21 MARCH 1997

TOTAL PETROLEUM, INC. 1

480-515-3112

*San-Rider et al*  
*BANK*

COTCO, INC.

**TANK CAR LEASE AND SERVICE CONTRACT**

CONTRACT NO. 01T

This Agreement, made this 21<sup>st</sup> day of March, 1997 by and between COTCO, Inc., having its principal office at 6565 S. Dayton St., Suite 3600, Englewood, CO 80111 hereinafter called "Lessor" and Total Petroleum, Inc., having its principal office at 999 18<sup>th</sup> Street, Denver, Colorado 80202 hereinafter called "Lessee".

WITNESSETH

1. Rental and Service Charges. Lessor hereby leases to the Lessee, and the Lessee hereby leases and hires from the Lessor and agrees to accept delivery of, upon the terms and conditions set forth herein and in the "rider" attached hereto and made a part hereof (hereinafter referred to as the "Riders", this instrument, together with the Riders, shall be herein referred to as the "Agreement"), the railroad tank cars described in the riders (hereinafter referred to singularly as the "Car" or collectively as the "Car"), for the use of which Cars the Lessee agrees to pay the Lessor the rental and service charges for the full term hereof all as set forth in the Riders.

2. Payment. Lessee agrees to pay said to rental and service charges to COTCO, Inc., at its principal office located in Englewood, CO, on the first of each calendar month in advance, without deduction, except that the Lessee shall pay in advance on the delivery of each Car, respectively, a pro rata portion of one month's rental and service charges for the period intervening the date of delivery and on the first of the next succeeding calendar month, and shall pay only the pro rata portion of such monthly charge attributable to any fractional month accruing at the termination of this lease.

3. Inspection of Car. Each of the Cars shall be subject to Lessee's inspection before loading, and the successful loading of such Car constitute acceptance thereof by Lessee, and shall be conclusive evidence (i) of the fit and suitable condition of such Car for the purpose of transporting the commodities then and thereafter loaded therein, and (ii) that it is one of the cars described in the Riders. In any event, however, monthly rental and service charges shall be paid from the date of forwarding.

MARCH 21 1997

TOTAL PETROLEUM, INC.

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4. Responsibility of Lading. Lessor shall not be liable for any loss of, or damage to commodities, or any part thereof, loaded or shipped in the Cars, except to the extent such loss or damage is caused by the negligence or willful misconduct of Lessor. Lessee agrees to assume responsibility for, to indemnify Lessor against, and to save it harmless from, any such loss or damage, provided such loss or damage does not arise out of or relate to Lessor's breach of this Agreement, negligence or willful misconduct.

5. Damage to Car Resulting from Lading. In the event any of the Cars, fittings or appurtenances thereto, including the interior lining for cars so equipped, shall become damaged by the commodity loaded therein, Lessee agrees to assume the responsibility for such damage, but only to the extent such damage does not arise out of or relate to the Lessor's negligence or willful misconduct.

6. Alteration and Lettering. Lessee will preserve the Cars in good condition and will not in any way alter the physical structure of the Cars without the advance approval in writing of Lessor. Lessee shall place no lettering or marking of any kind upon the Cars without Lessor's prior written consent, except that, for the purpose of evidencing the operation of the Cars in Lessee's service hereunder, Lessee will be permitted to board and placard or stencil the Cars with Letters not to exceed two inches (2") in height.

7. Limitations on Use. Lessee will not use the Cars in a "unit train" without advance approval in writing of the Lessor. Lessee agrees not to load any of the Cars in excess of the load limit stenciled thereon.

8. Maintenance.

8.1 Lessors Maintenance. Lessor shall, at its expense, maintain each of the Cars in good condition and repair according to the Interchange Rules of the Association of American Railroads ("AAR"), and Lessee agrees to forward the Cars to the shop of Lessor for periodic maintenance repairs as may be directed by Lessor. Lessee shall continue to pay rental charges on each Car, as set forth herein, for the first five days following such Cars arrival in Lessor's shop. Thereafter rentals shall be waived until such time as the Car(s) in question are forwarded from Lessor's shop, provided, however, that the foregoing waiver of rentals shall not apply in the event repairs are required as a result of, (i) the misuse by or negligence of Lessee, and in the event the Lessor and Lessee cannot agree on this fact, negligence can be confirmed by an independent third party, or (ii) use of the Car on a railroad that does not subscribe to, or fails to meet its responsibility under the Interchange Rules of the AAR, or (iii) the Car being located on any private siding or track any industrial road.

8.2 Lessee Maintenance. Notwithstanding anything else herein to the contrary, Lessee shall, at its expense, replace any removable parts if lost or broken, provided, however that Lessee will not be responsible for the cost of repairs covered by Railroad defect card in addition, Lessee shall be responsible for maintenance, replacement and testing of safety valves, angle valves, check

valves and gauging device, to the extent required in excess of periodic maintenance performed by Lessor pursuant to 8.1 above. Unless otherwise agreed by Lessor, replacement or repair by Lessee of any parts, equipment, and/or accessories that are of like kind and of at least equal quality to those being replaced or repaired.

