

FORM 10-Q

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For Quarterly period ended June 30, 1997

-----  
OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For The transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 1-7677  
-----

LSB INDUSTRIES, INC.

-----  
Exact name of Registrant as specified in its charter

DELAWARE

73-1015226

-----  
State or other jurisdiction of incorporation or organization

-----  
I.R.S. Employer Identification No.

16 South Pennsylvania, Oklahoma City, Oklahoma 73107

-----  
Address of principal executive offices (Zip Code)

(405) 235-4546

-----  
Registrant's telephone number, including area code

None

-----  
Former name, former address and former fiscal year, if changed since last report.

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

YES x NO

-----  
The number of shares outstanding of the Registrant's voting Common Stock, as of August 12, 1997 is 12,861,081 shares excluding 2,152,395 shares held as treasury stock.

PART I

FINANCIAL INFORMATION

Company or group of companies for which report is filed: LSB Industries, Inc. and all of its wholly-owned subsidiaries.

The accompanying condensed consolidated balance sheet of LSB Industries, Inc., at June 30, 1997, the condensed consolidated statements of operations for the six month and three month periods ended June 30, 1997 and 1996 and the consolidated statements of cash flows for the six month periods ended June 30, 1997 and 1996 are unaudited and reflect all adjustments, consisting primarily of adjustments of a normal recurring nature,

which are, in the opinion of management, necessary for a fair presentation of the interim periods. The results of operations for the six months and three months ended June 30, 1997 are not necessarily indicative of the results to be expected for the full year. The condensed consolidated balance sheet at December 31, 1996, was derived from audited financial statements as of that date.

LSB INDUSTRIES, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(Information at June 30, 1997 is unaudited)  
(Dollars in thousands)

ASSETS	June 30, 1997	December 31, 1996
Current assets:		
Cash and cash equivalents	\$ 769	\$ 1,620
Trade accounts receivable, net of allowance	56,578	50,791
Inventories:		
Finished goods	37,720	36,304
Work in process	6,490	12,084
Raw materials	19,232	19,594
Total inventory	63,442	67,982
Supplies and prepaid items	7,978	7,217
Total current assets	128,767	127,610
Property, plant and equipment, net	119,547	103,143
Investments and other assets:		
Loans receivable, secured by real estate	743	15,010
Other assets, net of allowance	17,163	15,521
	\$ 266,220	\$ 261,284

(Continued on following page)

LSB INDUSTRIES, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(Continued)  
(Information at June 30, 1997 is unaudited)  
(Dollars in thousands)

LIABILITIES AND STOCKHOLDERS' EQUITY	June 30, 1997	December 31, 1996
Current liabilities:		
Drafts payable	\$ 519	\$ 536
Accounts payable	35,715	41,796
Accrued liabilities	12,385	12,780
Current portion of long-term debt (Note 1)	14,904	13,007
Total current liabilities	63,523	68,119
Long-term debt (Note 1)	135,135	119,277
Contingencies (Note 5)		
Redeemable, noncumulative convertible preferred stock, \$100 par value; 1,539 shares issued and outstanding	146	146
Stockholders' equity (Note 4):		
Series B 12% cumulative, convertible		

preferred stock, \$100 par value; 20,000 shares issued and outstanding Series 2 \$3.25 convertible, exchangeable Class C preferred stock, \$50 stated value; 920,000 shares issued	2,000 46,000	2,000 46,000
Common stock, \$.10 par value; 75,000,000 shares authorized, 15,013,476 shares issued (14,888,476 in 1996)	1,501	1,489
Capital in excess of par value	38,227	37,843
Accumulated deficit	(8,687)	(2,706)
	<hr/>	<hr/>
	79,041	84,626
Less treasury stock, at cost:		
Series 2 Preferred, 5,000 shares	200	200
Common stock, 2,079,395 shares (1,913,120 in 1996)	11,425	10,684
	<hr/>	<hr/>
Total stockholders' equity	67,416	73,742
	<hr/>	<hr/>
	\$ 266,220	\$ 261,284
	=====	=====

(See accompanying notes)

LSB INDUSTRIES, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(Unaudited)  
Six Months Ended June 30, 1997 and 1996  
(Dollars in thousands, except per share amounts)

	1997	1996
	<hr/>	<hr/>
Revenues:		
Net sales	\$ 162,502	\$ 159,375
Other income	3,801	2,991
	<hr/>	<hr/>
	166,303	162,366
Costs and expenses:		
Cost of sales	132,199	127,335
Selling, general and administrative	31,554	27,087
Interest	6,396	5,964
	<hr/>	<hr/>
	170,149	160,386
Income (loss) before provision for income taxes	(3,846)	1,980
Provision for income taxes	125	139
	-----	-----
Net income (loss)	\$ (3,971)	\$ 1,841
	=====	=====
Net income (loss) applicable to common stock (Note 3)	\$ (5,594)	\$ 218
	=====	=====
Average common shares outstanding (Note 3):		
Primary	13,066,250	13,129,970
Fully diluted	13,068,250	13,465,303
Earnings (loss) per common share (Note 3):		
Primary	\$ (.43)	\$ .02
	=====	=====
Fully diluted	\$ (.43)	\$ .02
	=====	=====

(See accompanying notes)

LSB INDUSTRIES, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(Unaudited)  
Three Months Ended June 30, 1997 and 1996  
(Dollars in thousands, except per share amounts)

	1997	1996
	<hr/>	<hr/>
Revenues:		
Net sales	\$ 89,268	\$ 89,880
Other income	2,171	1,580

	91,439	91,460
Costs and expenses:		
Cost of sales	69,887	72,647
Selling, general and administrative	16,682	13,369
Interest	3,340	2,995
	<u>89,909</u>	<u>89,011</u>
Income before provision for income taxes	1,530	2,449
Provision for income taxes	63	77
Net income	----- \$ 1,467 =====	----- \$ 2,372 =====
Net income applicable to common stock (Note 3)	\$ 648 =====	\$ 1,568 =====
Average common shares outstanding (Note 3):		
Primary	13,157,676	13,348,553
Fully diluted	13,161,676	14,019,219
Earnings per common share (Note 3):		
Primary	\$ .05 =====	\$ .12 =====
Fully diluted	\$ .05 =====	\$ .12 =====

(See accompanying notes)

LSB INDUSTRIES, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(Unaudited)  
Six Months Ended June 30, 1997 and 1996  
(Dollars in thousands)

	1997	1996
Cash flows from operations:		
Net income (loss)	\$ (3,971)	\$ 1,841
Adjustments to reconcile net income (loss) to cash flows provided (used) by operations:		
Depreciation, depletion and amortization:		
Property, plant and equipment	5,141	4,522
Other	567	617
Provision for possible losses on receivables and other assets	1,066	677
Loss (gain) on sale of assets	9	(767)
Recapture of prior period provisions for loss on loans receivable secured by real estate	(1,383)	-
Cash provided (used) by changes in assets and liabilities:		
Trade accounts receivable	( 5,834)	(17,959)
Inventories	4,540	1,169
Supplies and prepaid items	( 716)	(1,880)
Accounts payable	(6,081)	23,372
Accrued liabilities	(853)	598
Net cash provided (used) by operations	<u>(7,515)</u>	<u>12,190</u>
Cash flows from investing activities:		
Capital expenditures	(5,701)	(7,381)
Principal payments on notes receivable	203	75
Proceeds from sales of equipment and real estate properties	360	236
Proceeds from sale of investment securities	-	1,444
Increase in other assets	(2,994)	(985)
Net cash used in investing activities	----- (8,132)	----- (6,611)
Cash flows from financing activities:		
Payments on long-term and other debt	(23,041)	(3,365)
Long-term and other borrowings	53,864	5,647
Net change in revolving debt	(13,655)	(3,465)
Net change in drafts payable	(17)	(424)
Dividends paid (Note 4):		
Preferred stocks	(1,621)	(1,623)
Common Stock	(389)	(389)

Purchases of treasury stock (Note 4)	(535)	(12)
Net proceeds from issuance of common stock	190	-
	<hr/>	<hr/>
Net cash provided (used) by financing activities	14,796	(3,631)
	<hr/>	<hr/>
Net increase (decrease) in cash	(851)	1,948
Cash and cash equivalents at beginning of period	1,620	1,420
	-----	-----
Cash and cash equivalents at end of period	\$ 769	\$ 3,368
	=====	=====

(See accompanying notes)

Note 1: The Company's working capital line of credit has a scheduled termination date of April 1, 1998, and as of June 30, 1997, the Company was not in compliance with its financial covenants relating to Tangible Net Worth and Debt-to-Worth. The Company's working capital lender has waived such defaults as of June 30, 1997. As of the date of this report, the lender has verbally committed to an extension of the termination date so that the termination date will be scheduled to occur more than twelve months from June 30, 1997, and resetting the Company's Tangible Net Worth and Debt-to-Worth financial covenants so that such are consistent with the Company's current projections for the next twelve months. Accordingly, the Company has classified the \$43.4 million due under the working capital line of credit at June 30, 1997 as long-term debt due after one year in the accompanying condensed consolidated financial statements. As of the date of this report, there are no assurances that the lender will extend the scheduled termination date and reset the Tangible Net Worth and Debt-to-Worth financial covenants and, if such financial covenants are reset, that the Company will be able to comply with such reset covenants.

Note 2: At June 30, 1997, the Company had net operating loss ("NOL") carryforwards for tax purposes of approximately \$45 million (approximately \$10 million alternative minimum tax NOLs). Such amounts of regular tax NOL expire beginning in 1999. The Company also has investment tax credit carryforwards of approximately \$356,000 which begin expiring in 1997.

The Company's provision for income taxes for the six months ended June 30, 1997 of \$125,000 is for current state income taxes and federal alternative minimum tax.

Note 3: Primary earnings per common share are based upon the weighted average number of common shares and dilutive common equivalent shares outstanding during each period, after giving appropriate effect to preferred stock dividends.

Fully diluted earnings per share are based on the weighted average number of common shares and dilutive common equivalent shares outstanding and the assumed conversion of dilutive convertible securities outstanding after appropriate adjustment for interest and related income tax effects on convertible notes payable.

Net income applicable to common stock is computed by adjusting net income by the amount of preferred stock dividends, including undeclared or unpaid dividends, if cumulative.

In February 1997, the Financial Accounting Standards Board issued statement No. 128, Earnings per Share, which is required to be adopted on December 31, 1997. At that time, the Company will be required to change the method currently used to compute earnings per share and to restate all prior periods. Under the new requirements for calculating primary earnings per share, the dilutive effect of stock options will be excluded. Based on the Company's review of its earnings per share calculation, the impact of Statement No. 128 on both primary and fully diluted earnings per share for the periods presented herein are not expected to be material.

Note 4: The table below provides detail of activity in the Stockholders' equity accounts for the six months ended June 30, 1997:

Common Stock      Non-      Capital      Treasury

	Shares	Par Value	redeemable Preferred Stock	in excess of par Value	Treasury Accumulated Stock-Deficit	Treasury Stock-Common	Stock Prefer-red	Total
			(In thousands)					
Balance at December 31, 1996	14,888	\$ 1,489	\$ 48,000	\$ 37,843	\$(2,706)	\$(10,684)	\$ (200)	\$73,742
Net loss					(3,971)			(3,971)
Exercise of stock options:								
Cash received	61	6		184				190
Stock tendered and added to treasury at market value	64	6		200		(206)		
Dividends declared:								
Common Stock (\$.03 per share)					(389)			(389)
Series B 12% preferred stock (\$6.00 per share)					(120)			(120)
Redeemable preferred stock (\$10.00 per share)					(16)			(16)
Series 2 preferred stock (\$1.62 per share)					(1,485)			(1,485)
Purchase of treasury stock						(535)		(535)
	(1)							
Balance at June 30, 1997	15,013	\$ 1,501	\$ 48,000	\$ 38,227	\$(8,687)	\$(11,425)	\$ (200)	\$67,416

(1)

Includes 2,079,395 shares of the Company's Common Stock held in treasury.

Excluding the 2,079,395 shares held in treasury, the outstanding shares of the Company's Common Stock at June 30, 1997 were 12,934,081.

Note 5: Following is a summary of certain legal actions involving the Company:

- A. In 1987, the U.S. Government notified one of the Company's subsidiaries along with numerous other companies, of potential responsibility for clean-up of a waste disposal site in Oklahoma. No legal action has yet been filed. The amount of the Company's cost associated with the clean-up of the site is unknown. Accordingly, no provision for any liability which may result has been made in the accompanying financial statements.
- B. The Company submitted to the State of Arkansas a "Groundwater Monitoring Work Plan" which was approved by the State of Arkansas. Pursuant to the Groundwater Monitoring Work Plan, the Company has performed phase I and II groundwater investigations, and submitted a risk assessment report to the State of Arkansas. The risk assessment report is currently being reviewed by the State of Arkansas.

On February 12, 1996, the Company entered into a Consent Administrative Agreement ("Administrative Agreement") with the state of Arkansas to resolve certain compliance issues associated with nitric acid concentrators. Pursuant to the Administrative Agreement, the Company installed additional pollution control equipment to address the compliance issues. The Company was assessed \$50,000 in civil penalties associated with the Administrative Agreement. In the summer of 1996 and then on January 28, 1997, the Company executed amendments to the Administrative Agreement ("Amended Agreements"). The Amended Agreements imposed a \$150,000 civil penalty, which penalty has been paid.

- C. In 1996, a lawsuit was filed against the Company's Chemical Business by a group of residents of El Dorado, Arkansas, asserting a citizens' suit against the Chemical Business as a result of certain alleged violations of the Clean Air Act, the Clean Water Act, the Chemical Business' air and water permits and certain other environmental laws, rules and regulations. The citizens' suit requests the court to order the Chemical Business to cure such alleged violations, if any, plus penalties as provided under the applicable statutes. The Company's Chemical Business will assert all defenses available to it and will vigorously defend itself.

In July 1996, several of the same individuals who are plaintiffs in the citizens' suit referenced above filed a

toxic tort lawsuit against the Company's Chemical Business alleging that they suffered certain injuries and damages as a result of alleged releases of toxic substances from the Chemical Business' El Dorado, Arkansas manufacturing facility. In October 1996, another toxic tort lawsuit was filed against the Company's Chemical Business. This subsequent action asserts similar damage theories as the previously discussed lawsuit, except this action attempts to have a class certified to represent substantially all allegedly affected persons. The plaintiffs are suing for an unspecified amount of actual and punitive damages.

The Company's insurance carriers have been notified of these matters. The Company and the Chemical Business maintain an Environmental Impairment Insurance Policy ("EIL Insurance") that provides coverage to the Company and the Chemical Business for certain discharges, dispersals, releases, or escapes of certain contaminants and pollutants into or upon land, the atmosphere or any water course or body of water from the Site, which has caused bodily injury, property damage or contamination to others or to other property not on the Site. The EIL Insurance provides limits of liability for each loss up to \$10.0 million and a similar \$10.0 million limit for all losses due to bodily injury or property damage, except \$5.0 million for all remediation expenses, with the maximum limit of liability for all claims under the EIL Insurance not to exceed \$10.0 million for each loss or remediation expense and \$10.0 million for all losses and remediation expenses. The EIL Insurance also provides a retention of the first \$500,000 per loss or remediation expense that is to be paid by the Company. The Company's Chemical Business has spent an amount in excess of \$500,000 in legal, expert and other costs in connection with the toxic tort and citizen lawsuits described in this paragraph C, which the Company expensed and has made a claim against its EIL Insurance for reimbursement of the legal, expert and other costs paid by the Chemical Business in excess of \$500,000 and to pay such legal, expert and other costs on an on-going basis. The Company and the EIL Insurance Carrier are presently negotiating this claim. There are no assurances that the Company and its EIL Insurance Carrier will be able to satisfactorily resolve this matter.

- D. A civil cause of action has been filed against the Company's Chemical Business and five (5) other unrelated commercial explosives manufacturers alleging that the defendants allegedly violated certain federal and state antitrust laws in connection with alleged price fixing of certain explosive products. The plaintiffs are suing for an unspecified amount of damages, which, pursuant to statute, plaintiffs are requesting be trebled, together with costs. Based on the information presently available to the Company, the Company does not believe that the Chemical Business conspired with any party, including but not limited to, the five (5) other defendants, to fix prices in connection with the sale of commercial explosives. Discovery has only recently commenced in this matter. The Chemical Business intends to vigorously defend itself in this matter.

The Company's Chemical Business has been added as a defendant in a separate lawsuit pending in Missouri. This lawsuit alleges a national conspiracy, as well as a regional conspiracy, directed against explosive customers in Missouri and seeks unspecified damages. The Company's Chemical Business has been included in this lawsuit because it sold products to customers in Missouri during a time in which other defendants have admitted to participating in an antitrust conspiracy, and because it has been sued in the preceding described lawsuit. Based on the information presently available to the Company, the Company does not believe that the Chemical Business conspired with any party, to fix prices in connection with the sale of commercial explosives. The Chemical Business intends to vigorously defend itself in this matter.

For several years the explosive industry has been under an investigation by the U.S. Department of Justice. Certain explosive companies plead guilty to antitrust violations. In connection with that investigation, the Chemical Business received and has complied with certain document subpoenas, and certain of the Chemical Business' employees have been

subpoenaed to testify in connection with such investigation. As of the date of this report, the Chemical Business has not been identified as a target of this investigation.

The Company including its subsidiaries, is a party to various other claims, legal actions, and complaints arising in the ordinary course of business. In the opinion of management after consultation with counsel, all claims, legal actions (including those described above) and complaints are adequately covered by insurance, or if not so covered, are without merit or are of such kind, or involve such amounts that unfavorable disposition would not have a material effect on the financial position of the Company, but could have a material impact to the net income (loss) of a particular quarter or year, if resolved unfavorably.

#### Debt Guarantee

The Company has guaranteed approximately \$2.6 million of indebtedness of a start-up aviation company, Kestrel Aircraft Company, in exchange for a 25.6% ownership interest, to which no value has been assigned as of June 30, 1997. The Company has advanced the aviation company \$341,000 as of June 30, 1997 and is accruing losses of the aviation company based on its ownership percentage. As a result, the Company has recorded losses of \$1,591,000 (\$375,000 in the first six months of 1997, and \$626,000 and \$590,000 in the years ended December 31, 1996 and 1995, respectively) related to the debt guarantee. The debt guarantee relates to a \$2 million term note and up to \$600,000 of a \$2 million revolving credit facility. The \$2 million term note requires interest only payments through September 1998; thereafter, it requires monthly principal payments of \$11,111 plus interest beginning in October 1998 until it matures on August 8, 1999, at which time all outstanding principal and unpaid interest are due. In the event of a default of this note, the Company would be required to assume payments on the note with the term extended until August 2004. The \$2 million revolving credit facility, on which a subsidiary of the Company has guaranteed up to \$600,000 of indebtedness, had a balance of approximately \$1.1 million as of June 30, 1997.

#### Nitric Acid Project

In June 1997, El Dorado Chemical Company ("El Dorado"), a wholly-owned subsidiary of the Company, El Dorado Nitrogen Company ("EDNC"), a wholly-owned subsidiary of El Dorado, and Bayer Corporation ("Bayer"), a corporation that is a non-affiliate of the Company, entered into a series of agreements (collectively, the "Agreement") whereby EDNC will act as agent to build and will operate a nitric acid plant at Bayer's Baytown, Texas chemical facility ("Nitric Acid Plant"). Under the terms of the Agreement, Bayer has agreed to purchase from EDNC their required amount of nitric acid used or to be used by Bayer at its Baytown, Texas facility for ten years from the date on which the Nitric Acid Plant becomes fully operational. The Agreement provides for up to six renewal terms of five years each, however, prior to each renewal period, either party to the Agreement may opt against renewal. El Dorado has guaranteed the performance of EDNC's obligations under the Agreement.

EDNC is to lease the Nitric Acid Plant pursuant to an operating lease with an initial lease term of ten years from the date on which the Nitric Acid Plant becomes fully operational. EDNC has an option to purchase the Nitric Acid Plant at the end of the initial 10 year term. It is anticipated that construction of the Nitric Acid Plant will cost approximately \$60 million and will be completed by the end of 1998. If operations at the Nitric Acid Plant are not commenced by February 1, 1999, Bayer has an option to terminate the Agreement. Construction financing of the Nitric Acid Plant is to be provided by an unaffiliated lender. Neither the Company, nor El Dorado, has guaranteed any of the lending obligations for the Nitric Acid Plant. The transaction with Bayer is subject to EDNC as construction agent finalizing a long-form contract with an unrelated third party to construct the Nitric Acid Plant, which contract is presently being negotiated.

#### MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following Management's Discussion and Analysis of Financial Condition and Results of Operations should be read in

OVERVIEW

The Company is pursuing a strategy of focusing on its more profitable businesses and concentrating on businesses and product lines in niche markets where the Company has established or can establish a position as a market leader. In addition, the Company is seeking to improve its liquidity and profits through liquidation of inventory that is on its balance sheet and on which it is not realizing an acceptable return nor does it have the potential to do so.

In this connection, the Company has been concentrating on reshaping the Automotive Products Business by the liquidation of certain of their assets that don't have the potential to earn an acceptable return and focusing on product lines that management believes have strategic advantages within select niche markets. The Company has also recruited new key management people in the Automotive Products Business including marketing, materials control, manufacturing, and financial. The Company continues to explore its alternatives to accomplish these goals.

In addition, the Company has been liquidating certain slow moving inventory in the Industrial Products Business in the ordinary course of business. It is the present intention of the Company to limit this Business to lines of machine tools which should result in an acceptable return on capital employed.

Certain statements contained in this Overview are forward-looking statements, and the results thereof could differ materially from such statements if the Company is unable to liquidate such assets in a reasonable period or on reasonable terms, and if able to liquidate such assets, it may not be able to improve profits in the Automotive Products Business or have an acceptable return on capital employed in these Businesses if general economic conditions deteriorate drastically from the environment these Businesses currently operate in or these Businesses are unable to meet competitive pressures in the market place which restrict these Businesses from manufacturing or purchasing and selling their products at acceptable prices.

Information about the Company's continuing operations in different industry segments for the six months and three months ended June 30, 1997 and 1996 is detailed below.

	Six Months		Three Months	
	1997	1996	1997	1996
	----	----	----	----
	(In thousands)			
	(Unaudited)			
Sales:				
Chemical	\$ 90,196	\$ 90,118	\$ 49,597	\$ 53,598
Environmental Control	47,822	41,512	26,199	22,517
Automotive Products	17,037	20,738	9,045	9,782
Industrial Products	7,447	7,007	4,427	3,983
	<u>\$162,502</u>	<u>\$159,375</u>	<u>\$ 89,268</u>	<u>\$ 89,880</u>
	=====	=====	=====	=====
Gross profit:				
Chemical	\$ 12,783	\$ 16,116	\$ 9,399	\$ 9,316
Environmental Control	13,683	10,255	7,675	5,556
Automotive Products	2,226	4,005	1,117	1,555
Industrial Products	1,611	1,664	1,190	806
	<u>\$ 30,303</u>	<u>\$ 32,040</u>	<u>\$ 19,381</u>	<u>\$ 17,233</u>
	=====	=====	=====	=====
Operating profit (loss):				
Chemical	\$ 4,734	\$ 9,825	\$ 5,379	\$ 6,280
Environmental Control	4,391	2,301	2,840	1,580
Automotive Products	(2,889)	(690)	(1,663)	(829)
Industrial Products	(710)	(1,045)	(45)	(548)
	<u>5,526</u>	<u>10,391</u>	<u>6,511</u>	<u>6,483</u>
General corporate expenses	(2,976)	(2,447)	(1,641)	(1,039)
Interest expense	(6,396)	(5,964)	(3,340)	(2,995)
	<u>Income (loss) before provision</u>	<u></u>	<u></u>	<u></u>

for income taxes

\$ (3,846) \$ 1,980 \$ 1,530 \$ 2,449  
=====

Gross profit by industry segment represents net sales less cost of sales. Operating profit by industry segment represents revenues less operating expenses before deducting general corporate expenses, interest expense and income taxes. As indicated in the above table the operating profit for the first six months (as defined) declined from \$10.4 million in 1996 to \$5.5 million in 1997, while sales increased approximately 2.0%. The decline in operating profit, coupled with increases in general corporate expenses, primarily legal fees, and interest expense, resulted in a loss before income taxes for the first six months of 1997 of approximately \$3.8 million.

#### Chemical Business

The operating profit in the Chemical Business is down from \$9.8 million in the first six months of 1996 to \$4.7 million in the first six months of 1997. During the first quarter of 1997, the Chemical Business continued to incur significant amounts of downtime at its El Dorado, Arkansas Plant site due to mechanical problems being incurred at the plant. The downtime resulted in increases in manufacturing overhead and lower absorption of such costs. The unabsorbed overhead (partially offset by an insurance settlement) combined with the continued high cost of the primary raw material, ammonia, led to higher cost of sales as a percent of sales and lower gross profit margins. During the first six months of 1997, the Company believes that it substantially completed repairs to resolve the mechanical problems resulting in substantial downtime experienced during 1996 and the first six months of 1997 at the El Dorado, Arkansas facility.

The Chemical Business purchases approximately 250,000 tons per year of ammonia. The cost of ammonia consumed by the Chemical Business in 1996 averaged \$167 per ton, while in November and December 1996, ammonia prices took an unexpected increase to an average of approximately \$200 per ton. During the first quarter of 1997, ammonia prices continued to increase through February (a high of \$217 per ton) and then began to decline during the second quarter so that the price for June, 1997 approximated \$167 per ton. The continued volatility in ammonia prices had a disruptive effect on the first six months results of the Chemical Business' operations. The price of ammonia averaged \$32 more per ton in the first six months of 1997 than in the first six months of 1996. During the first half of 1997, the Chemical Business entered into agreements with unrelated suppliers of ammonia to purchase its ammonia requirements. Under these agreements the Company believes that the prices the Chemical Business' will be required to pay for ammonia will be favorable. However, there are no assurances that the pricing pursuant to the above agreements will result in reduced costs to the Chemical Business since such pricing is subject to variations due to numerous factors.

As discussed in Note 5 of Notes to Condensed Consolidated Financial Statements, the Chemical Business has finalized an agreement with Bayer Corporation ("Bayer") for the Chemical Business to act as construction agent to build and will operate a nitric acid plant located on property owned by Bayer in Baytown, Texas. When the transaction is completed, the Chemical Business will provide nitric acid from such plant to Bayer's Baytown, Texas plant. Such nitric acid plant will be leased to the Chemical Business for a period expected to equal ten years under an operating lease. The Chemical Business has an option to purchase such nitric acid plant at the end of the initial 10 year term. It is expected that the cost to construct the nitric acid plant will be approximately \$60 million and that it will be completed by the end of 1998. The construction financing is to be provided by an unrelated lender. See Note 5 of Notes to Condensed Consolidated Financial Statements.

#### Environmental Control Business

As indicated in the above table, the Environmental Control Business reported improved sales (an increase of 15.2%) and improved operating profit for the first six months of 1997, over that of the first six months of 1996, primarily as a result of improved market conditions for the heat pump product lines.

#### Automotive and Industrial Products Businesses

As indicated in the above table, during the first six months of 1997 these Businesses recorded combined sales of \$24.5 million and reported an operating loss (as defined above) of \$3.6 million, as compared to combined sales of \$27.7 million and an operating loss of \$1.7 million for the first six months of 1996, as a result of lower sales and decreased absorption of manufacturing costs due to lower production volume. As a result of the inventory reduction program put into place in 1995, inventories of these Businesses decreased approximately \$1.0 million during the six months ended June 30, 1997.

## RESULTS OF OPERATIONS

Six months ended June 30, 1997 vs. Six months ended June 30, 1996.

### Revenues

Total revenues for the six months ended June 30, 1997 and 1996 were \$166.3 million and \$162.4 million, respectively (an increase of \$ 3.9 million). Sales increased \$3.1 million. Other income increased \$.8 million. In February 1997, the Company exercised its option to acquire an office building in Oklahoma City, Oklahoma (the "Tower"), by foreclosing against the balance owed the Company under a note receivable. As part of this transaction, the Company recaptured \$1.4 million of prior period provisions for potential losses on loans receivable secured by the Tower. This amount is included in other income in 1997.

### Net Sales

Consolidated net sales included in total revenues for the six months ended June 30, 1997 were \$162.5 million, compared to \$159.4 million for the first six months of 1996, an increase of \$3.1 million. This increase in sales resulted principally from: (i) increased sales in the Environmental Control Business of \$6.3 million, primarily due to increased heat pump sales; and, (ii) increased sales of machine tools in the Industrial Products Business of \$.4 million, offset by (iii) decreased sales in the Automotive Products Business of \$3.7 million primarily due to less units being shipped and product mix.

### Gross Profit

Gross profit was 18.6% for the first six months of 1997, compared to 20.1% for the first six months of 1996. The decrease in the gross profit percentage was due primarily to (i) higher production costs in the Chemical Business due to the effect of higher prices of ammonia and unabsorbed overhead costs caused by excessive downtime related to modifications made to resolve problems associated with mechanical failures at the Chemical Business' primary manufacturing plant, offset by a reduction in cost of sales of \$1.3 million through recapture of manufacturing variances of the Chemical Business in the form of a business interruption insurance settlement, and (ii) decreased absorption of costs due to lower production volumes in the Automotive Products Business.

### Selling, General and Administrative Expense

Selling, general and administrative ("SG&A") expenses as a percent of net sales were 19.4% and 17.0% in the six month periods ended June 30, 1997 and 1996, respectively. Approximately \$840,000 of this increase is due to the operations of the Tower in 1997 as discussed elsewhere in this report. The remaining increase is primarily the result of increased bad debt provisions, increased professional fees related to environmental matters in the Chemical Business and decreased sales volume in the Automotive Products Business without a corresponding decrease in SG&A.

### Interest Expense

Interest expense for the Company, before deducting capitalized interest, was approximately \$7.5 million during the six months ended June 30, 1997 compared to approximately \$6.0 million during the six months ended June 30, 1996. During the first six months of 1997, \$1.1 million of interest expense was capitalized in connection with construction of the DSN Plant.

The 1997 increase of \$1.5 million before the effect of capitalization primarily resulted from increased borrowings.

#### Income Before Taxes

The Company had a loss before income taxes of \$3.8 million in the first six months of 1997 compared to income before income taxes of \$2.0 million in the six months ended June 30, 1996. The decreased profitability of \$5.8 million was primarily due to the decline in gross profit, increase in SG&A and increase in interest expense as previously discussed.

#### Provision For Income Taxes

As a result of the Company's net operating loss carryforward for income tax purposes as discussed elsewhere herein and in Note 2 of Notes to Condensed Consolidated Financial Statements, the Company's provisions for income taxes for the six months ended June 30, 1997 and the six months ended June 30, 1996 are for current state income taxes and federal alternative minimum taxes.

Three months ended June 30, 1997 vs. Three months ended June 30, 1996.

#### Revenues

Total revenues for the three months ended June 30, 1997 and 1996 were approximately the same. Sales decreased \$.6 million. Other income increased \$.6 million.

#### Net Sales

Consolidated net sales included in total revenues for the three months ended June 30, 1997 were \$89.3 million, compared to \$89.9 million for the second quarter of 1996, a decrease of \$.6 million. This decrease in sales resulted principally from: (i) increased sales in the Environmental Control Business of \$3.7 million, primarily due to firming of market conditions for this Business' Heat Pump Product lines, and (ii) increased machine tool sales in the Industrial Products Business of \$.4 million, offset by (iii) decreased sales in the Chemical Business of \$4.0 million primarily due to a delayed start of the agricultural season in April due to wet weather conditions, and (iv) decreased sales in the Automotive Products Business of \$.7 million.

#### Gross Profit

Gross profit was 21.7% for the second quarter of 1997, compared to 19.2% for the second quarter of 1996. The improvement in the gross profit percentage was due primarily to (i) higher prices and increased absorption of costs due to higher production volumes in the Environmental Control Business, and (ii) the settlement of a \$1.3 million business interruption insurance claim in the second quarter of 1997 which reduced cost of sales in the Chemical Business.

#### Selling, General and Administrative Expense

Selling, general and administrative ("SG&A") expenses as a percent of net sales were 18.7% and 14.9% in the three month periods ended June 30, 1997 and 1996, respectively. Approximately \$840,000 of this increase is due to the operations of the Tower in 1997 as discussed elsewhere in this report. The remaining increase is primarily the result of increased professional fees related to litigation matters as discussed in Note 5 of Notes to Condensed Consolidated Financial Statements and increased bad debt provisions compounded by lower sales in the Chemical and Automotive Products Businesses.

#### Interest Expense

Interest expense for the Company, before deducting capitalized interest, was approximately \$3.8 million during the three months ended June 30, 1997 compared to approximately \$3.0 million during the three months ended June 30, 1996. During the second quarter of 1997, \$.4 million of interest expense was capitalized in connection with construction of the DSN plant. The 1997 increase of \$.8 million before the effect of capitalization primarily resulted from higher average balances of borrowed funds.

## Income Before Taxes

The Company had income before income taxes of \$1.5 million in the second quarter of 1997 compared to income before income taxes of \$2.4 million in the three months ended June 30, 1996. The decreased profitability of \$.9 million was primarily due to the increases in SG&A and interest expense, partially offset by an insurance settlement as previously discussed.

## Provision For Income Taxes

As a result of the Company's net operating loss carryforward for income tax purposes as discussed elsewhere herein and in Note 2 of Notes to Condensed Consolidated Financial Statements, the Company's provisions for income taxes for the three months ended June 30, 1997 and the three months ended June 30, 1996 are for current state income taxes and federal alternative minimum taxes ("AMT").

## Liquidity and Capital Resources

### Cash Flow From Operations

Net cash used by operations for the six months ended June 30, 1997 was \$7.5 million, including adjustments for noncash depreciation and amortization of \$5.7 million, provisions for possible losses on accounts receivable and other assets of \$1.1 million, and recapture of previous years provisions for possible losses of \$1.4 million. This net cash usage includes the following changes in assets and liabilities: (i) accounts receivable increases of \$5.8 million, (ii) inventory decreases of \$4.5 million, (iii) increases in supplies and prepaid items of \$0.7 million, and (iv) decreases in accounts payable and accrued liabilities of \$6.9 million. The increase in accounts receivable is due mainly to seasonal sales increases in the Chemical Business. The decrease in inventories is primarily due to spring planting season sales of fertilizer inventory that is typically built up by the Chemical Business in the fourth quarter of each year, in addition to an inventory reduction in the Automotive Products Business. The increase in supplies and prepaid items is due primarily to increases in prepaid insurance costs and manufacturing supplies. The decrease in accounts payable and accrued liabilities is due primarily to use of proceeds from the \$50 million long-term financing discussed elsewhere in this report.

### Cash Flow From Investing And Financing Activities

Cash used by investing activities included \$5.7 million in capital expenditures (primarily in the Chemical Business) and increased other assets of \$3.0 million due primarily to (i) a \$1.0 million advance to a French manufacturer of HVAC equipment as discussed further under "Joint Ventures and Options to Purchase", and (ii) \$1.4 million of deposits made in connection with an interest rate hedge contract related to the 10 year permanent financing of the nitric acid plant to be completed in late 1998 pursuant to the agreement with Bayer. See Note 5 of Notes to Condensed Consolidated Financial Statements. Net cash provided by financing activities included (i) term borrowings of \$53.9 million, including proceeds from the new \$50 million financing discussed under "Sources of Funds", (ii) payments on term debt of \$23.0 million, including \$19.1 million in prepayments of debt with proceeds from the new \$50 million financing, (iii) decreases in revolving debt of \$13.7 million, (iv) dividends of \$2.0 million, and (v) treasury stock purchases of \$.5 million.

During the first six months of 1997, the Company paid the following aggregate dividends: (1) \$6.00 per share on each of the 20,000 outstanding shares of its Series B 12% Cumulative Convertible Preferred Stock; (2) \$1.625 per share on each outstanding share of its \$3.25 Convertible Exchangeable Class C Preferred Stock, Series 2; (3) \$.03 per share on each outstanding share of its Common Stock; and (4) \$10.00 per share on each of the 1,539 outstanding shares of its Redeemable Preferred Stock.

### Source of Funds

The Company is a diversified holding Company and its liquidity is dependent, in large part, on the operations of its subsidiaries and credit agreements with lenders.

On February 13, 1997 the Company's wholly-owned subsidiaries, El Dorado Chemical Company, Slurry Explosive Corporation, and Northwest Financial Corporation. (collectively "Borrowers") completed a \$50 million long-term financing agreement ("Financing") with an institutional lender. Approximately \$19.1 million in proceeds from the Financing was used to repay other outstanding term debt; \$.2 million was used to pay accrued interest; and, the remaining \$30.7 million in proceeds were used to pay down the Company's revolving credit facilities and thereby create additional borrowing availability for future working capital and other corporate needs. The Financing is secured by a first mortgage lien on the Chemical Business' property, plant, and equipment located in El Dorado, Arkansas and owned by the Borrowers, except rolling stock and excluding the DSN Plant which is security under a separate loan agreement. The \$50.0 million Financing consists of \$25.0 million of fixed rate notes bearing interest at 10.57% per annum and \$25.0 million of floating rate notes bearing interest at LIBOR plus 4.2% (initially 9.76%). Repayment of the notes is due in quarterly installments of \$833,332 plus interest commencing on July 1, 1997 through April 2004 at which time the balance is due. The Financing requires the Borrowers to maintain certain financial ratios and contains other financial covenants, including the ratio of funded debt to total capitalization, current ratio, and fixed charge coverage ratio, in addition to net worth and working capital requirements. As of the date of this report, the Borrowers are in compliance with all financial covenants required by the loan agreement related to the Financing. The Financing also contains certain restrictions on transactions with affiliates. The Financing limits the amount of dividends or distributions by the Borrowers to an amount equal to payments for federal income taxes determined as if the Borrowers filed returns on a separate company basis and dividends up to 50% of the Borrowers' prior year net income. The annual interest on the \$50 million in outstanding debt under the Financing at June 30, 1997, at the rate then in effect, would approximate \$5.1 million.