When a Car is shopped by Lessee for routine maintenance or repairs required of Lessee pursuant to this Section 8.2, Lessee shall be responsible for all required cleaning, disposal charges, and testing required to be performed by the AAR Rules of Interchange, if any. Except as expressly provided in this Section 8.2, Lessee shall not make any repairs to the Cars without prior written consent of Lessor.

8.3 Damaged Cars. Except as otherwise expressly set forth in paragraph 2 hereof, if any Car is completely destroyed, or if the parties determine that the physical condition of a Car is such that the Car cannot be operated in railroad service, then the Lessor shall, as soon as practicable, either (i) substitute another Car of approximately the same type and capacity for the damaged Car (in which event the substituted Car shall be subject to this Agreement and any applicable Rider), or (ii) if the term of the lease of the damaged Car has less than six (6) months until expiration, terminate the lease with respect to such damaged Car (in which event Lessee shall be relieved of its obligation to pay rent for such damaged Car from and after the effective date of termination).

Notwithstanding the foregoing, if, as a result of Lessee's misuse or negligence in the use of the Car, or use of the Cars on a railroad that does not subscribe to or fails to meet its responsibility under the Interchange Rules of the AAR, or while used on any private siding or tack or any private or industrial railroad, a Car is completely destroyed, or the parties determine that the Car's condition is such that it cannot be operated in railroad service, the Lessee will pay Lessor, in readily available funds, the AAR depreciated value or settlement value, as determined by the AAR Rules of the Interchange then in effect. Within ten (10) days following a request by Lessor for such payment, Lessee at its own expense, shall either replace or reimburse Lessor for the cost of replacing any appliance or removable part, if destroyed, damaged, or lost, removed or stolen unless the Railroads transporting the cars have assumed full responsibility for such loss or damage or unless such loss or damage result from the negligence or omission of Lessor, its agents or employees.

9. Lining. For products that require linings the application, maintenance, and removal of interior protective lining in Cars equipped is to be at the expense of the Lessee, including freight charges to and from the lining shop.

10. Indemnity. Lessee will indemnify Lessor against any loss, damage, claim, expense (including attorney's fees and expenses of litigation), or injury imposed on, incurred by, or asserted against Lessor arising, directly or indirectly, out of Lessee's or any sublessee's use, lease, possession, or operation of the Cars occurring during the term of this lease, or by the contents of such Car's, howsoever occurring except any loss, liability, claim, damage, or expense which is attributable to the fault or neglect of the Lessor, or for which a railroad or railroads have assumed full responsibility.

11. Insurance. Lessee shall, at all times prior to the return of the cars to Lessor in accordance with the terms of this Agreement and during any storage period, at its own expense, carry and maintain public liability and property damage insurance in respect of the cars against the risks and in the amounts, if any, customarily insured against by Lessee in respect to similar equipment owned or leased by it.

12. Governmental and Industrial Regulations. Lessee agrees to comply with all governmental laws, rules, regulations and requirements, and with the Interchange Rules of the AAR with respect to the use and operation of each of the Cars during the term of this Agreement.

13. Return of Cars. Upon the expiration or termination of this Agreement or any Rider issued hereunder, Lessee agrees to return, within sixty (60) days following such expiration, each of the Cars leased under the Agreement or the Rider, as applicable, to Lessor at the point of delivery, or such other point as may be mutually agreed upon by the parties. The returned Cars shall be in good working order, ordinary wear and tear excepted, free from any charges or liens caused by Lessee, cleaned of all residue and complete with all parts, equipment, and accessories with which the particular Car was originally equipped or which had been added during the term of this Agreement. Lessee agrees to give Lessor thirty (30) days advance written notice of the date Cars will be returned.

14. Reports. Lessee shall give Lessor written notice of any injury to either person or commodities which involve the Cars. Said notice shall be delivered with ten days following the occurrence of any such injury.

15. Additional Charges by Railroads. Lessee agrees to use the Cars, upon each railroad over which the Cars shall move, in accordance with the then prevailing tariffs to which each such railroad shall be a party, and, if the operation or movements of any of the Cars during the term hereof shall result in any charges being made against Lessor by any such railroad, Lessee shall pay Lessor for such charges within the period prescribed by and at rates and under the conditions established by said then prevailing tariffs. Lessee agrees to indemnify Lessor against same and shall be liable for any switching demurrage, track storage, or detention charge imposed on the Cars during the time hereof.

During the term of the Agreement, Lessee agrees that it will use reasonable efforts to maintain the aggregate mileage under load for all Cars covered by this Agreement equal to or exceeding the aggregate mileage empty for such Cars. Following (i) the end of each calendar year during the term of this Agreement, and (ii) the termination or expiration of this Agreement, the Lessor will determine for the calendar year or portion thereof just ended the aggregate loaded mileage and empty mileage for the calendar year or portion thereof. Lessee shall reimburse Lessor for any excess empty mileage charges assessed against the Lessor by the AAR. Said reimbursement shall be at the rate specified by governing tariffs then in effect.

16. Taxes and Liens. Lessor agrees to pay all property taxes levied upon the Cars and to file all property tax reports related thereto. Lessee agrees to report and pay, in addition to rent and service charges, all sales, use, leasing, operation, excise, and other taxes with respect to the Cars, together with any penalties, fines, or interest thereon, and all duties, taxes, investment tax credit reductions, and similar charges arising out of use of the Cars outside the United States. Lessee agrees not to encumber or dispose of this lease or of any of the Cars or any part of a Car, or cause any encumbrance or lien to be entered or levied upon any of the Cars.

17. Assignment. Lessee agrees, to the best of its ability, to use the Cars exclusively in Lessee's own service within the boundaries of the continental United States (exclusive of Alaska, Hawaii and Canada) and to make no transfer, or assignment, of this Agreement, except that Lessee shall have the right to sublease any of the Cars; provided, however, that notwithstanding any such sublease, Lessee shall continue to remain fully liable to Lessor under this Agreement. In the event the Cars are used outside of the area specified and/or Mexico, Lessee agrees to bear full responsibility for, to defend, and to reimburse Lessor for any loss, damage and/or cost and expenses suffered by Lessor, or claim against Lessor and for all cost and expenses, including legal costs and attorney's fees arising in any way from such Car movement.

Subject always to the foregoing, this Agreement inures to the benefit of, and is binding upon, the Lessor, its successors and assigns and the Lessee, its successors and assigns.

18. Default. It is mutually agreed that the time of payment of rental and service charges is of the essence of this Agreement and that if the Lessee shall make default in the payment of rental and service charges on any of the Cars at the time when same become due and payable or shall make default in the performance or observance of any of the other agreements herein contained and by Lessee to be performed or observed, and such default shall continue for ten (10) days after Lessee has been given notice of default (that is Lessee shall have ten (10) days from date of receiving notice to correct default) or there shall be filed by or against Lessee a petition in bankruptcy or for reorganization under the Bankruptcy Law or there shall be a receiver appointed of any part of Lessee's property or Lessee shall make a general assignment for the benefit of creditors, then and in any of said events, Lessor, at its election, may, upon notice to Lessee of termination, terminate the lease set forth herein and repossess itself of any or all of said Cars,

and this lease shall thereupon become and be terminated. In the alternative, Lessor may, without notice repossess itself of said Cars and re-let the same or any part thereof to others for such rent and upon such terms as it may see fit, and if a sufficient sum shall not be thus realized after repaying all expenses of re-taking and re-letting said cars (including attorney's fees and expenses of litigation and collecting the rentals thereof to satisfy the rental and service charges herein reserved), the Lessee agrees to satisfy and pay the deficiency accrued from time upon demand. The obligation to pay such deficiency as well as the obligation for any and all other payments by Lessee to Lessor called for by this Agreement shall survive any termination of this Agreement or the lease contained herein for whatever reason and/or such retaking of the Cars. Lessee shall, without expense to Lessor, assist it in repossessing itself of said Cars and shall, for a reasonable time if required, furnish suitable trackage space for the storage of said Cars. The rights and remedies herein given or provided by law or in equity.

19. Reliance on Lease. Lessor, in consideration of the Lessee's oral representations and agreement to observe and be bound by each and all of the terms and conditions of this Agreement as set forth herein, and the immediate need of Cars by Lessee, may have shipped one or more of the Cars to Lessee prior to the formal execution of this Agreement. If this has occurred, this Agreement, whether or not executed, shall be the Agreement between the parties for such Cars and supersedes prior negotiations and correspondence.

20. Notice. All notices provided for herein, as well as all correspondence pertaining to this Agreement, shall be considered as properly given if given: (a) in writing and delivered personally or sent by registered or certified mail, or (b) by telex or cable and confirmed thereafter in writing sent by registered or certified mail. The respective addresses for notice shall be the addresses of the parties given at the outset hereof. Such address may be changed by either party giving written notice thereof to the other.

21. Miscellaneous. Nothing herein contained shall give or convey to Lessee any right, title, or property interests in and to the Cars except as Lessee. LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, WITH RESPECT TO THE CARS, THEIR MERCHANTABILITY, THEIR FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT OR OTHERWISE.

It is expressly understood and agreed that this Agreement constitutes a separate Railcar Lease and Service Contract with respect to the Cars described in each Rider. The termination or extension of any such Rider shall not affect any other Rider. At the request of either party hereto, a separate Railcar Lease and Service Contract with respect to the Cars described in any Rider will be executed, delivered, and acknowledged in substantially the form of this Agreement.

This instrument, together with any and all Riders attached hereto, constitutes the entire agreement between Lessor and Lessee and it shall not be amended, altered, or changed except by written agreement signed by the parties hereto.

MARCH 21 1997

TOTAL PETROLEUM, INC.

6