The Company and certain of its subsidiaries are parties to a working capital line of credit evidenced by six separate loan agreements ("Agreements") with an unrelated lender ("Lender") collateralized by receivables, inventory, and proprietary rights of the Company and the subsidiaries that are parties to the Agreements and the stock of certain of the subsidiaries that are borrowers under the Agreements. The Agreements, as amended, provide for revolving credit facilities ("Revolver") for total direct borrowings up to \$63.0 million, including the issuance of letters of credit. The Revolver provides for advances at varying percentages of eligible inventory and trade receivables. The Agreements, as amended, provide for interest at the reference rate as defined (which approximates the national prime rate) plus 1.5%, or the Eurodollar rate plus 3.875%. At June 30, 1997 the effective interest rate was 10%. The annual interest on the outstanding debt under the Revolver at June 30, 1997 at the rates then in effect would approximate \$4.3 million. At June 30, 1997, additional amounts that the Company could have borrowed under the Agreements, based on eligible collateral, were approximately \$14.2 million. Borrowings under the Revolver outstanding at June 30, 1997, were \$43.4 million. The Revolver has a scheduled termination date of April 1, 1998, and as of June 30, 1997, the Company was not in compliance with its financial covenants relating to Tangible Net Worth and Debt-to-Worth. The Company's working capital lender has waived such defaults as of June 30, 1997. As of the date of this report, the lender has verbally committed to an extension of the termination date so that the termination date will be scheduled to occur more than twelve months from June 30, 1997, and resetting the Company's Tangible Net Worth and Debt-to-Worth financial covenants so that such are consistent with the Company's current projections for the next twelve months. Accordingly, the Company has classified the \$43.4 million due under the Revolver at June 30, 1997 as long-term debt due after one year in the accompanying condensed consolidated financial statements. As of the date of this report, there are no such assurances that the lender will extend the scheduled termination date and reset the Tangible Net Worth and Debt-to-Worth financial covenants and, if such financial covenants are reset, that the Company will be able to comply with such reset covenants. This paragraph contains certain forward-looking statements, including but not limited to, the reference to projections over the next twelve months and that the lender

will extend the termination date and reset certain financial covenants and the result thereof could differ materially from such statements if, among other reasons, the Company is unable to meet such projections due to material reduction in revenues or adverse changes to the Company's businesses or the lender decides for whatever reason not to reset the scheduled termination date or the financial covenants.

In addition to the Agreements discussed above, the Company had the following term loans in place as of June 30, 1997:

- (1) The Company's wholly-owned subsidiary, DSN Corporation ("DSN"), is a party to several loan agreements with a financing company (the Financing Company) for three (3) projects. These loan agreements are for a \$16.5 million term loan (the DSN Permanent Loan), which was used to construct, equip, re-erect, and refurbish the DSN Plant being placed into service by the Chemical Business at its El Dorado, Arkansas facility; a loan for approximately \$1.2 million to purchase additional railcars to support the DSN Plant (the Railcar Loan); and a loan for approximately \$1.1 million to finance the construction of a mixed acid plant (the Mixed Acid Plant) in North Carolina (the Mixed Acid Loan). At June 30, 1997, DSN had outstanding borrowings of \$12.9 million under the DSN Permanent Loan, \$0.9 million under the Mixed Acid Loan, and \$1.0 million under the Railcar Loan. The loans have repayment schedules of eighty-four (84) consecutive monthly installments of principal and interest. The interest rate on each of the loans is fixed and range from 8.24% to 8.86%. Annual interest, for the three notes as a whole, at June 30, 1997 at the agreed to interest rates would approximate \$1.3 million. The loans are secured by the various DSN and Mixed Acid Plants property and equipment, and all railcars purchased under the Railcar Loan. The loan agreements require the Company to maintain certain financial ratios, including tangible net worth requirements. As of the date of this report, the Company is in compliance with all financial covenants or if not in compliance, has obtained appropriate waivers from the Financing Company.
- (2) As of June 30, 1997, a subsidiary of the Company ("Prime") was a party to an agreement ("Agreement") with a national bank ("Bank"). The Agreement, as modified, requires interest per annum at a rate equal to three quarters of one percent (.75%) above the prime rate in effect from day to day as published in the Wall Street Journal. The outstanding principal balance of the note is payable in sixty (60) monthly payments of principal and interest. Payment of the note is secured by a first and priority lien and security interest in and to Prime's right, title, and interest in the loan receivable relating to the real property and office building located in Oklahoma City, Oklahoma (the "Tower"), and the Management Agreement relating to the Tower. In February 1997, the Company exercised its option to purchase the Tower by paying approximately \$140,000 for the exercise price under the purchase option and related costs and accordingly \$14.0 million of carrying value was transferred to property, plant and equipment.

Future cash requirements include working capital requirements for anticipated sales increases in all Businesses, and funding for future capital expenditures, primarily in the Chemical Business and the Environmental Control Business. Funding for the higher accounts receivable resulting from anticipated sales increases will be provided by cash flow generated by the Company and the revolving credit facilities discussed elsewhere in this report. Inventory requirements for the higher anticipated sales activity should be met by scheduled reductions in the inventories of the Industrial Products Business and in the inventories of the Automotive Products Business. In the remaining six months of 1997, the Company has planned capital expenditures of approximately \$4.1 million, primarily in the Chemical and Environmental Control Businesses.

SBL Corporation ("SBL"), a corporation wholly owned by the spouse and children of Jack E. Golsen, Chairman of the Board and President of the Company, including, but not limited to, Barry H. Golsen, son of Jack E. Golsen and Vice Chairman of the Board of the Company, has proposed to the Company that it is willing to

infuse into the Company \$3 million of new equity. Under such proposal, SBL proposes that the Company issue to SBL for such \$3 million three million (3,000,000) shares of a newly created series of preferred stock, with (i) each share of preferred stock having one (1) vote and voting with the Common Stock of the Company as a single class and bearing a dividend rate of 10% per annum, with such dividends being cumulative, (ii) such preferred stock is to be convertible into Common Stock of the Company held by the Company as treasury shares at a conversion rate to be negotiated, and (iii) the preferred stock containing such other terms, rights and preferences as are standard in such series of preferred stock.

At the meeting of the Board of Directors on August 14, 1997, the Board of Directors established a special committee of the Board ("Committee") consisting of four (4) outside and independent directors. The Committee was given full power and authority to evaluate the proposal for the Company, negotiate the terms and provisions of such transaction, if any, retain legal, financial and other advisors to assist the Committee in performance of its duties, and, if such preferred is to be issued, to fix and establish the terms thereof and authorize the issuance of such preferred on terms approved by the Committee. The Committee was established by the Board at its meeting held on August 14, 1997, and has not yet begun to consider or evaluate the proposal. There are no assurances that this transaction will be completed, or, if completed, that the terms of such transaction will be as set forth in the proposal by SBL.

Management believes that cash flows from operations, the Company's revolving credit facilities, and other sources, including the possible infusion of \$3 million of new equity proposed to be provided by SBL discussed above, will be adequate to meet its presently anticipated capital expenditure, working capital, debt service, and dividend requirements. The above sentence and certain statements contained in the preceding paragraph are forward-looking statements that involve a number of risks and uncertainties that could cause actual results to differ materially, such as, a material reduction in revenues, continuing to incur losses, inability to collect a material amount of receivables, required capital expenditures in excess of those presently anticipated, or the Company is unable to finance such capital expenditures on terms acceptable to the Company, the Company and SBL do not complete the transaction discussed above for any reason, or other future events, not presently predictable, which individually or in the aggregate could impair the Company's ability to obtain funds to meet its requirements. Although the Company has planned capital expenditures, there are no material irrevocable commitments to such at the date of this report. The commitment to build the nitric acid plant discussed in Note 5 to Notes to Condensed Financial Statements is to be financed by an unaffiliated lender.

#### Foreign Subsidiary Financing

The Company has guaranteed a revolving credit working capital facility (the "Facility") between TES and Bank of New Zealand (the "Lender"). The Facility allows for borrowings based on specific percentages of qualified eligible assets. Based on the effective exchange rate at June 30, 1997, approximately US\$4.9 million (A\$7 million approximately) was borrowed at June 30, 1997. Such debt is secured by substantially all the assets of TES, plus an unlimited guarantee and indemnity from the Company. The interest rate on this debt is the Bank of New Zealand Corporate Lending Rate plus 0.5% (approximately 9.5% at June 30, 1997). TES is in technical non-compliance with a certain financial covenant contained in the loan agreement involving the Facility. However, this covenant was not met at the time of closing and the Lender agreed and continues to agree as of the date of this report that the covenant is something to work towards in the future and has continued to allow TES to borrow under the Facility. The outstanding borrowing under the Facility at June 30, 1997 has been classified as due within one year in the accompanying Consolidated Financial Statements.

The Lender has verbally agreed to amend the Facility to allow for borrowings up to an aggregate of A\$11 million Australian. This A\$11 million will be broken down into three parts: a A\$6 million revolving working capital facility; a A\$4.5 million long-term debt facility; and, a A\$.5 million leasing facility.

## Joint Ventures and Options to Purchase

Prior to 1997, the Company, through a subsidiary, loaned \$2.9 million to a French manufacturer of HVAC equipment whose product line is compatible with that of the Company's Environmental Control Business in the USA. Under the loan agreement, the Company has the option to exchange its rights under the loan for 100% of the borrower's outstanding common stock. The Company obtained a security interest in the stock of the French manufacturer to secure its loan. During the first six months of 1997 the Company advanced an additional \$1 million to the French manufacturer bringing the total of the loan at June 30, 1997 to \$3.8 million. As of the date of this report, the decision has not been made to exercise such option and the \$3.8 million loan, net of a \$1.5 million valuation reserve, is carried on the books as a note receivable in other assets.

During 1995, the Company executed a stock option agreement to acquire eighty percent (80%) of the stock of a specialty sales organization ("Optioned Company") to enhance the marketing of the Company's air conditioning products. The stock option has a four (4) year term, and a total option granting price of \$1.0 million and annual \$100,000 payments for yearly extensions of the stock option thereafter for up to three (3) years. Through June 30, 1997 the Company has made option payments aggregating \$1.2 million and has loaned the Optioned Company approximately \$983,000. The Company has recorded reserves of \$605,000 against the loans and investments. Upon exercise of the stock option by the Company, or upon the occurrence of certain performance criteria which would give the grantors of the stock option the right to accelerate the date on which the Company must elect whether to exercise, the Company shall pay certain cash and issue promissory notes for the balance of the exercise price of the subject shares. The total exercise price of the subject shares is \$4.0 million, less the amounts paid for the granting and any extensions of the stock option. As of the date of this report, no decision to exercise this option has been reached by the Company.

In 1995, a subsidiary of the Company invested approximately \$2.8 million to purchase a fifty percent (50%) equity interest in an energy conservation joint venture (the "Project"). The Project had been awarded a contract to retrofit residential housing units at a US Army base which it completed during 1996. The completed contract was for installation of energy-efficient equipment (including air conditioning and heating equipment), which would reduce utility consumption. For the installation and management, the Project will receive an average of seventy-seven percent (77%) of all energy and maintenance savings during the twenty (20) year contract term. The Project spent approximately \$17.5 million to retrofit the residential housing units at the US Army base. The Project received a loan from a lender to finance approximately \$14.0 million of the cost of the Project. The Company is not guaranteeing any of the lending obligations of the Project.

## Debt Guarantee

As disclosed in Note 5 of the Notes to Condensed Consolidated Financial Statements a subsidiary of the Company and one of its subsidiaries have guaranteed approximately \$2.6 million of indebtedness of a start up aviation company in exchange for an ownership interest. The debt guarantee relates to two note instruments. One note for which the subsidiary had guaranteed up to \$600,000 had a balance of approximately \$1,051,000 as of June 30, 1997. The other note in the amount of \$2.0 million requires monthly principal payments of \$11,111 plus interest beginning in October 1998 through August 8, 1999, at which time all outstanding principal and accrued interest are due. In the event of default of the \$2.0 million note, the Company is required to assume payments on the note with the term extended until August 2004. Both notes are current as to principal and interest.

During 1996 and 1997, the aviation company received cash infusions of \$6.0 million from an unrelated third party investor for a 41.6% ownership interest in the aviation company. During 1997, the investor exercised an option to purchase additional stock of the aviation company in exchange for \$4.0 million in scheduled payments. At the date of this report, \$1.0 million of

payments under this option have been received.

#### Availability of Company's Loss Carryovers

The Company anticipates that its cash flow in future years will benefit from its ability to use net operating loss ("NOL") carryovers from prior periods to reduce the federal income tax payments which it would otherwise be required to make with respect to income generated in such future years; however, such benefit will be limited by the Company's reduced NOL for alternative minimum tax purposes which is approximately \$10.0 million at December 31, 1996. As of December 31, 1996, the Company had available NOL carryovers of approximately \$45.0 million, based on its federal income tax returns as filed with the Internal Revenue Service for taxable years through 1995, and on the Company's estimates for 1996. These NOL carryovers will expire beginning in the year 1999.

The above paragraph contains certain forward-looking statements. The amount of these carryovers has not been audited or approved by the Internal Revenue Service and, accordingly, no assurance can be given that such carryovers will not be reduced as a result of audits in the future. In addition, the ability of the Company to utilize these carryovers in the future will be subject to a variety of limitations applicable to corporate taxpayers generally under both the Internal Revenue Code of 1986, as amended, and the Treasury Regulations. These include, in particular, limitations imposed by Code Section 382 and the consolidated return regulations.

#### Contingencies

As discussed in Note 5 of Notes to Condensed Consolidated Financial Statements, the Company has several contingencies that could impact its liquidity in the event that the Company is unsuccessful in defending against the claimants. Although management does not anticipate that these claims will result in substantial adverse impacts on its liquidity, it is not possible to determine the outcome. The preceding sentence is a forward looking statement that involves a number of risks and uncertainties that could cause actual results to differ materially, such as, among other factors, the following: the EIL Insurance does not provide coverage to the Company and the Chemical Business for any material claims made by the claimants, the claimants alleged damages are not covered by the EIL Policy which a court may find the Company and/or the Chemical Business liable for, such as punitive damages or penalties, a court finds the Company and/or the Chemical Business liable for damages to such claimants for a material amount in excess of the limits of coverage of the EIL Insurance or a court finds the Chemical Business liable for a material amount of damages in the antitrust lawsuits pending against the Chemical Business in a manner not presently anticipated by the Company.

## PART II OTHER INFORMATION

#### Item 1. Legal Proceedings

There are no additional material legal proceedings pending against the Company and/or its subsidiaries not previously reported by the Company in Item 3 of its Form 10-K for the fiscal period ended December 31, 1996, which Item 3 is incorporated by reference herein.

#### Item 2. Changes in Securities

Not applicable.

#### Item 3. Defaults upon Senior Securities

Not applicable.

#### Item 4. Submission of Matters to a Vote of Security Holders

At the Company's 1997 Annual Meeting of Shareholders held on June 27, 1997, the following nominees to the Board of Directors were elected as directors of the Company:

Name	Number of Shares "For"	Shares "Against" and to "Withhold Authority"	Number of Abstentions and Broker Non-Votes
Gerald J. Gagner	10,397,346	1,402,698	-
Barry H. Golsen	10,683,094	1,116,950	-
David R. Goss	10,690,093	1,109,951	-
Donald J. Munson	10,686,246	1,113,798	-
Jerome D. Shaffer, M.D.	10,542,127	1,257,917	-

Messrs Golsen, Goss and Shaffer had been serving on the Board of Directors at the time of the Annual Meeting and were reelected for a term of three (3) years. Mr. Gagner was not serving as a director of the Company at the time of the Annual Meeting and was elected for a term of one (1) year. Mr. Munson was not serving as a director of the Company at the time of the Annual Meeting and was elected for a term of two (2) years. The following are the directors whose terms of office continued after such Annual Meeting: Raymond B. Ackerman, Robert C. Brown, M.D., Jack E. Golsen, Bernard G. Ille, Horace G. Rhodes, Jerome D. Shaffer, M.D. and Tony M. Shelby.

At the annual Meeting, Ernst & Young, LLP, Certified Public Accountants, was appointed as independent auditors of the Company for 1997, as follows:

Number of Shares "For"	Number of Shares "Against" and to "Withhold Authority"	Number of Abstentions and Broker Non-Votes
11,156,349	624,316	19,379

At the Annual Meeting, a shareholder proposal to amend the Corporation's by-laws to prohibit the election to the Board of Directors of any person above the age of seventy (70) was defeated, as follows:

Number of Shares "For"	Number of Shares "Against" and to "Withhold Authority"	Number of Abstentions and Broker Non-Votes
1,990,579	6,795,013	3,014,452

At the Annual Meeting, a shareholder proposal recommending that the Board of Directors consider amending the Company's Certificate of Incorporation to adopt cumulative voting was defeated, as follows:

Number of Shares "For"	Number of Shares "Against" and to "Withhold Authority"	Number of Abstentions and Broker Non-Votes
2,988,725	5,785,237	3,026,082

At the Annual Meeting, a shareholder proposal recommending that the Board of Directors consider amending the Company's Certificate of Incorporation to eliminate the staggered terms of the Board of Directors was defeated, as follows:

Number of Shares "For"	Number of Shares "Against" and to "Withhold Authority"	Number of Abstentions and Broker Non-Votes

## Item 5. Other Information

Not applicable.

## Item 6. Exhibits and Reports on Form 8-K

(A) Exhibits. The Company has included the following exhibits in this report:

4.1. Seventh Amendment to Loan and Security Agreement between the Company and BankAmerica Business Credit, Inc. Substantially identical Seventh Amendments were entered into by each of L&S Bearing, International Environmental Corporation, Climate Master, Inc., Summit Machine Tool Manufacturing Corp., an El Dorado Chemical Company and are omitted herefrom, and such will be provided to the Commission upon request.

4.2. Eighth Amendment to Loan and Security Agreement between the Company and BankAmerica Business Credit, Inc. Substantially identical Seventh Amendments were entered into by each of L&S Bearing, International Environmental Corporation, Climate Master, Inc., Summit Machine Tool Manufacturing Corp., an El Dorado Chemical Company and are omitted herefrom, and such will be provided to the Commission upon request.

10.1 Anhydrous Ammonia Sales Agreement dated May 28, 1997, to be effective January 1, 1997, between Koch Nitrogen Company and El Dorado Chemical Company. CERTAIN INFORMATION WITHIN THIS EXHIBIT HAS BEEN OMITTED AS IT IS THE SUBJECT OF A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FREEDOM OF INFORMATION ACT. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

10.2 Baytown Nitric Acid Project and Supply Agreement dated June 27, 1997 by and among El Dorado Nitrogen Company, El Dorado Chemical Company and Bayer Corporation. CERTAIN INFORMATION WITHIN THIS EXHIBIT HAS BEEN OMITTED AS IT IS THE SUBJECT OF A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FREEDOM OF INFORMATION ACT. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

10.3 Services Agreement dated June 27, 1997, between Bayer Corporation and El Dorado Nitrogen Company. CERTAIN INFORMATION WITHIN THIS EXHIBIT HAS BEEN OMITTED AS IT IS THE SUBJECT OF A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FREEDOM OF INFORMATION ACT. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST. Additionally, the Exhibits and Schedules to the Services Agreement have not been filed herewith, but will be filed supplementally upon request of the Commission, with the exception that SCHEDULE 6, WASTE, IS THE SUBJECT OF A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FREEDOM OF INFORMATION ACT. SCHEDULE 6 HAS NOT BEEN FILED AS A SCHEDULE TO THIS 10-Q AS SUCH ENTIRE DOCUMENT IS THE SUBJECT OF A REQUEST FOR CONFIDENTIAL TREATMENT, BUT SUCH DOCUMENT HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

10.4 Ground Lease dated June 27, 1997, between Bayer Corporation and El Dorado Nitrogen Company.

10.5 Participation Agreement, dated as of June 27, 1997, among El Dorado Nitrogen Company, Boatmen's Trust Company of Texas as Owner Trustee, Security Pacific Leasing Corporation, as Owner Participant and a

Construction Lender, Wilmington Trust Company, Bayerische Landesbank, New York Branch, as a Construction Lender and the Note Purchaser, and Bank of America National Trust and Savings Association, as Construction Loan Agent. The Exhibits and Schedules to the Participation Agreement have not been filed herewith, but will be filed supplementally upon request of the Commission, with the exception that Exhibit E, the Lease, and Exhibit F-1, the Ground Lease have been filed as separate exhibits to this Form 10-Q and EXHIBIT D-1, THE BAYER SUPPORT AGREEMENT, EXHIBIT D-2, THE BAYER AGREEMENT, EXHIBIT S-1, THE BAYTOWN NITRIC ACID PROJECT AND SUPPLY AGREEMENT, EXHIBIT S-2, THE SERVICES AGREEMENT, AND SCHEDULE 6, FIXED PRICE PURCHASE OPTION AMOUNT ARE THE SUBJECTS OF A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FREEDOM OF INFORMATION ACT. EXHIBITS D-1 AND D-2 AND SCHEDULE 6 HAVE NOT BEEN FILED AS EXHIBITS OR SCHEDULES TO THIS 10-Q AS SUCH ENTIRE DOCUMENTS ARE THE SUBJECT OF A REQUEST FOR CONFIDENTIAL TREATMENT, BUT SUCH DOCUMENTS HAVE BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST. EXHIBITS S-1 AND S-2 HAVE BEEN FILED WITH INFORMATION OMITTED WHICH HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

10.6 Lease Agreement dated as of June 27, 1997, between Boatmen's Trust Company of Texas as Owner Trustee and El Dorado Nitrogen Company.

10.7 Security Agreement and Collateral Assignment of Construction Documents, dated as of June 27, 1997, made by El Dorado Nitrogen Company.

10.8 Security Agreement and Collateral Assignment of Facility Documents, dated as of June 27, 1997, made by El Dorado Nitrogen Company and consented to by Bayer Corporation.

11.1 Statement Re: Computation of Per Share Earnings.

27.1 Financial Data Schedule.

(B) Reports on Form 8-K. The Company did not file any reports on Form 8-K during the Quarter ended June 30, 1997.

#### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Company has caused the undersigned, duly-authorized, to sign this report on its behalf on this 19th day of August, 1997.

LSB INDUSTRIES, INC.

By: /s/ Tony M. Shelby

Tony M. Shelby,  
Senior Vice President of Finance  
(Principal Financial Officer)

By: /s/ Jim D. Jones

Jim D. Jones,  
Vice President, Controller and  
Treasurer (Principal Accounting  
Officer)

SEVENTH AMENDMENT  
TO  
LOAN AND SECURITY AGREEMENT

Exhibit 4.1

THIS SEVENTH AMENDMENT TO LOAN AND SECURITY AGREEMENT (the "Amendment") is dated as of April 11, 1997, and entered into by and between BANKAMERICA BUSINESS CREDIT, INC. ( Lender ) and LSB INDUSTRIES, INC. ("Borrower").

WHEREAS, Lender and Borrower have entered into that certain Loan and Security Agreement dated December 12, 1994, as amended by (i) that certain First Amendment to Loan and Security Agreement dated as of August 17, 1995, (ii) that certain Second Amendment to Loan and Security Agreement dated as of December 1, 1995, (iii) that certain Third Amendment to Loan and Security Agreement dated as of April 1, 1996, (iv) that certain Fourth Amendment to Loan and Security Agreement dated as of July 1, 1996, (v) that certain Fifth Amendment to Loan and Security Agreement dated as of November 18, 1996, and (vi) that certain Sixth Amendment to Loan and Security Agreement dated as of February 13, 1997 (as so amended, the "Agreement");

WHEREAS, Lender and Borrower desire to amend the Agreement as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth in the Agreement and this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Definitions. Capitalized terms used in this Amendment, to the extent not otherwise defined herein, shall have the same meanings as in the Agreement, as amended hereby.

Section 1.02. Amendment to Definition of Availability Reductions. The definition of "Availability Reductions" is hereby amended by adding a new subsection (vi) which reads as follows:

"(vi) reserves in Lender s sole discretion with respect to Swap Transactions, with the amount thereof to be at all times based on a weekly mark-to-market calculation given to Lender by Bank s Capital Markets Credit Group."

All other subsections of the definition remain unchanged.

Section 1.03 Amendment to Definition of Obligations. The second sentence of the definition of "Obligations" beginning in its original version as "'Obligations" includes" and ending "Letter of Credit Agreement." is amended in its entirety to read as follows:

"'Obligations" includes, without limitation, (a) all debts, liabilities, and obligations now or hereafter owing from Borrower to Lender under or in connection with the Letters of Credit and (b) all debts, liabilities and obligations now or hereafter owing from the Borrower to the Lender arising from or related to Swap Transactions."

There is no change in the first sentence of the definition of "Obligations".

Section 1.04 New Definition. The following new definition is hereby added to the Agreement:

"Swap Transactions" means interest rate swaps entered into by the Bank s Capital Markets Credit Group for the account of or otherwise for the benefit of the Borrower.

ARTICLE II

Amendments

Section 2.01. Amendment to Article 2. Article 2 of the Agreement is hereby amended by adding a new Section 2.5 which

reads as follows:

"2.5. Swap Transactions. The Borrower may request and the Lender may, in its sole and absolute discretion, arrange for the Borrower to obtain Swap Transactions from the Bank's Capital Markets Credit Group, provided, however, that Lender's exposure to the LSB Borrowing Group may in no event exceed a maximum amount of \$1,850,000. The Borrower agrees to indemnify and hold the Lender harmless from all losses, liabilities, costs, expenses and claims incurred by the Lender arising from or related to such Swap Transactions. The Borrower acknowledges and agrees that the obtaining of Swap Transactions from the Bank's Capital Markets Credit Group (a) is in the sole and absolute discretion of the Bank's Capital Markets Credit Group, (b) is subject to all rules and regulations of the Bank's Capital Markets Credit Group, and (c) is due to the Bank's Capital Markets Credit Group relying on the indemnity of the Lender to the Bank's Capital Markets Credit Group with respect to all risks of loss associated with the Swap Transactions."

Section 2.02. Amendment to Section 12. The first sentence of Section 12 which in its original version reads in its entirety as follows "The initial term of this Agreement shall be three (3) years from the Closing Date (the "Termination Date")" is hereby amended to read in its entirety as follows:

"The initial term of this Agreement shall be from the Closing Date until April 1, 1998 (the "Termination Date")."

All other provisions of Section 12 remain unchanged.

### ARTICLE III

#### Ratifications, Representations and Warranties

Section 3.01.Ratifications. The terms and provisions set forth in this Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Agreement and, except as expressly modified and superseded by this Amendment, the terms and provisions of the Agreement, including, without limitation, all financial covenants contained therein, are ratified and confirmed and shall continue in full force and effect. Lender and Borrower agree that the Agreement as amended hereby shall continue to be legal, valid, binding and enforceable in accordance with its terms.

Section 3.02.Representations and Warranties. Borrower hereby represents and warrants to Lender that the execution, delivery and performance of this Amendment and all other loan, amendment or security documents to which Borrower is or is to be a party hereunder (hereinafter referred to collectively as the "Loan Documents") executed and/or delivered in connection herewith, have been authorized by all requisite corporate action on the part of Borrower and will not violate the Articles of Incorporation or Bylaws of Borrower.

### ARTICLE IV

#### Conditions Precedent

Section 4.01.Conditions. The effectiveness of this Amendment is subject to the satisfaction of the following conditions precedent (unless specifically waived in writing by the Lender):

(a)Lender shall have received all of the following, each dated (unless otherwise indicated) as of the date of this Amendment, in form and substance satisfactory to Lender in its sole discretion:

(i)Company Certificate. A certificate executed by the Secretary or Assistant Secretary of Borrower certifying (A) that Borrower's Board of Directors has met and adopted, approved, consented to and ratified the resolutions attached thereto which authorize the execution, delivery and performance by Borrower of the Amendment and the Loan Documents, (B) the names of the officers of Borrower authorized to sign this Amendment and each of the Loan Documents to which Borrower is to be a party hereunder, (C) the specimen signatures of such officers, and (D) that neither the Articles of Incorporation nor Bylaws of Borrower have been amended since the date of the Agreement;

(ii) No Material Adverse Change. There shall have occurred no material adverse change in the business, operations, financial condition, profits or prospects of Borrower, or in the Collateral, and the Lender shall have received a certificate of Borrower's chief executive officer to such effect;

(iii) Other Documents. Borrower shall have executed and delivered such other documents and instruments as well as required record searches as Lender may require.

(b) All corporate proceedings taken in connection with the transactions contemplated by this Amendment and all documents, instruments and other legal matters incident thereto shall be satisfactory to Lender and its legal counsel, Jenkens & Gilchrist, a Professional Corporation.

## ARTICLE V

### Miscellaneous

Section 5.01. Survival of Representations and Warranties. All representations and warranties made in the Agreement or any other document or documents relating thereto, including, without limitation, any Loan Document furnished in connection with this Amendment, shall survive the execution and delivery of this Amendment and the other Loan Documents, and no investigation by Lender or any closing shall affect the representations and warranties or the right of Lender to rely thereon.

Section 5.02. Reference to Agreement. The Agreement, each of the Loan Documents, and any and all other agreements, documents or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Agreement as amended hereby, are hereby amended so that any reference therein to the Agreement shall mean a reference to the Agreement as amended hereby.

Section 5.03. Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

Section 5.04. APPLICABLE LAW. THIS AMENDMENT AND ALL OTHER LOAN DOCUMENTS EXECUTED PURSUANT HERETO SHALL BE DEEMED TO HAVE BEEN MADE AND TO BE PERFORMABLE IN THE STATE OF OKLAHOMA AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OKLAHOMA.

Section 5.05. Successors and Assigns. This Amendment is binding upon and shall inure to the benefit of Lender and Borrower and their respective successors and assigns; provided, however, that Borrower may not assign or transfer any of its rights or obligations hereunder without the prior written consent of Lender. Lender may assign any or all of its rights or obligations hereunder without the prior consent of Borrower.

Section 5.06. Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument.

Section 5.07. Effect of Waiver. No consent or waiver, express or implied, by Lender to or of any breach of or deviation from any covenant or condition of the Agreement or duty shall be deemed a consent or waiver to or of any other breach of or deviation from the same or any other covenant, condition or duty. No failure on the part of Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power, or privilege under this Amendment, the Agreement or any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Amendment, the Agreement or any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided for in the Agreement and the other Loan Documents are cumulative and not exclusive of any rights and remedies provided by law.

Section 5.08. Headings. The headings, captions and arrangements used in this Amendment are for convenience only and shall not affect the interpretation of this Amendment.

Section 5.09. Releases. As a material inducement to Lender to enter into this Amendment, Borrower hereby represents and warrants that there are no claims or offsets against, or defenses or counterclaims to, the terms and provisions of and the other obligations created or evidenced by the Agreement or the other Loan Documents. Borrower hereby releases, acquits, and forever discharges Lender, and its successors, assigns, and predecessors in interest, their parents, subsidiaries and affiliated organizations, and the officers, employees, attorneys, and agents of each of the foregoing (all of whom are herein jointly and severally referred to as the "Released Parties") from any and all liability, damages, losses, obligations, costs, expenses, suits, claims, demands, causes of action for damages or any other relief, whether or not now known or suspected, of any kind, nature, or character, at law or in equity, which Borrower now has or may have ever had against any of the Released Parties, including, but not limited to, those relating to (a) usury or penalties or damages therefor, (b) allegations that a partnership existed between Borrower and the Released Parties, (c) allegations of unconscionable acts, deceptive trade practices, lack of good faith or fair dealing, lack of commercial reasonableness or special relationships, such as fiduciary, trust or confidential relationships, (d) allegations of dominion, control, alter ego, instrumentality, fraud, misrepresentation, duress, coercion, undue influence, interference or negligence, (e) allegations of tortious interference with present or prospective business relationships or of antitrust, or (f) slander, libel or damage to reputation, (hereinafter being collectively referred to as the "Claims"), all of which Claims are hereby waived.

Section 5.10. Expenses of Lender. Borrower agrees to pay on demand (i) all costs and expenses reasonably incurred by Lender in connection with the preparation, negotiation and execution of this Amendment and the other Loan Documents executed pursuant hereto and any and all subsequent amendments, modifications, and supplements hereto or thereto, including, without limitation, the costs and fees of Lender's legal counsel and the allocated cost of staff counsel and (ii) all costs and expenses reasonably incurred by Lender in connection with the enforcement or preservation of any rights under the Agreement, this Amendment and/or other Loan Documents, including, without limitation, the costs and fees of Lender's legal counsel and the allocated cost of staff counsel.

Section 5.11. NO ORAL AGREEMENTS. THIS AMENDMENT, TOGETHER WITH THE OTHER LOAN DOCUMENTS AS WRITTEN, REPRESENT THE FINAL AGREEMENTS BETWEEN LENDER AND BORROWER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN LENDER AND BORROWER.

IN WITNESS WHEREOF, the parties have executed this Amendment on the date first above written.

"BORROWER"

LSB INDUSTRIES, INC.

By: \_\_\_\_\_  
Name: Tony M. Shelby  
Title: Vice President

"LENDER"

BANKAMERICA BUSINESS CREDIT, INC.

By: \_\_\_\_\_  
Name: Michael J. Jasaitis  
Title: Vice President

Each of the undersigned hereby acknowledges the execution of, and consents to, the terms and conditions of that certain Seventh Amendment to Loan and Security Agreement dated as of April 11, 1997, between LSB Industries, Inc., and BankAmerica Business Credit, Inc. ("Creditor") and reaffirms its obligations under that certain Cross-Collateralization and Cross-Guaranty Agreement (the Cross-Collateralization Agreement ) dated as of December 12, 1994, made by the undersigned in favor of the Creditor, and acknowledges and agrees that the Cross-Collateralization Agreement remains in full force and effect and the Cross-Collateralization Agreement is hereby ratified and confirmed.

Dated as of April 11, 1997.

CLIMATE MASTER, INC.  
L&S BEARING CO.  
SUMMIT MACHINE TOOL  
MANUFACTURING CORP.  
INTERNATIONAL ENVIRONMENTAL  
CORPORATION

By: \_\_\_\_\_  
Tony M. Shelby, Vice President  
acting on behalf of each of  
the above

#### CONSENTS AND REAFFIRMATIONS

Each of the undersigned hereby acknowledges the execution of, and consents to, the terms and conditions of that certain Seventh Amendment to Loan and Security Agreement dated as of April 11, 1997, between LSB Industries, Inc., and BankAmerica Business Credit, Inc. ("Creditor") and reaffirms its obligations under (i) that certain Continuing Guaranty with Security Agreement (the "Guaranty") dated as of December 12, 1994, and (ii) that certain Cross-Collateralization and Cross-Guaranty Agreement (the Cross-Collateralization Agreement ) dated as of December 12, 1994, each made by the undersigned in favor of the Creditor, and acknowledges and agrees that the Guaranty and the Cross-Collateralization Agreement remain in full force and effect and the Guaranty and the Cross-Collateralization Agreement are hereby ratified and confirmed.

Dated as of April 11, 1997.

UNIVERSAL TECH CORPORATION  
LSB CHEMICAL CORP.  
L&S AUTOMOTIVE PRODUCTS CO.  
(f/k/a LSB Bearing Corp.)  
INTERNATIONAL BEARINGS, INC.  
LSB EXTRUSION CO.  
ROTEX CORPORATION  
TRIBONETICS CORPORATION  
SUMMIT MACHINE TOOL SYSTEMS, INC.  
HERCULES ENERGY MFG. CORPORATION  
MOREY MACHINERY MANUFACTURING  
CORPORATION  
CHP CORPORATION  
KOAX CORP.  
APR CORPORATION

By: \_\_\_\_\_  
Tony M. Shelby, Vice President  
acting on behalf of each of  
the above

EIGHTH AMENDMENT  
TO  
LOAN AND SECURITY AGREEMENT  
AND WAIVER OF DEFAULTS

THIS EIGHTH AMENDMENT TO LOAN AND SECURITY AGREEMENT AND WAIVER OF DEFAULTS (the "Amendment") is dated as of May 19, 1997, and entered into by and between BANKAMERICA BUSINESS CREDIT, INC. ( Lender ) and LSB INDUSTRIES, INC. ("Borrower").

WHEREAS, Lender and Borrower have entered into that certain Loan and Security Agreement dated December 12, 1994, as amended by (i) that certain First Amendment to Loan and Security Agreement dated as of August 17, 1995, (ii) that certain Second Amendment to Loan and Security Agreement dated as of December 1, 1995, (iii) that certain Third Amendment to Loan and Security Agreement dated as of April 1, 1996, (iv) that certain Fourth Amendment to Loan and Security Agreement dated as of July 1, 1996, (v) that certain Fifth Amendment to Loan and Security Agreement dated as of November 18, 1996, (vi) that certain Sixth Amendment to Loan and Security Agreement dated as of February 13, 1997, and (vii) that certain Seventh Amendment to Loan and Security Agreement dated as of April 11, 1997 (as so amended, the "Agreement");

WHEREAS, two Events of Default have occurred under the Agreement;

WHEREAS, the Borrower desires that the Lender waive the Events of Default and amend the Agreement in certain respects; and

WHEREAS, the Lender is willing to waive the Events of Default and amend the Agreement subject to the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth in the Agreement and this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

Definitions

Section 1.01. Definitions. Capitalized terms used in this Amendment, to the extent not otherwise defined herein, shall have the same meanings as in the Agreement, as amended hereby.

ARTICLE II

Amendments

Section 2.01. Amendment to Section 9.16. Section 9.16 of the Agreement is hereby amended to read in its entirety as follows:

9.16 Adjusted Tangible Net Worth. Adjusted Tangible Net Worth will not be less than the following amounts at the end of each of the Fiscal Quarters during the following Fiscal Years:

Fiscal Quarters in the Following Fiscal Years	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Fiscal Year Ending December 31, 1996			\$ 66,000,000	\$ 64,500,000
Fiscal Year Ending December 31, 1997	\$ 64,500,000	\$ 61,000,000	\$ 62,000,000	\$ 60,000,000
Each Fiscal Quarter during each Fiscal Year ending thereafter:			\$ 80,400,000	

ARTICLE III

Waivers

Section 3.01. Waiver of Events of Default.

(a) The Lender hereby waives the following Events of

Default: (i) the LSB Borrowing Group's Adjusted Tangible Net Worth for the Fiscal Quarter ending March 31, 1997 was less than \$64,500,000, in breach of Section 9.16 of the Loan Agreement; and (ii) the LSB Borrowing Group's Debt Ratio for the Fiscal Quarter ending March 31, 1997 was greater than 2.39 to 1.0, in breach of Section 9.17 of the Loan Agreement.

(b) The foregoing waiver is only applicable to and shall only be effective to the extent described above. The waiver is limited to the facts and circumstances referred to herein and shall not operate as (i) a waiver of or consent to non-compliance with any other section or provision of the Loan Agreement, (ii) a waiver of any right, power, or remedy of the Lender under the Loan Agreement (except as provided herein), or (iii) a waiver of any other Event of Default or Event which may exist under the Loan Agreement.

#### ARTICLE IV

##### Ratifications, Representations and Warranties

Section 4.01. Ratifications. The terms and provisions set forth in this Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Agreement and, except as expressly modified and superseded by this Amendment, the terms and provisions of the Agreement, including, without limitation, all financial covenants contained therein, are ratified and confirmed and shall continue in full force and effect. Lender and Borrower agree that the Agreement as amended hereby shall continue to be legal, valid, binding and enforceable in accordance with its terms.

Section 4.02. Representations and Warranties. Borrower hereby represents and warrants to Lender that the execution, delivery and performance of this Amendment and all other loan, amendment or security documents to which Borrower is or is to be a party hereunder (hereinafter referred to collectively as the "Loan Documents") executed and/or delivered in connection herewith, have been authorized by all requisite corporate action on the part of Borrower and will not violate the Articles of Incorporation or Bylaws of Borrower.

#### ARTICLE V

##### Conditions Precedent

Section 5.01. Conditions. The effectiveness of this Amendment is subject to the satisfaction of the following conditions precedent (unless specifically waived in writing by the Lender):

(a) Lender shall have received all of the following, each dated (unless otherwise indicated) as of the date of this Amendment, in form and substance satisfactory to Lender in its sole discretion:

(i) Company Certificate. A certificate executed by the Secretary or Assistant Secretary of Borrower certifying (A) that Borrower's Board of Directors has met and adopted, approved, consented to and ratified the resolutions attached thereto which authorize the execution, delivery and performance by Borrower of the Amendment and the Loan Documents, (B) the names of the officers of Borrower authorized to sign this Amendment and each of the Loan Documents to which Borrower is to be a party hereunder, (C) the specimen signatures of such officers, and (D) that neither the Articles of Incorporation nor Bylaws of Borrower have been amended since the date of the Agreement;

(ii) No Material Adverse Change. There shall have occurred no material adverse change in the business, operations, financial condition, profits or prospects of Borrower, or in the Collateral, and the Lender shall have received a certificate of Borrower's chief executive officer to such effect;

(iii) Other Documents. Borrower shall have executed and delivered such other documents and instruments as well as required record searches as Lender may require.

(b) All corporate proceedings taken in connection with the transactions contemplated by this Amendment and all documents, instruments and other legal matters incident thereto shall be satisfactory to Lender and its legal counsel, Jenkens & Gilchrist, a Professional Corporation.

## ARTICLE VI

### Miscellaneous

Section 6.01. Survival of Representations and Warranties. All representations and warranties made in the Agreement or any other document or documents relating thereto, including, without limitation, any Loan Document furnished in connection with this Amendment, shall survive the execution and delivery of this Amendment and the other Loan Documents, and no investigation by Lender or any closing shall affect the representations and warranties or the right of Lender to rely thereon.

Section 6.02. Reference to Agreement. The Agreement, each of the Loan Documents, and any and all other agreements, documents or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Agreement as amended hereby, are hereby amended so that any reference therein to the Agreement shall mean a reference to the Agreement as amended hereby.

Section 6.03. Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

Section 6.04. APPLICABLE LAW. THIS AMENDMENT AND ALL OTHER LOAN DOCUMENTS EXECUTED PURSUANT HERETO SHALL BE DEEMED TO HAVE BEEN MADE AND TO BE PERFORMABLE IN THE STATE OF OKLAHOMA AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OKLAHOMA.

Section 6.05. Successors and Assigns. This Amendment is binding upon and shall inure to the benefit of Lender and Borrower and their respective successors and assigns; provided, however, that Borrower may not assign or transfer any of its rights or obligations hereunder without the prior written consent of Lender. Lender may assign any or all of its rights or obligations hereunder without the prior consent of Borrower.

Section 6.06. Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument.

Section 6.07. Effect of Waiver. No consent or waiver, express or implied, by Lender to or of any breach of or deviation from any covenant or condition of the Agreement or duty shall be deemed a consent or waiver to or of any other breach of or deviation from the same or any other covenant, condition or duty. No failure on the part of Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power, or privilege under this Amendment, the Agreement or any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Amendment, the Agreement or any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies provided for in the Agreement and the other Loan Documents are cumulative and not exclusive of any rights and remedies provided by law.

Section 6.08. Headings. The headings, captions and arrangements used in this Amendment are for convenience only and shall not affect the interpretation of this Amendment.

Section 6.09. Releases. As a material inducement to Lender to enter into this Amendment, Borrower hereby represents and warrants that there are no claims or offsets against, or defenses or counterclaims to, the terms and provisions of and the other obligations created or evidenced by the Agreement or the other Loan Documents. Borrower hereby releases, acquits, and forever

discharges Lender, and its successors, assigns, and predecessors in interest, their parents, subsidiaries and affiliated organizations, and the officers, employees, attorneys, and agents of each of the foregoing (all of whom are herein jointly and severally referred to as the "Released Parties") from any and all liability, damages, losses, obligations, costs, expenses, suits, claims, demands, causes of action for damages or any other relief, whether or not now known or suspected, of any kind, nature, or character, at law or in equity, which Borrower now has or may have ever had against any of the Released Parties, including, but not limited to, those relating to (a) usury or penalties or damages therefor, (b) allegations that a partnership existed between Borrower and the Released Parties, (c) allegations of unconscionable acts, deceptive trade practices, lack of good faith or fair dealing, lack of commercial reasonableness or special relationships, such as fiduciary, trust or confidential relationships, (d) allegations of dominion, control, alter ego, instrumentality, fraud, misrepresentation, duress, coercion, undue influence, interference or negligence, (e) allegations of tortious interference with present or prospective business relationships or of antitrust, or (f) slander, libel or damage to reputation, (hereinafter being collectively referred to as the "Claims"), all of which Claims are hereby waived.

Section 6.10. Expenses of Lender. Borrower agrees to pay on demand (i) all costs and expenses reasonably incurred by Lender in connection with the preparation, negotiation and execution of this Amendment and the other Loan Documents executed pursuant hereto and any and all subsequent amendments, modifications, and supplements hereto or thereto, including, without limitation, the costs and fees of Lender's legal counsel and the allocated cost of staff counsel and (ii) all costs and expenses reasonably incurred by Lender in connection with the enforcement or preservation of any rights under the Agreement, this Amendment and/or other Loan Documents, including, without limitation, the costs and fees of Lender's legal counsel and the allocated cost of staff counsel.

Section 6.11. NO ORAL AGREEMENTS. THIS AMENDMENT, TOGETHER WITH THE OTHER LOAN DOCUMENTS AS WRITTEN, REPRESENT THE FINAL AGREEMENTS BETWEEN LENDER AND BORROWER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN LENDER AND BORROWER.

IN WITNESS WHEREOF, the parties have executed this Amendment on the date first above written.

"BORROWER"

LSB INDUSTRIES, INC.

By: \_\_\_\_\_  
Name: Tony M. Shelby  
Title: Vice President

"LENDER"

BANKAMERICA BUSINESS CREDIT, INC.

By: \_\_\_\_\_  
Name: Michael J. Jasaitis  
Title: Vice President

#### CONSENTS AND REAFFIRMATIONS

Each of the undersigned hereby acknowledges the execution of, and consents to, the terms and conditions of that certain Eighth Amendment to Loan and Security Agreement and Waiver of Defaults dated as of May 19, 1997, between LSB Industries, Inc., and BankAmerica Business Credit, Inc. ("Creditor") and reaffirms its obligations under that certain Cross-Collateralization and Cross-Guaranty Agreement (the Cross-Collateralization Agreement) dated as of December 12, 1994, made by the undersigned in favor of the Creditor, and acknowledges and agrees

that the Cross-Collateralization Agreement remains in full force and effect and the Cross-Collateralization Agreement is hereby ratified and confirmed.

Dated as of May 19, 1997.

CLIMATE MASTER, INC.  
L&S BEARING CO.  
SUMMIT MACHINE TOOL  
MANUFACTURING CORP.  
INTERNATIONAL ENVIRONMENTAL  
CORPORATION

By: \_\_\_\_\_  
Tony M. Shelby, Vice President  
acting on behalf of each of  
the above

#### CONSENTS AND REAFFIRMATIONS

Each of the undersigned hereby acknowledges the execution of, and consents to, the terms and conditions of that certain Eighth Amendment to Loan and Security Agreement and Waiver of Defaults dated as of May 19, 1997, between LSB Industries, Inc., and BankAmerica Business Credit, Inc. ("Creditor") and reaffirms its obligations under (i) that certain Continuing Guaranty with Security Agreement (the "Guaranty") dated as of December 12, 1994, and (ii) that certain Cross-Collateralization and Cross-Guaranty Agreement (the Cross-Collateralization Agreement ) dated as of December 12, 1994, each made by the undersigned in favor of the Creditor, and acknowledges and agrees that the Guaranty and the Cross-Collateralization Agreement remain in full force and effect and the Guaranty and the Cross-Collateralization Agreement are hereby ratified and confirmed.

Dated as of May 19, 1997.

UNIVERSAL TECH CORPORATION  
LSB CHEMICAL CORP.  
L&S AUTOMOTIVE PRODUCTS CO.  
(f/k/a LSB Bearing Corp.)  
INTERNATIONAL BEARINGS, INC.  
LSB EXTRUSION CO.  
ROTEX CORPORATION  
TRIBONETICS CORPORATION  
SUMMIT MACHINE TOOL SYSTEMS, INC.  
HERCULES ENERGY MFG. CORPORATION  
MOREY MACHINERY MANUFACTURING  
CORPORATION  
CHP CORPORATION  
KOAX CORP.  
APR CORPORATION

By: \_\_\_\_\_  
Tony M. Shelby, Vice President  
acting on behalf of each of  
the above

\*\*\*\*INDICATES INFORMATION IN THIS DOCUMENT WHICH HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

THIS AGREEMENT is entered into as of the 28th day of May, 1997, to be effective January 1, 1997, between KOCH NITROGEN COMPANY, a Nebraska corporation, with principal offices at 4111 East 37th Street North, Wichita, Kansas 67220 (herein called "Koch") and EL DORADO CHEMICAL COMPANY, an Oklahoma corporation, with principal offices at 16 S. Pennsylvania, Oklahoma City, Oklahoma 73107 (herein called "Buyer");

WITNESSETH:

WHEREAS, as specified in this Agreement, Buyer and Koch desire to enter into an anhydrous ammonia sales agreement under which Koch agrees to supply to Buyer and Buyer agrees to take and pay for, or to pay for if not taken, a Required Yearly Quantity of anhydrous ammonia; and

WHEREAS, as specified in this Agreement, Buyer will take delivery of such Required Yearly Quantity in approximately equal monthly quantities throughout the term of this Agreement; and

WHEREAS, as specified in this Agreement, Koch shall charge Buyer a price for each Ton to be taken or paid for hereunder based upon the pricing formula set out in this Agreement; and

WHEREAS, as specified in this Agreement, Buyer shall be responsible for all taxes related to such quantities of anhydrous ammonia and for all transportation charges beyond the Delivery Point hereunder; and

WHEREAS, the parties desire to state their agreements in writing:

NOW THEREFORE, in consideration of the mutual promises herein contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

#### I. DEFINITIONS

Whenever used in this Agreement, the following terms shall have the following respective meanings:

- A. "Agreement" shall mean this Anhydrous Ammonia Sales Agreement between Koch and Buyer.
- B. "Ammonia Pipeline Transportation Charge" shall mean Koch's actual Product pipeline transportation cost from Koch's Sterlington, Louisiana ammonia production facility to the pipeline Delivery Point.
- C. "Contract Price" shall mean the price stated in Article VI, Section A.
- D. "Contract Year" shall mean: (i) each of the three (3) twelve (12) Month periods during the term hereof, the first of which shall begin on the Effective Date and shall end on December 31, 1997 and the following two (2) twelve (12) month periods until December 31, 1999 and (ii) the four (4) month period from January 1, 2000 to April 30, 2000.
- E. "Conversion Factor" shall mean \*\*\*\*
- F. "Deficiency Volumes" shall mean the definition stated in Article III, Section B.
- G. "Delivery Point" shall mean (i) for pipeline deliveries, the discharge side of the Product meter owned by Koch Pipeline Company, L.P. at Buyer's El Dorado, Arkansas chemical production facility, or (ii) for rail or trucking deliveries, the point at Buyer's facility where the truck or rail cars come to rest, or (iii) another delivery point along Koch Pipeline

Company, L.P.'s ammonia pipeline, provided Buyer gives Koch at least forty-five (45) days written notice prior to the date it wishes to begin delivery at such alternate delivery point.

- H. "Effective Date" shall mean January 1, 1997.
- I. "Fixed Charge" shall mean \*\*\*\*
- J. "Gas Price" shall mean (MMBTU Price + Transportation Charge) multiplied by the Conversion Factor.
- K. "Koch Facility" shall mean Koch's anhydrous ammonia production facility at Sterlington, Louisiana.
- L. "Maximum Take Quantity" shall mean the definition stated in Article VII, Section A.
- M. "Minimum Take Quantity" shall mean the definition stated in Article VII, Section A.
- N. "MMBTU Price" shall mean the "Henry Hub" Index price in MMBTU's reported under the table entitled "Market Center Spot-Gas Prices" in the first issue of Inside FERC's Gas Market Report for the Month of delivery. If Inside FERC's Gas Market Report and/or the "Henry Hub" Index price are no longer published, the parties shall meet within 30 days of the date such publication ceases to determine a new publication and/or index.
- O. "Month" shall mean a calendar month.
- P. "Monthly Quantity" for any given Month during the term of this Agreement shall mean 10,000 Tons/Month.
- Q. "Product" shall mean commercial anhydrous ammonia having the following specifications:
- |                                     |  |
|-------------------------------------|--|
| Ammonia (NH <sub>3</sub> ) Content: | 99.5% by weight minimum                        |
| Oil:                                | 5 ppm maximum by weight                        |
| Water:                              | 0.2% by weight minimum; 0.5% by weight maximum |
| Inerts:                             | 0.5 cc per gram maximum                        |
- R. "PPI" shall mean the Producer Price Index for Chemicals and Allied Products published by the United States Department of Labor.
- S. "Required Yearly Quantity" shall mean one hundred twenty thousand (120,000) Tons per Contract Year, except for the four (4) Month period from January 1, 2000 to April 30, 2000 where it shall be defined as forty thousand (40,000) Tons per Contract Year.
- T. "Taxes" shall mean the definition set forth in Article VIII, Section A.
- U. "Ton" shall mean a short ton of two thousand (2,000) pounds avoirdupois.
- V. "Transportation Charge" shall mean Koch's actual natural gas transportation charge, including fuel, from Henry Hub to Koch's Sterlington, Louisiana ammonia facility, which as of the Effective Date of this Agreement is \*\*\*\*, subject to adjustments under Article VI, Section B, below.
- W. "Weighted Average Monthly Gas Price" shall mean (i) the sum of the (Gas Price x Tons of Product actually taken by Buyer) for each Month of the subject Contract Year divided by (ii) the total Tons of Product actually taken by Buyer during the subject Contract Year, provided if Buyer fails to take any Product during a Contract Year, the total amount taken during each Month shall be deemed to be the Monthly Quantity and the total amount take during the Contract Year shall be deemed to be the Required Yearly Quantity.
- X. "Yearly Contract Price" shall mean the price per Ton of Product equal to the sum of (i) the Weighted Average Monthly Gas Price, plus (ii) the Fixed Charge, for the

applicable Contract Year.

## II. TERM

This Agreement shall continue and remain in full force and effect for a term of forty (40) Months commencing on the Effective Date and ending April 30, 2000.

## III. QUANTITY TO BE SOLD AND PURCHASED

- A. Purchase Obligation. Subject to Article III, Section B, Article VII, Section A and Article IX below, during each Contract Year, Koch agrees to sell and deliver to Buyer and Buyer agrees to take and pay for, or pay Koch the Contract Price if not taken, the Required Yearly Quantity of Product. If during any Month of a particular Contract Year, Koch fails to deliver the volume of Product requested by Buyer for such Month, up to the Maximum Take Quantity, and such failure to deliver is not otherwise excused by another provision of this Agreement, Buyer's Required Yearly Quantity for the Contract Year shall be reduced by the quantity of Product Koch failed to deliver during such Contract Year. In addition, if for two (2) consecutive Months during the term of this Agreement, Koch fails to deliver a minimum of eighty percent (80%) of the Product volumes requested by Buyer for the particular Months (up to the Maximum Take Quantity), for any reason other than a Force Majeure event or for an event where Koch's performance is excused hereunder, then Buyer shall have the right to terminate this Agreement by providing Koch written notice within ten (10) days of the end of the second Month where Koch failed to provide at least eighty percent (80%) of Buyer's requested Product volumes.
- B. Make-up Rights. Subject to Article VII, Section B below, if during any Contract Year Buyer fails to take the Required Yearly Quantity (the difference between the Required Yearly Quantity and the quantity actually taken shall be referred to hereafter as the "Deficiency Volumes"), Buyer shall have the right to take delivery of the Deficiency Volumes during the twenty-four (24) months following the Contract Year it failed to take such Deficiency Volumes, including after the term of this Agreement expires. Buyer's take of any Deficiency Volumes shall be in addition to its take obligations of the Required Yearly Quantity for the subject Contract Year. If Buyer elects to take delivery of Deficiency Volumes during the twenty-four (24) Months following the Contract Year it failed to take the Deficiency Volumes, in addition to the Yearly Contract Price paid in the Contract Year it failed to take the Deficiency Volumes, Buyer shall pay Koch the product of the (i) difference between the Contract Price for the Month Buyer actually takes delivery of Deficiency Volumes and the Yearly Contract Price paid by Buyer in the Contract Year it failed to take the Deficiency Volumes multiplied by (ii) the Tons of Deficiency Volumes actually taken in the subject Month of the following Contract Year. If Buyer elects to take Deficiency Volumes after this Agreement's term expires, Buyer shall pay Koch, in addition to the Yearly Contract Price paid in the Contract Year it failed to take the Deficiency Volumes, the product of (i) the difference between the Contract Price for the Month it actually takes delivery of any Deficiency Volumes calculated as if the term of this Agreement had been extended to such Month and the Yearly Contract Price paid by Buyer in the Contract Year it failed to take the Deficiency Volumes multiplied by (ii) the Tons of Deficiency Volumes actually taken during the subject Month after this Agreement's term expires. If Buyer elects not to take Deficiency Volumes as set forth in this Section B, it waives any rights to take the Deficiency Volumes at a later date.
- C. No Duty to Mitigate. It is understood and agreed by Buyer that its obligation to pay for Product it elects not to take during any Contract Year is not in the nature of damages. Rather, such a payment constitutes

an alternative measure of performance elected by Buyer. This alternative measure is designed to compensate Koch for the risk of producing, procuring and supplying the Product, while it is expressly understood that Buyer has accepted the market risk associated with such a contract. Therefore, if Buyer fails to take or to pay for the Required Yearly Quantity not taken in any Contract Year, Koch shall have no duty or obligation to resell or otherwise mitigate its potential losses arising from Buyer's failure to perform its contractual obligations.

D. Measurement. The quantity of Product delivered hereunder to Buyer by pipeline shall be governed by the weights and measures taken by meters owned by Koch Pipeline Company, L.P. at the Delivery Point pursuant to Koch Pipeline Company, L.P.'s tariff in effect on the date of delivery. For trucking or rail deliveries, the quantity of Product delivered to Buyer shall be governed by the weights and measures taken as the trucks or rail cars are loaded at the Koch Facility. The foregoing measurements of said quantities shall be final and conclusive, unless proven to be in error.

E. Refund. If Buyer and Koch execute this Agreement by June 1, 1997, within five (5) business days of Koch receiving payment from Buyer for Product purchased in May 1997, Koch shall refund to Buyer the difference between (i) the total price paid by Buyer for Product purchased from Koch from the Effective Date until the date the Contract Price becomes effective hereunder and (ii) the total Tons of Product purchased by Buyer from Koch from the Effective Date until the date the Contract Price becomes effective hereunder multiplied by the lower of (x) the Contract Price and (y) the "Green Markets-Gulf Coast Low Average", less three percent (3%). The "Green Markets Gulf Coast Low Average" shall mean the average of the weekly lows of the ranges of "Green Markets" Price Scan, Northern American Domestic Spot Quotes, U.S. Gulf New Orleans, FOB Barge for the Month of delivery.

#### IV. QUALITY

All Product delivered hereunder shall conform to the specifications set forth in Section Q of Article I. All claims by Buyer that any Product delivered hereunder does not conform to the specifications set forth in said Section Q, shall be made in writing and sent within thirty (30) days of Koch's delivery of such Product to the Delivery Point. Failure to give written notice of such claim within the specified time shall constitute a waiver and bar of and to such claim, and Buyer shall be precluded from relying on defects which are not stated in such notice as a basis for rejection or assertion of a breach.

#### V. WARRANTIES

A. Koch makes no warranty of any kind, express or implied, except that Product sold hereunder shall conform to the specifications set forth in Section Q of Article I and that Koch will convey good title thereto, free from any lien or security interest. Koch ASSUMES NO OTHER LIABILITY WITH RESPECT TO PRODUCT AND MAKES NO OTHER WARRANTY WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, EXPRESSED OR IMPLIED, WITH RESPECT THERETO.

B. Neither party shall be liable, under any circumstances, for any special, indirect, incidental, consequential (including but not limited to, loss of profits or any similar damages) or punitive or exemplary damages arising out of this Agreement, except for third party personal injuries and property damage which are deemed by applicable law to be consequential damages. In no event shall the amount of any claim by Buyer, whether for failure to meet the specifications, for non-delivery, or for any other reason, be greater than the actual replacement costs of the Product for the particular shipment. In this regard, Buyer's sole and exclusive remedy for any breach of this Agreement by Koch shall be, at Koch's option, replacement of any

nonconforming product at the Delivery Point or payment not to exceed the replacement price of the Product. Buyer shall use reasonable efforts to obtain reasonably priced replacement Product.

## VI. PRICE AND PAYMENT

- A. Contract Price. For each Ton of Required Yearly Quantity to be sold to Buyer hereunder, Koch shall charge, and Buyer shall pay to Koch the following Contract Price:  
\*\*\*\*
- B. Transportation Charge Adjustment. The Transportation Charge component of the Gas Price shall be increased or decreased whenever Koch incurs a cost change to reflect Koch's actual natural gas transportation costs (including fuel) from Henry Hub to Koch's Facility.
- C. Fixed Charge Adjustment. The Fixed Charge shall be adjusted annually beginning January 1, 1998, and shall be adjusted on January 1 of each calendar year thereafter, by the difference in the PPI as it existed on January 1, 1997, and each Contract Year thereafter. To calculate each annual adjustment, the difference in the PPI for the preceding Contract Year (expressed as a percentage) and the PPI for the subject Contract Year (expressed as a percentage) shall be multiplied by the then effective Fixed Charge. For example, stated for illustrative purposes only, to adjust the Fixed Charge effective January 1, 1998, the difference in the PPI for the year 1997 and the PPI for 1996 will be calculated, and then multiplied by the Fixed Charge in effect on January 1, 1997. If the PPI ceases to be published, or the government changes the underlying basis of how the index is calculated, the parties shall meet within thirty (30) days of the date publication ceases or the date the index is changed to determine a replacement index.
- D. Ammonia Pipeline Transportation Charge Adjustment. The Ammonia Pipeline Transportation Charge shall be increased or decreased whenever Koch incurs a cost change to reflect Koch's actual Product transportation costs from Koch's Facility to the Delivery Point.
- E. Rail or Truck Transportation Costs. Notwithstanding any other provision of this Agreement, if ammonia pipeline transportation service is interrupted or curtailed, preventing Koch from making all or a portion of the required deliveries of Product hereunder, Koch shall use reasonable efforts to arrange rail or trucking transportation service from Koch's Facility to Buyer's Facility. Buyer shall be responsible for and reimburse Koch for all rail and/or trucking transportation costs incurred by Koch for deliveries of Product hereunder, including without limitation, demurrage charges. However, if Buyer is forced to pay a trucking and/or rail transportation rate that is higher than the Pipeline Transportation Charge and the increased transportation rate makes it uneconomical for Buyer to operate Buyer's Facility, forcing Buyer to shut down such facility, then Buyer shall have the right to suspend its performance hereunder by providing Koch with thirty (30) days written notice. However, Buyer shall not be allowed to suspend its performance hereunder if Koch, within its sole discretion, elects to pay the difference between the Ammonia Pipeline Transportation Charge and the trucking and/or rail transportation charges to the Delivery Point. If it remains uneconomical for Buyer to operate Buyer's Facility for sixty (60) consecutive days from the date Buyer gives Company notice solely because of the interruption or curtailment of pipeline Product deliveries hereunder and Koch elects not to pay the transportation differential, then Buyer shall have the right to terminate this Agreement by providing Koch with written notice within five (5) days of the end of the sixty (60) day period.
- F. Payment Terms. \*\*\*\*

- G. Deficiency Payment. If during a Contract Year Buyer fails to take the Required Yearly Quantity, Koch shall invoice Buyer within thirty (30) days of the end of the Contract Year for an amount equal to the Deficiency Volumes multiplied by the Yearly Contract Price for such Contract Year. Buyer shall pay Koch the foregoing amount within two (2) days of the invoice date by Koch debiting Buyer's bank account using EFT.
- H. Letter of Credit. As assurance to Koch for Buyer's performance hereunder, Buyer agrees at least one business day prior to the execution of this Agreement to deliver to Koch an irrevocable standby letter of credit in the amount of \$3.5 million dollars (\$3,500,000) (the "LC") issued by a bank or other financial institution acceptable to the Credit Department of Koch Industries, Inc. Such LC shall be in the form of Addendum A attached hereto and made a part hereof. Buyer shall annually renew or cause the renewal of the LC at least thirty (30) days prior to the LC's expiration date. The LC shall remain effective until 30 days after the term of this Agreement expires. If the bank or financial institution issuing the LC shall at any time cease to be acceptable to the Credit Department of Koch Industries, Inc., as determined in its sole discretion, then within fifteen (15) calendar days after written notice from Koch, Buyer agrees it shall deliver to Koch a substitute irrevocable standby LC issued by a bank or other financial institution satisfactory to Koch, without terminating the original or then outstanding LC until such substitute LC has been delivered to Koch. If Buyer fails or refuses to cause the renewal of an existing LC or the delivery of a substitute LC within the required time period, such failure or refusal shall constitute a material breach of this Agreement entitling Koch to collect damages and to draw on the original or then outstanding letter of credit for such damages, in addition to any other remedies Koch may be entitled to under this Agreement or at law or in equity. Koch shall give Buyer five (5) days notice prior to drawing on the LC.
- I. Additional Credit. Koch may from time to time demand different terms of payment, or additional assurance of payment, or other credit terms whenever Koch within its good faith discretion deems itself insecure because the prospect for payment or performance reasonably appears impaired. In any such event, and upon written notice specifying the event warranting the change in terms of payment, additional assurance of payment, or credit, Koch may suspend further deliveries pending agreement to the revised terms, including, but not limited to, pending agreement of Buyer to the posting of an appropriate bond, an additional letter of credit or other security acceptable to Koch to further secure Buyer's obligations hereunder. If Buyer fails or refuses to give adequate assurance of performance or payment upon demand therefor, Koch may treat such failure or refusal as a repudiation and breach of this Agreement, thereby entitling Koch to exercise all remedies provided for under this Agreement and any other remedy it may have at law or in equity.

## VII. DELIVERY

- A. Required Yearly Quantity. Subject to variations as may be necessitated due to a Force Majeure event as set out in Article IX, Koch shall deliver the Required Yearly Quantity, and Buyer shall take delivery of the Required Yearly Quantity in approximately equal quantities of 10,000 Tons per Month. However, in no event (except as provided in the preceding sentence) shall Buyer take delivery of less than eight thousand (8,000) Tons per Month (the "Minimum Take Quantity"), nor shall Seller be obligated to deliver more than twelve thousand (12,000) Tons per Month (the "Maximum Take Quantity"). Buyer shall notify Koch no later than the 1<sup>st</sup> calendar day of the Month immediately prior to the Month of delivery of the number of Product Tons it wishes to receive for such Month of delivery. Buyer shall

promptly notify Koch in writing of any known or anticipated changes that will not permit Buyer to receive the Monthly Quantity.

- B. Deficiency Volumes. If Buyer elects to take delivery of Deficiency Volumes in a subsequent Contract Year or after the term of this Agreement expires as set forth in Article III, Section B above, it shall give Koch forty-five (45) days written notice prior to the first day of the requested Month of delivery. Unless otherwise agreed to by Koch, Buyer shall take delivery of such Deficiency Volumes in approximately equal quantities during each Month of the subsequent Contract Year or the twelve (12) month period after the term of this Agreement expires, unless otherwise agreed to by Koch in writing. However, in no event shall Koch be required to deliver more than twelve thousand ( 12,000) Tons of Deficiency Volumes in any given Month.
- C. Title and Risk of Loss. Koch shall deliver the Product hereunder to Buyer at the Delivery Point, and upon the passing of said title to Buyer, Buyer shall be deemed to have exclusive ownership and control of said Product and shall be responsible for any injuries or damages caused thereby.

#### VIII. TAXES

- A. All present and future taxes, including, but not limited to, the Superfund Tax, (referred to herein as "Taxes") relating to the Product delivered hereunder, including all new taxes or increases in existing taxes including excise taxes (but excluding Koch's net income, excess profits, or corporate franchise taxes) imposed by any governmental authority upon the manufacture, use, sale, or delivery of the Product, shall be for Buyer's account, unless Buyer delivers to Koch current exemption certificates evidencing Buyer's exemption from paying such Taxes.
- B. Buyer agrees to indemnify and hold harmless Koch and its successors and assigns from and against any and all excise taxes (but not including net income, excess profits, or corporate franchise taxes), inclusive of any penalty and interest, assessed at a future date against Koch by any governmental authority upon the manufacture, use, sale, or delivery of the Required Yearly Quantity and/or Additional Volumes, whether taken or not.

#### IX. FORCE MAJEURE

- A. Neither Koch, nor Buyer, shall be liable for any failure or delay in performance under this Agreement, except for the obligation to make money payments due hereunder for Product already purchased, due to a Force Majeure event. "Force Majeure," as used herein shall mean any event which may be due in whole or in part to any contingency, delay, failure, cause or other occurrence of any nature beyond a party's reasonable control, whether it is presently occurring or occurs in the future, which (i) prevents Koch from producing, selling, purchasing or transporting the Product or (ii) which prevents Product from being used at Buyer's chemical facility in El Dorado, Arkansas (referred to hereinafter as Buyer's Facility).
- B. The term "Force Majeure" shall not include (i) an event caused by a party's sole or contributory negligence; (ii) Koch's ability to sell or Buyer's ability to purchase Product at a price more advantageous than the Contract Price; (iii) Buyer's loss of markets for products produced at Buyer's Facility; (iv) shutdown of Seller's Facility or Buyer's Facility for reasons other than a Force Majeure event and (v) routine or scheduled maintenance at Seller's Facility or Buyer's Facility.
- C. If a Force Majeure event occurs, the declaring party may exercise its right under this Article by giving timely notice thereof to the other party setting forth with reasonable particularity the nature of the Force

Majeure event. The declaring party shall use reasonable efforts to remedy the situation as quickly as possible and shall only be excused from performance hereunder during the duration of the Force Majeure event. The declaring party shall give the other party prompt notice of when the Force Majeure event ends. If Koch's deliveries of Product to Buyer are impeded due to a Force Majeure event, Koch shall have the right to apportion deliveries among its present and future customers (including regular customers not then under contract) and Koch's own requirements on such basis as may appear to Koch to be appropriate and equitable. Koch shall not be obligated to take any action which would result in increasing its performance costs under this Agreement beyond the costs which it would have incurred in the absence of such occurrence, delay or cause. In this regard, should Koch be required to operate the Koch Facility in a manner that results in Koch violating an operational flow order or similar gas pipeline order in order to meet its obligations under this Agreement, and the violation triggers a penalty or other charge to be incurred by Koch, Koch shall have the right to invoice Buyer for such charge on a per Ton basis as follows: ([the dollar amount per MMBTU of such a charge x Conversion Factor] x the number of Tons of Product produced using natural gas to which such charge applies). Buyer agrees to pay such charge in addition to the Contract Price per Ton and all other charges to be paid by Buyer to Koch for Product under this Agreement until such penalty or charge is curtailed as against Koch, provided, that in any such event, Buyer will have the option of declining to take Product that is subject to such penalty or charge. The Required Yearly Quantity for the subject Contract Year shall be reduced by the Tons of Product Buyer declines to take under the preceding sentence.

- D. If a Force Majeure event occurs, Koch shall have the option, but not the obligation, to reduce the number of Tons of Product that it is required to deliver and Buyer is required to take or pay for hereunder; provided, that such reduction shall not affect the obligation of Koch to deliver, nor the obligation of Buyer (except as provided for herein) to take or pay for, the remaining Tons to be taken or paid for hereunder. If Koch elects to reduce the number of Tons Buyer is obligated to take or pay for in a particular Contract Year due to a Force Majeure event, or if the Force Majeure event continues into a subsequent Contract Year, Buyer's Required Yearly Quantity shall be reduced by number of Tons canceled by Koch due to the Force Majeure event. Koch's exercise of its option to cancel such affected Tons must be made by notice in writing by Koch to Buyer no later than thirty (30) days after the Force Majeure event no longer exists. If Koch does not exercise such option, the quantity of Product which was not delivered and received during the occurrence shall be delivered by Koch and received by Buyer after the Force Majeure event no longer exists during the term of this Agreement or within a reasonable period immediately following the expiration of this Agreement depending upon when Koch has Product available. If Koch delivers the Product after the Force Majeure event no longer exists during the term hereof, the Contract Price per Ton for such Product shall be as set forth in Article VI, Section A calculated for the Month Koch actually delivers the Product. If, however, Koch delivers the Product after the end of this Agreement's term, the price for such Product shall be the price per Ton according to the formula contained in Article VI, Section A and the definitions contained in Article I that would have been charged during the Month the Product is actually delivered if the term of this Agreement had continued in effect. If a Force Majeure event exists for a period of sixty (60) days or longer, or the declaring party gives notice that such event will last more than sixty (60) days, the non-declaring party shall have the option to terminate this Agreement by written notice to the other. Upon such termination, all obligations of the parties hereunder shall terminate without liability to the other party, except

for obligations which accrued prior to the effective date of the termination.

- E. If, at any time during this Agreement's term, any regulatory or governmental body adopts, issues, or publishes any action, rule, or order which directly or indirectly materially and adversely affects the rights or obligations of Koch under this Agreement or (each of the events described in hereafter referred to as "Adverse Action"), Koch shall notify Buyer in writing of the Adverse Action and the parties shall enter into negotiations to modify this Agreement. If negotiations regarding the Adverse Action do not result in Koch and Buyer agreeing on the terms of a modification to this Agreement within sixty (60) days of Koch's notice to Buyer, Koch shall have the right, but not the obligation, to suspend its performance hereunder until such time, if any, as the parties reach agreement on such a modification to this Agreement. In the event such Adverse Action continues for a period of one hundred twenty (120) days after Koch notifies Buyer of the same and the parties have not resolved the handling of the Adverse Action, either party may, but is not required to, terminate this Agreement upon thirty (30) days written notice to the other party within one hundred eighty (180) days of when Koch first notified buyer of the Adverse Action. Upon termination, all obligations by either party shall cease, except obligations to remit money due and payable. In the event of Adverse Action, upon written request, Koch shall provide Buyer with data or information reasonably necessary for Buyer to determine that such Adverse Action exists, subject to the confidentiality obligations of Article XV of this Agreement.

#### X. REMEDIES FOR PAYMENT BREACH

- A. If Buyer is late in making any payment due to Koch under Article VI hereof, or otherwise, Koch may at its sole discretion by notice to Buyer elect one or more of the following courses of action:
1. Cease to make any further deliveries hereunder until Buyer has made the late payment and has taken steps to assure Koch that there shall be no such delinquencies in the future;
  2. Refuse to make any further deliveries hereunder except upon cash payments before delivery;
  3. Stop delivery of goods in the possession of a carrier or other bailee as provided by law;
  4. Resell any Product concerned without further notice to Buyer and without affecting or abating Buyer's other obligations under this Agreement;
  5. Set off any obligations Koch may have to Buyer against the payments due Koch hereunder; or
  6. Draw upon any letter of credit and/or other security provided by Buyer hereunder, provided any draw by Koch shall not exceed the amounts due and payable.

If Buyer has not remedied late payments to the reasonable satisfaction of Koch within ten (10) days of such notice, Koch may at its option by notice to Buyer terminate this Agreement (without discharging any claim for breach), provided Koch shall not be allowed to terminate this Agreement if the amount of Buyer's liability to Koch does not exceed the outstanding LC amount and Buyer makes-up the amount drawn by Koch under the LC within five (5) days of the date Koch draws on the LC; however, Koch shall have the right to suspend performance until Buyer replenishes the LC. The election by Koch of any of the courses of action hereto shall in no way limit any other remedies available to Koch under this Agreement or otherwise at law or in equity.

B. If either party:

1. Voluntarily petitions under or otherwise seeks the benefit of any bankruptcy, reorganization, arrangement or insolvency law; or
2. Makes a general assignment for the benefit of creditors; or
3. Is adjudicated bankrupt or becomes insolvent; or
4. Allows a receiver or trustee of the business to be appointed; or
5. Fails to perform any part of this Agreement (other than provided for in Section A. of this Article) and upon written notice of such failure by the other party fails to remedy the same within thirty (30) days of such notice, or in the event such failure cannot reasonably be cured within thirty (30) days, does not initiate and pursue reasonable corrective action within said period of time, then, in any of said events, this Agreement may be terminated forthwith by written notice at the option of the other party with such other party retaining all its other rights and remedies at law or in equity.

#### XI. RIGHTS NOT WAIVED

The waiver by either party hereto of any breach of this Agreement by the other party hereto shall not be deemed to be a waiver of any successive or other breach of this Agreement. Each and every right, power and remedy may be excused from time to time and so often and in such order as may be deemed expedient by the party, and the exercise of any such right, power or remedy shall not be deemed a waiver of the right to exercise at the same time or thereafter, any other right, power or remedy.

#### XII. NOTICES

Any notices, requests or other communications required or permitted by any provision of this Agreement shall be in writing and shall be deemed delivered if delivered by hand, facsimile or mailed by U.S. Postal Service, postage prepaid, by registered or certified mail, and if to Koch, addressed to:

Koch Nitrogen Company 4111 East 37th Street North P.O. Box 2256 Wichita, KS 67201 Attention: President	Secretary Koch Nitrogen Company c/o Legal Department 4111 East 37th Street North P.O. Box 2256 Wichita, KS 67201
--	---

or, if to Buyer, addressed to:

El Dorado Chemical Company 16 S. Pennsylvania Oklahoma City, OK 73107 Attention: President	El Dorado Chemical Company 16 S. Pennsylvania Oklahoma City, OK 73107 Attention: General Counsel
---	---

Any party may change the address to which notices are to be given by mailing written notice thereof to the other party as provided above.

#### XIII. ASSIGNMENT

Neither party shall assign or delegate, or permit by assignment or delegation, by operation of law or otherwise any of its rights and obligations under this Agreement to any third party without first obtaining the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, either party shall be allowed to assign this Agreement to an Affiliate upon providing written notice to the other party, provided no such transfer shall operate to relieve the transferor party of its obligations hereunder. For purposes of this Agreement, "Affiliate" shall mean any corporation or other business enterprise which directly or indirectly controls, is controlled by, or is under common control with a party hereunder; and for the purpose of this definition "control" shall mean the ability to directly or indirectly vote

fifty percent (50%) or more of the shares or other securities at the time entitled to vote for the election of directors. Any assignment or delegation, or attempted assignment or delegation, in violation of this Article XIII shall be null and void, shall be considered a material breach of this Agreement and shall permit the other party in addition to any other rights which it may hereunder or at law or in equity to terminate this Agreement and exercise any remedies available to the non-breaching party hereunder or at law or in equity.

#### XIV. ENTIRE AGREEMENT; AMENDMENT

This Agreement constitutes the final and complete Agreement between the parties relative to the transactions contemplated hereby and supersedes any and all prior or contemporaneous agreements, understandings, correspondence or other agreements relating to the subject matter hereof. This Agreement may be amended only by a written document signed by duly authorized representatives or employees of each of the parties hereto. Any printed terms or conditions contained in any printed forms used in placing or acknowledging orders hereunder, or otherwise used in any way in connection with the sale and purchase provided for in this Agreement, shall not have the effect of modifying or amending this Agreement in any respect unless specifically identified and accepted in writing by a duly authorized representative of both parties.

#### XV. CONFIDENTIALITY

If an Adverse Action, as defined in Section E of Article IX, results in Koch's suspension of its performance hereunder, Koch may, as provided for in said Section, provide Buyer with certain information ("Adverse Action Information"). Koch and Buyer may also, in connection with their respective performance of this Agreement, communicate information, give notices and exchange documents ("Contract Related Information"). Buyer shall maintain in confidence the Adverse Action Information and the Contract Related Information, and Koch shall maintain in confidence the Contract Related Information, and such information shall be disclosed to no one other than (i) the receiving party's officers, directors, agents and other personnel who need to know the same in connection with this Agreement, and such of officers, directors, agents and other personnel shall be advised of and bound by the confidential nature of such information or (ii) when disclosure is required by law or pursuant to a court or administrative order. For disclosures required under sub-item (ii), the disclosing party shall immediately notify the other party of the required disclosure so that the other party may seek an appropriate protective order or other remedy and use reasonable efforts to limit the scope of the disclosure so required. If a protective order or other remedy is not obtained, the disclosing party shall only furnish such portion or portions of the Confidential Information as it is legally required to furnish. Koch and Buyer shall take all proper precautions to prevent such information from being acquired by any unauthorized person, firm, company or other entity. In this regard, Koch and Buyer acknowledge specifically, but without limitation, that both injunctive relief and monetary damages, alone or in combination, are appropriate remedies for any breach of this Article XV by Koch or Buyer or any person, firm, company or other entity obtaining such information through the recipient thereof. The confidentiality obligations hereunder shall continue for a period of seven (7) years after the termination of this Agreement. Koch shall have no obligation to provide, and Buyer shall have no right to obtain, information regarding Koch's Product supply costs.

#### XVI. ARTICLE HEADINGS

Article headings are for the convenience of the parties and are not considered parts of the Agreement, it being stipulated that any headings in conflict with the substantive provisions of the Agreement shall have no force and effect.

#### XVII. GOVERNING LAW

This Agreement shall be governed exclusively by the laws of the State of Kansas both with respect to interpretation and performance without giving effect to any provision which would direct application of the laws of another jurisdiction. Koch and Buyer agree that venue and jurisdiction of any action or cause of

action arising hereunder shall be exclusively in the United States District Court for the District of Kansas.

XVIII. SEVERABILITY

The provisions of this Agreement are severable and, if any provisions are determined to be void or unenforceable in whole or in part, the remaining provisions shall remain unaffected and shall be binding and enforceable in accordance with the terms hereof.

XIX. AUTHORITY

A. Buyer warrants and represents that it is a corporation duly organized and validly existing and in good standing under the laws of the State of Oklahoma and has all requisite power and authority to lawfully carry on its business as now being conducted and specifically, that it has all requisite power and authority to make, execute, deliver and perform this Agreement.

B. Koch warrants and represents that it is a corporation duly organized and validly existing and in good standing under the laws of the State of Nebraska and has all requisite power and authority to lawfully carry on its business as now being conducted and specifically, that it has all requisite power and authority to make, execute, deliver and perform this Agreement.

XX. LEGAL COMPLIANCE

Each party shall be subject to all applicable laws, rules, regulations and ordinances issued by any national, state, or local regulatory or governing body and may act in accordance therewith until such time as the same may be held invalid by final judgment in a court of competent jurisdiction.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the Effective Date by their respective officers thereunto duly authorized.

("Koch") KOCH NITROGEN COMPANY

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

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

Attest:

Secretary/Assistant Secretary

("Buyer") EL DORADO CHEMICAL COMPANY

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

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

Attest:

Secretary/Assistant Secretary

STATE OF KANSAS )  
COUNTY OF SEDGWICK )

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this \_\_\_ day of \_\_\_\_\_, 1997, personally came and appeared \_\_\_\_\_, who in the presence of me, said authority, declared and acknowledged that he is the identical person who executed the foregoing instrument in

writing; that his signature thereto is his own true and genuine signature; and that he executed said instrument in his capacity as President of Koch Nitrogen Company, a Nebraska corporation, of his own free will and accord and as the free act and deed of said Koch Nitrogen Company for the purposes and considerations therein set forth and expressed.

Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF OKLAHOMA )  
COUNTY OF CLEVELAND )

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this \_\_\_ day of \_\_\_\_\_, 1997, personally came and appeared \_\_\_\_\_, who in the presence of me, said authority, declared and acknowledged that he is the identical person who executed the foregoing instrument in writing; that his signature thereto is his own true and genuine signature; and that he executed said instrument in his capacity as \_\_\_\_\_ of El Dorado Chemical Company, an Oklahoma corporation, of his own free will and accord and as the free act and deed of said El Dorado Chemical Company, for the purposes and considerations therein set forth and expressed.

Notary Public

My Commission Expires: \_\_\_\_\_

ADDENDUM A

(Bank Letterhead)

Date: \_\_\_\_\_  
Letter of Credit No.: \_\_\_\_\_  
Expire Date: \_\_\_\_\_

KOCH NITROGEN COMPANY  
4111 E. 37TH STREET NORTH  
WICHITA, KS 67220  
ATTN: CREDIT DEPARTMENT  
KEVIN SHELTON / CALVIN BAHR

GENTLEMEN:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT IN YOUR FAVOR FOR THE ACCOUNT OF EL DORADO CHEMICAL COMPANY. AVAILABLE BY YOUR DRAFTS DRAWN AT SIGHT ON BANK NAME, CITY, STATE, FOR ANY SUM OR SUMS NOT EXCEEDING A TOTAL OF ABOUT U.S. 3,500,000 (THREE MILLION FIVE HUNDRED THOUSAND AND 00/100 U.S. DOLLARS).

ACCOMPANIED BY STATEMENT SIGNED BY A PURPORTED OFFICER OF KOCH NITROGEN COMPANY STATING THAT:

"EL DORADO CHEMICAL COMPANY ("EDC") HAS BEEN PROVIDED WITH AT LEAST TEN (10) DAYS NOTICE OF A BREACH UNDER THE ANHYDROUS AMMONIA SALES AGREEMENT DATED \_\_\_\_\_ ("AGREEMENT), AND, THEREFORE KOCH NITROGEN COMPANY IS DUE THE AMOUNT OF \$\_\_\_\_\_ AND MAKES THIS DRAWING FOR SUCH AMOUNT UNDER LETTER OF CREDIT NUMBER \_\_\_\_\_. BREACH OF THE AGREEMENT BY EDC RELATES TO EDC FAILING TO RENEW THE UC AS PER THE AGREEMENT, EDC FAILING TO PAY AMOUNTS DUE OR OWING UNDER THE AGREEMENT, EDC ASSIGNING THE AGREEMENT TO AN UNAFFILIATED THIRD PARTY WITHOUT KOCH NITROGEN'S CONSENT, OR EDC FAILING TO PROVIDE A SUBSTITUTE UC IN FORM AND SUBSTANCE ACCEPTABLE TO KOCH AND ON A BANK ACCEPTABLE TO KOCH SHOULD THE BANK ISSUING THE ORIGINAL LC BECOME UNACCEPTABLE TO KOCH."

EXCEPT AS OTHERWISE STATED HEREIN, THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 500.

ALSO EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, ANY CHARGES OR COMMISSION IN RESPECT TO THE NEGOTIATION OF DRAFTS UNDER THIS CREDIT ARE FOR OPENER'S ACCOUNT.

THE AMOUNT OF EACH DRAFT NEGOTIATED, WITH THE DATE OF NEGOTIATION, MUST BE ENDORSED HEREON BY THE NEGOTIATING BANK, AND ANY DRAFT PRESENTED TO US SHALL CONSTITUTE A WARRANTY OF THE NEGOTIATING BANK THAT SUCH ENDORSEMENT WAS EFFECTED.

ALL DRAFTS DRAWN UNDER THIS CREDIT SHOULD BEAR THE CLAUSE "DRAWN UNDER BANK NAME

LETTER OF CREDIT NO. \_\_\_\_\_ DATED \_\_\_\_\_. CITY, STATE'

PARTIAL DRAWINGS ARE ACCEPTABLE AND DRAWING MAY BE MADE FOR SALES PRIOR TO AND DURING THE TERM OF THIS CREDIT.

ANY AND/OR ALL DOCUMENTS REQUIRED BY THIS LETTER OF CREDIT MAY BE PRESENTED REGARDLESS OF THEIR DATE OF ORIGINATION.

IN EXCEPTION TO ARTICLE 43, PUBLICATION NO. 500, STALE DOCUMENTS ARE ACCEPTABLE, AND ALL DOCUMENTS REQUIRED BY THIS LETTER MAY BE SUBMITTED UNTIL EXPIRY.

WE HEREBY AGREE WITH YOU AND WITH NEGOTIATING BANKS AND BANKERS THAT ALL DRAFTS DRAWN BY VIRTUE OF THIS CREDIT, AND IN ACCORDANCE WITH ITS TERMS, SHALL MEET WITH DUE HONOR UPON PRESENTATION AND DELIVERY OF DOCUMENTS AS SPECIFIED TO BANK NAME, CITY, STATE, IF NEGOTIATED, OR IF PRESENTED AT THIS OFFICE TOGETHER WITH LETTER OF CREDIT ON OR BEFORE (EXPIRE DATE).

YOURS VERY TRULY,

AUTHORIZED BANK REPRESENTATIVE SIGNATURE

BAYTOWN NITRIC ACID  
PROJECT AND SUPPLY AGREEMENT

By and Among

EL DORADO NITROGEN COMPANY,

EL DORADO CHEMICAL COMPANY

and

BAYER CORPORATION

\*\*\*\*INDICATES INFORMATION IN THIS DOCUMENT WHICH HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

BAYTOWN NITRIC ACID  
PROJECT AND SUPPLY AGREEMENT

TABLE OF CONTENTS

	PAGE
SECTION 1: DEFINITIONS . . . . .	3
1.1 Additional Capital Investment . . . . .	3
1.2 Affiliate . . . . .	3
1.3 Ammonia . . . . .	4
1.4 Ammonia Specifications . . . . .	4
1.5 Back-up and Start-up Supply Plan . . . . .	4
1.6 Baseline Fixed Costs . . . . .	4
1.7 Baseline Period . . . . .	4
1.8 Battery Limits . . . . .	4
1.9 Bayer . . . . .	5
1.10 Bayer Agreement . . . . .	5
1.11 Bayer Baytown Plant . . . . .	5
1.12 Bayer Default Termination Fee . . . . .	5
1.12(A) Bayer Support Agreement . . . . .	5
1.13 Business Day . . . . .	6
1.14 Capital Costs Monthly Charge . . . . .	6
1.14(A) Capital Costs Monthly Credit . . . . .	6
1.15 Change of Control Event . . . . .	6
1.16 Commencement Date . . . . .	9
1.17 Compliance Program . . . . .	9
1.18 Delivered Unit Cost . . . . .	9
1.19 Delivery Systems . . . . .	10
1.20 Demonstrated Capacity . . . . .	10
1.21 Depreciation Cycle . . . . .	10
1.22 EDNC . . . . .	10
1.23 EDNC Baytown Plant . . . . .	10
1.24 EDNC Baytown Plant Net Book Value . . . . .	10
1.25 EDNC Default Termination Fee . . . . .	11
1.26 Effective Date . . . . .	11
1.27 Egress Fee . . . . .	11
1.28 Environmental, Health and Safety Laws . . . . .	11
1.29 Event of Default . . . . .	12
1.30 Excluded Fixed Costs . . . . .	12
1.31 Expiration Termination Fee . . . . .	12
1.32 First Operating Period . . . . .	13
1.33 Fixed Costs . . . . .	13
1.34 Fixed Costs Monthly Charge . . . . .	14
1.35 Fixed Price Purchase Option . . . . .	15
1.36 Fixed Price Purchase Option Amount . . . . .	15
1.37 Force Majeure Event . . . . .	15
1.38 Fully Operational . . . . .	15
1.39 GAAP . . . . .	16
1.40 Ground Lease . . . . .	16
1.41 Guarantor . . . . .	16
1.42 Initial Capital Investment . . . . .	16
1.43 Initial Term . . . . .	17
1.44 Laws . . . . .	17
1.45 Leased Premises . . . . .	17
1.46 Leasehold Improvements . . . . .	18
1.47 Leveraged Lease . . . . .	18

1.47A	Monthly Net Capital Amount . . . . .	18
1.48	Moving Average Actual Cost . . . . .	18
1.49	Net Distributed Cost . . . . .	18
1.50	Net Sales Price. . . . .	18
1.51	Nitric Acid Specifications . . . . .	19
1.52	Operating Period . . . . .	19
1.53	Operative Agreements . . . . .	19
1.55	Permits. . . . .	20
1.56	Production Shortfall . . . . .	20
1.57	Profit Component . . . . .	20
1.58	Project Agreements . . . . .	21
1.59	Rebate Reconciliation Statement. . . . .	21
1.60	Renewal Term . . . . .	21
1.61	Right of First Refusal . . . . .	21
1.62	Safety Improvement Program . . . . .	21
1.63	Services Agreement . . . . .	21
1.64	Spill. . . . .	21
1.65	Start-up Expenses. . . . .	21
1.66	Start-up Nitric Acid . . . . .	23
1.67	Stipulated Loss Value. . . . .	23
1.68	Substitute Blended Nitric Acid . . . . .	23
1.69	Surplus Nitric Acid. . . . .	23
1.70	Technology Agreement . . . . .	23
1.71	Term . . . . .	24
1.72	Termination Date . . . . .	24
1.73	Total Capital Invested . . . . .	24
1.74	Total Estimate . . . . .	24
1.75	Utilities. . . . .	24
1.76	Variable Costs Adjustments . . . . .	24
1.77	Variable Costs Component . . . . .	24
1.78	Waste. . . . .	24
SECTION 2: NITRIC ACID. . . . .		24
2.1	Supply . . . . .	24
2.2(A)	Nitric Acid Specifications . . . . .	25
2.2(B)	Start-up Nitric Acid and Substitute Blended Nitric Acid: Specifications. . . . .	26
2.3	Place of Delivery. . . . .	27
2.4	Most Favored Customer. . . . .	27
2.5	Sales Optimization . . . . .	28
2.6	Swaps. . . . .	29
SECTION 3: PRICE. . . . .		29
**** APPROXIMATELY TWENTY-ONE (21) PAGES HAVE BEEN OMITTED FROM THIS SECTION PURSUANT TO A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION. SUCH PAGES HAVE BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO SUCH REQUEST.		
3.10	Additional Capital Investments . . . . .	48
	(A) Additional Capital Investments. . . . .	48
	(B) Changes to Profit Component . . . . .	49
	(C) Requirements for Additional Capital Investment. . . . .	49
	(D) Direct Additional Capital Investment by Bayer . . . . .	50
3.11	Miscellaneous (Invoices, Forecasts and Planned Outages) Provisions. . . . .	50
	(A) Forecasts by Bayer. . . . .	50
	(B) Forecasts by EDNC . . . . .	50
	(C) Effect of Forecasts . . . . .	51
	(D) Monthly Purchase Orders/Monthly Sales Forecasts . . . . .	51
	(E) Planned Outages . . . . .	52
	(F) Contract Maintenance Expenditures . . . . .	52
3.12	Taxes. . . . .	52
SECTION 4: BAYER REBATE AND EGRESS FEE. . . . .		53
4.1	Rebate . . . . .	53
4.2	Egress Fees. . . . .	54
SECTION 5: TITLE AND RISK OF LOSS . . . . .		54
5.1	Ammonia. . . . .	54
5.2	Nitric Acid Produced by EDNC at the EDNC Baytown Plant for Bayer. . . . .	54
5.3	Nitric Acid From El Dorado and Third Party Suppliers Under the Start-up Supply Plan . . . . .	54
5.4	Nitric Acid From El Dorado and Third Party Suppliers Under the Back-up Supply Plan. . . . .	54
5.5	Surplus Nitric Acid. . . . .	55
SECTION 6: NITRIC ACID WARRANTY AND TECHNOLOGY. . . . .		55
6.1	Title. . . . .	55
6.2	Technology Approval. . . . .	55

SECTION 7: LEASE OF REAL PROPERTY FOR AND CONSTRUCTION OF EDNC	
BAYTOWN PLANT . . . . .	56
7.1 Ground Lease . . . . .	56
7.2 Construction . . . . .	56
7.3 Ownership, Operation and Maintenance . . . . .	58
SECTION 8: REPRESENTATIONS, WARRANTIES AND COVENANTS. . . . .	58
8.1 Representations, Warranties and Covenants of EDNC. . . . .	58
(A) Corporate Standing. . . . .	58
(B) Binding Effect of Project Agreements. . . . .	58
(C) Consents. . . . .	59
(D) Conflicts . . . . .	59
(E) Health and Safety Covenants . . . . .	59
(F) Notices Under the Operative Agreements. . . . .	60
(G) Compliance with Laws & Permits. . . . .	60
(H) EDNC Baytown Plant Capacity . . . . .	61
(I) Hazards Analyses. . . . .	61
(J) Common Carriers . . . . .	62
(K) Termination for Uneconomic or Surplus Condition . . . . .	62
(L) Operative Agreements. . . . .	62
(M) Assignment and Sublease of EDNC Baytown Plant . . . . .	62
(N) Bankruptcy Remote . . . . .	62
(O) Quality Standards . . . . .	63
8.2 Representations, Warranties and Covenants of El Dorado. . . . .	64
(A) Corporate Standing. . . . .	64
(B) Binding Effect of Project Agreements. . . . .	64
(C) Consents. . . . .	64
(D) Conflicts . . . . .	65
(E) Back-up and Start-up Supply . . . . .	65
(F) Health and Safety . . . . .	65
8.3 Representations, Warranties and Covenants of Bayer . . . . .	65
(A) Corporate Standing. . . . .	65
(B) Binding Effect of Project Agreements. . . . .	66
(C) Consents. . . . .	66
(D) Conflicts . . . . .	66
(E) Quality Standards . . . . .	67
SECTION 9: AMMONIA. . . . .	67
9.1 Supply by Bayer. . . . .	67
9.2 Supply by EDNC . . . . .	68
9.3 Measurement of Ammonia Supplied. . . . .	68
(A) Metering. . . . .	68
(B) Calibration . . . . .	68
SECTION 10: UTILITIES . . . . .	70
SECTION 11: WASTE . . . . .	70
SECTION 12: INTERRUPTION OF AMMONIA, UTILITIES OR NITRIC ACID . . . . .	70
12.1 Interruption of EDNC Feedstock . . . . .	70
12.2 Interruption of Nitric Acid. . . . .	71
SECTION 13: PIPELINE AND DELIVERY SYSTEM CONSTRUCTION AND MAINTENANCE . . . . .	71
13.1 Delivery Systems . . . . .	71
13.2 Plant Systems. . . . .	71
13.3 Connection Points. . . . .	72
SECTION 14: PERMITS . . . . .	72
SECTION 15: INSURANCE . . . . .	72
15.1 EDNC's Insurance . . . . .	72
(A) Builders Risk (Course of Construction) Insurance. . . . .	72
(B) Insurance Against Loss or Damage. . . . .	73
(C) Insurance Against Public Liability. . . . .	73
(D) Workers' Compensation and Other Insurance . . . . .	74
15.2 Bayer's Insurance. . . . .	74
(A) Builders Risk (Course of Construction) Insurance. . . . .	74
(B) Insurance Against Loss or Damage. . . . .	75
(C) Insurance Against Public Liability. . . . .	75
(D) Workers' Compensation and Other Insurance . . . . .	76
15.3 Waiver of Subrogation Rights . . . . .	76
15.4 Miscellaneous Insurance Provisions . . . . .	77
15.5 Form of Policies . . . . .	77
15.6 Self-Insurance . . . . .	78
15.7 Blanket Coverage . . . . .	78
15.8 Failure of EDNC to Insure. . . . .	78
SECTION 16: DEFAULT AND REMEDIES. . . . .	79
16.1 EDNC Events of Default . . . . .	79

16.2	EDNC Cure Periods. . . . .	80
16.3	Bayer Events of Default. . . . .	82
16.4	Bayer Cure Periods . . . . .	83
16.5	Bayer Remedies for EDNC Events of Default. . . . .	83
16.6	EDNC Remedies for Bayer Events of Default. . . . .	86
SECTION 17: TERMINATION/FIXED PRICE PURCHASE OPTION . . . . .		88
17.1	Bayer's Optional Termination Rights. . . . .	88
17.2	EDNC's Optional Termination Rights . . . . .	89
17.3	Automatic Termination. . . . .	89
17.4	Effects of Termination . . . . .	90
17.5	Fixed Price Purchase Option. . . . .	93
SECTION 18: INDEMNIFICATION . . . . .		95
18.1	EDNC Indemnification . . . . .	95
18.2	Bayer Indemnification. . . . .	97
18.3	Notice of Proceedings. . . . .	98
18.4	Insurance. . . . .	99
SECTION 19: INJUNCTIVE RELIEF . . . . .		99
SECTION 20: TERM AND RENEWALS . . . . .		.100
20.1	Initial Term . . . . .	.100
20.2	Renewals . . . . .	.100
SECTION 21: RIGHT OF FIRST REFUSAL. . . . .		.100
21.1(A)	Change of Control Event. . . . .	.100
21.1(B)	Third Party Offer. . . . .	.101
21.2	Injunctive Relief and Specific Performance . . . . .	.101
SECTION 22: DISPUTE RESOLUTION. . . . .		.102
22.1	General. . . . .	.102
22.2	Mediation. . . . .	.102
22.3	Commencement of Legal Actions. . . . .	.103
22.4	Governing Law. . . . .	.103
22.5	Submission to Jurisdiction . . . . .	.103
22.6	Consent to Service of Process. . . . .	.104
SECTION 23: ENTIRE AGREEMENT. . . . .		.104
SECTION 24: MODIFICATION. . . . .		.104
SECTION 25: PAYMENTS. . . . .		.105
SECTION 26: DEMURRAGE . . . . .		.105
SECTION 27: COOPERATION . . . . .		.105
SECTION 28: NOTICES . . . . .		.106
SECTION 29: BINDING AGREEMENT . . . . .		.106
SECTION 30: WAIVER. . . . .		.107
SECTION 31: CONSTRUCTION. . . . .		.107
SECTION 32: COUNTERPARTS. . . . .		.108
SECTION 33: ASSIGNMENT. . . . .		.108
SECTION 34: AUDIT RIGHTS. . . . .		.108
SECTION 35: GUARANTY. . . . .		.109
SECTION 36: FORCE MAJEURE . . . . .		.110
SECTION 37: CONTROLLING AGREEMENT . . . . .		.110

BAYTOWN NITRIC ACID PROJECT AND SUPPLY AGREEMENT

\*\*\*\*INDICATES INFORMATION IN THIS DOCUMENT WHICH HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

(this "Agreement") is made and entered into this \_\_\_\_ day of June, 1997 (the "Effective Date"), by and among EL DORADO NITROGEN COMPANY, an Oklahoma corporation ("EDNC"), EL DORADO CHEMICAL COMPANY, an Oklahoma corporation ("El Dorado") and BAYER CORPORATION, an Indiana corporation ("Bayer").

W I T N E S S E T H:

WHEREAS, Bayer owns and operates a chemical manufacturing facility located in Baytown, Chambers County, Texas (the "Bayer Baytown Plant");

WHEREAS, Bayer engages in a manufacturing process at the Bayer Baytown Plant that requires nitric acid meeting certain agreed-upon specifications described in Section 2 hereof ("Nitric Acid");

WHEREAS, Bayer desires to obtain Nitric Acid for use in connection with the Bayer Baytown Plant;

WHEREAS, EDNC agrees, in accordance with the terms and conditions of this Agreement, the Services Agreement (as such term is hereinafter defined) and the Ground Lease (as such term is hereinafter defined), to construct, lease and operate a manufacturing facility capable of producing Nitric Acid (the "EDNC Baytown Plant") on real property located at the Bayer Baytown Plant;

WHEREAS, Bayer agrees to supply to EDNC ammonia that is required for the production of Nitric Acid and that is requested by EDNC in connection with the operation of the EDNC Baytown Plant \*\*\*\*;

WHEREAS, Bayer agrees, in accordance with the terms and conditions of this Agreement and the Services Agreement, to supply to EDNC certain utilities and services that are required for the production of Nitric Acid at the EDNC Baytown Plant and to share certain facilities and services with EDNC;

WHEREAS, EDNC agrees to supply Nitric Acid to Bayer, subject to and in accordance with the terms and conditions of this Agreement;

WHEREAS, beginning on the Commencement Date, as hereinafter defined, Bayer desires to purchase from EDNC all of Bayer's requirements for Nitric Acid for use at the Bayer Baytown Plant; and

WHEREAS, beginning on the Commencement Date, EDNC will use reasonable efforts to market and distribute to third parties Nitric Acid manufactured at the EDNC Baytown Plant that is not required by Bayer.

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

SECTION 1: DEFINITIONS

Unless otherwise defined herein, the following terms have the respective meanings assigned to them for purposes of this Agreement:

1.1 Additional Capital Investment - Shall mean all capital investments (other than Initial Capital Investments) made by or on behalf of EDNC or the Owner Trustee (as hereafter defined) at the EDNC Baytown Plant, all as determined in accordance with GAAP, including without limitation capitalized maintenance expenditures but excluding expenditures incurred in connection with:

(A) unless approved by Bayer, additional improvements for the purpose of enabling the storage or transport of Nitric Acid to third parties from the EDNC Baytown Plant (e.g., capital expended for the construction of a rail spur, barge loading facilities or additional truck loading facilities not contemplated by EDNC's Initial Capital Investment proposal);

(B) remediation, abatement, containment, clean-up, disposal or response costs associated with Spills (as such term is defined in the Services Agreement) at, on or under the Leased Premises to the extent such costs are the responsibility of EDNC pursuant to this Agreement; and

(C) any other item for which EDNC has expended any funds pursuant to its indemnification obligations to Bayer under this Agreement.

1.2 Affiliate - Shall mean any person, partnership, corporation, or other entity that controls, is controlled by or is under common control with a specified person, partnership, corporation or other entity. For purposes of this definition, "control" shall mean the power, whether direct or indirect, and whether by exercise of voting power or contract or otherwise, to direct the management policies and decisions of another entity.

1.3 Ammonia - All ammonia necessary for the manufacture of Nitric Acid by EDNC at the EDNC Baytown Plant at the operating rates necessary to meet Bayer's requirements of Nitric Acid and EDNC's sales requirements of Surplus Nitric Acid, which ammonia shall be supplied to EDNC by Bayer for its use and as required by EDNC at the EDNC Baytown Plant pursuant to the terms of this Agreement.

1.4 Ammonia Specifications - Shall mean the specifications for Ammonia set forth on Schedule 9 to this Agreement.

1.5 Back-up and Start-up Supply Plan - That certain Back-up and Start-up Supply Plan set forth in the attached Exhibit D.

1.6 Baseline Fixed Costs - Shall mean the aggregate of all Fixed Costs paid by EDNC during the Baseline Period, which amount shall include any real estate or property tax abatement in EDNC's favor.

1.7 Baseline Period - Shall mean the second Operating Period.

1.8 Battery Limits - The boundary lines of the Leased Premises.

1.9 Bayer - Shall have the meaning set forth in the preamble.

1.10 Bayer Agreement - Shall mean the agreement to be entered into among Bayer, Security Pacific Leasing Corporation (or such other party designated as "Owner Participant" thereunder), Bayerische Landesbank, New York Branch, El Dorado, EDNC, Wilmington Trust Company (or such other party designated as "Indenture Trustee" thereunder), Boatmen's Trust Company of Texas (or such other party designated as "Lessor" and "Owner Trustee" thereunder), substantially in the form of the attached Exhibit F.

1.11 Bayer Baytown Plant - Shall have the meaning set forth in the recitals.

1.12 Bayer Default Termination Fee - Shall mean \*\*\*\*

1.12(A) Bayer Support Agreement - Shall mean the agreement to be entered into among Bayer, Security Pacific Leasing Corporation (or such other party designated as "Owner Participant" thereunder), Bayerische Landesbank, New York Branch, EDNC, El Dorado, Wilmington Trust Company (or such other party designated as "Indenture Trustee" thereunder), Boatmen's Trust Company of Texas (or such other party designated as "Lessor" and "Owner Trustee" thereunder) and Bank of America National Trust and Savings Association, substantially in the form of the attached Exhibit G.

1.13 Business Day - Any day other than a (i) Saturday, (ii) Sunday or (iii) holiday on which national banks in New York City, New York are not open for business.

1.14 Capital Costs Monthly Charge - Shall mean:  
\*\*\*\*

1.14(A) Capital Costs Monthly Credit - Shall mean \*\*\*\*

1.15 Change of Control Event - Shall mean any of the following events:

(A) EDNC, El Dorado or LSB Industries, Inc. (a Delaware corporation and the parent company of El Dorado, hereinafter "LSB") is merged or consolidated into or with another corporation or other legal person not affiliated with EDNC, El Dorado or LSB and, as a result, (i) EDNC, El Dorado or LSB, whichever is applicable, is not the surviving entity and (ii) shareholders of the acquiring party have directly or indirectly acquired more than a majority of the combined voting power of the then-outstanding voting securities of such corporation or person immediately after such transaction;

(B) EDNC, El Dorado or LSB sells or otherwise transfers all or substantially all of its assets (other than pursuant to a sale-leaseback transaction) to any other corporation or other legal person not affiliated with EDNC, El Dorado or LSB, or LSB sells or otherwise transfers a majority of all of the voting equity securities of EDNC or El Dorado to any other corporation or other legal person not affiliated with LSB and, as a result of such sale or transfer, less than a majority of the combined voting power of the then-outstanding voting securities of such corporation or person immediately after such sale or transfer is held in the aggregate by the holders of Voting Stock (as defined below) of EDNC, El Dorado or LSB, whichever is applicable, immediately prior to such sale or transfer;

(C) There is a report filed on Schedule 13D or Schedule 14D-1 (or any successor schedule, form or report), each as promulgated pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), disclosing that any person (as the term "person" is used in Section 13(d)(3) or Section 14(d)(2) of the Exchange Act) has become the beneficial owner (as the term "beneficial owner" is defined under Rule 13d-3 or any successor rule or regulation promulgated under the Exchange Act) of securities representing ten percent (10%) or more of the combined voting power of the then-outstanding securities entitled to vote generally in the election of directors of EDNC, El Dorado or LSB (the "Voting Stock"), and such person has publicly disclosed or otherwise manifested an intention to cause the occurrence of an event described in subparagraphs (A), (B), (D) or (E) of this Section 1.15 in respect of EDNC, El Dorado or LSB, and such person is ultimately successful in affecting the occurrence of an event described in subparagraphs (A), (B), (D) or (E) of this Section 1.15;

(D) EDNC, El Dorado or LSB files a report or proxy statement with the Securities and Exchange Commission, pursuant to the Exchange Act, disclosing in response to Form 8-K or Schedule 14A (or any successor schedule, form or report or item therein) that a change in control of EDNC, El Dorado or LSB has occurred or will occur in the future pursuant to any then-existing contract or transaction (provided, however, that the pledge of the capital stock of LSB, EDNC or El Dorado to a third party lender in connection with a bona fide financing transaction will not, absent a default under such financing transaction, be considered in determining whether a Change of Control Event has occurred under this Section 1.15(D)); or

(E) If during any period of two (2) consecutive years, individuals who at the beginning of any such period constitute the directors of EDNC, El Dorado or LSB cease for any reason to constitute at least a majority thereof, unless the election, or the nomination for election by the relevant company's stockholders, of each director of the relevant company first elected during such period was approved by a vote of at least a majority of the directors of the relevant company then still in office.

1.16 Commencement Date - The date on which the EDNC Baytown Plant is Fully Operational.

1.17 Compliance Program - Shall have the meaning set forth in Section 8.1(G) hereof.

1.18 Delivered Unit Cost - Shall mean:  
\*\*\*\*

1.19 Delivery Systems - All pipelines, powerlines and other fixtures and improvements to the Bayer Baytown Plant (including, without limitation, pipe racks and other related fixtures) that comprise the systems that are necessary to transport to or from the Battery Limits: (i) Ammonia to be sold to the EDNC Baytown Plant; (ii) Utilities to be supplied to the EDNC Baytown Plant, including water treatment sewers and pipelines; (iii) Nitric Acid produced at the EDNC Baytown Plant; and (iv) Excess Steam (as defined in the Services Agreement) and condensate produced at the EDNC Baytown Plant.

1.20 Demonstrated Capacity - Shall mean the highest level of production of nitric acid at the EDNC Baytown Plant during any Operating Period, adjusted for normal outages for catalyst changes and turnarounds.

1.21 Depreciation Cycle - Shall mean depreciation on a straight-line basis over a ten (10) year useful life from the deemed date of any investment or financing, with no assumed salvage value.

1.22 EDNC - Shall have the meaning set forth in the preamble.

1.23 EDNC Baytown Plant - Shall have the meaning set forth in the recitals.

1.24 EDNC Baytown Plant Net Book Value - The pro forma book value of the EDNC Baytown Plant as of the date of cancellation, expiration or termination of the Term, determined as follows: the sum of the Initial Capital Investment plus any Additional Capital Investment, minus the aggregate amount of all Capital Costs Monthly Charges paid to the relevant date, utilizing the Depreciation Cycle.

1.25 EDNC Default Termination Fee - Shall mean \*\*\*\*

1.26 Effective Date - Shall have the meaning set forth in the preamble.

1.27 Egress Fee - The throughput charge of thirty-two cents (\$.32) per ton of Surplus Nitric Acid (one hundred percent assay basis) shipped from the Leased Premises pursuant to Section 4.2 hereof.

1.28 Environmental, Health and Safety Laws - All applicable federal, state and local laws relating to pollution or protection of human health or the environment including, without limitation, all laws, statutes, ordinances, rules, regulations, orders, codes and notices relating to releases or threatened releases of pollutants, contaminants, toxic or hazardous substances or wastes into the environment, including, without limitation, the following statutes, as amended from time to time: (a) Resource Conservation and Recovery Act ("RCRA"); (ii) Comprehensive Environmental Response, Compensation and Liability Act of 1980; (iii) Superfund Amendments and Reauthorization Act of 1986; (iv) Clean Air Act, 42 U.S.C. Section 7401 et seq.; (v) The Clean Water Act, 33 U.S.C. Section 1251 et seq.; (vi) Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; and (vii) Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.

1.29 Event of Default - Shall have the meaning set forth in Section 16 hereof.

1.30 Excluded Fixed Costs - Shall mean any tax other than those based upon revenue or income, insurance premiums, Bayer's net distributed unit costs or allocation rates for services and utilities, contract maintenance or EDNC hourly or salaried wage rates and/or benefits.

1.31 Expiration Termination Fee - Shall mean \*\*\*\*

1.32 First Operating Period - Shall mean the period from the Commencement Date through December 31 of the year in which the Commencement Date occurs; provided, however, that in the event such period is less than four (4) months in duration, the First Operating Period shall be the period from the Commencement Date through December 31 of the succeeding calendar year.

1.33 Fixed Costs - Shall collectively mean \*\*\*\*

1.34 Fixed Costs Monthly Charge - Shall mean \*\*\*\*

1.35 Fixed Price Purchase Option - Shall have the meaning set forth in the Leveraged Lease (as hereinafter defined).

1.36 Fixed Price Purchase Option Amount - Shall be \*\*\*\*

1.37 Force Majeure Event - Any circumstances materially interfering with the performance of this Agreement or any of the other Project Agreements that is reasonably beyond the control of the party hereto that is affected by such circumstances, such as but not limited to fire; storm; flood; act of God; war; explosion; sabotage; strike or other labor trouble; shortage of labor, utilities, fuel or energy; embargo; car shortage; accident; any new occurrence of a material environmental hazard or catastrophe; expropriation of plant, product, raw materials, utilities, fuel or energy in whole or in part by federal or state authority; inability to secure machinery or other equipment for the manufacture of the product; acts of the federal, state or local government or any agency thereof, including, without limitation, any material change in Environmental, Health and Safety Laws.

1.38 Fully Operational - When the EDNC Baytown Plant has first operated for (i) up to two hundred forty (240) hours (such duration to be fixed at EDNC's option, but in no event shall such duration be less than seventy-two (72) consecutive hours) at full capacity producing Nitric Acid meeting the Nitric Acid Specifications at a rate not less than 1265 short tons (1150 metric tons) per day during each day of operation and (ii) at least seventy-two (72) hours at the turndown rate producing Nitric Acid meeting the Nitric Acid Specifications.

1.39 GAAP - Shall mean generally accepted United States accounting principles consistently applied.

1.40 Ground Lease - That certain Ground Lease, dated as of the Effective Date and in the form of the attached Exhibit A.

1.41 Guarantor - Shall mean El Dorado Chemical Company.

1.42 Initial Capital Investment - Shall mean \*\*\*\*

1.43 Initial Term - Shall mean the initial term of this Agreement commencing on the Effective Date and ending on the tenth (10th) year following the Commencement Date; provided, however, that if the Commencement Date has not occurred prior to December 31, 2008, then the termination shall occur on December 31, 2008, unless (a) sooner terminated as provided hereunder, (b) extended in accordance with Section 20 of this Agreement or (c) extended for a period equal to the duration of a Force Majeure Event as agreed by the parties.

1.44 Laws - Shall have the meaning set forth in Section 8.1(G) hereof.

1.45 Leased Premises - Shall have the meaning specified in the Ground Lease.

1.46 Leasehold Improvements - Shall have the meaning specified in the Ground Lease.

1.47 Leveraged Lease - Shall mean the Lease Agreement to be entered into between EDNC and the Owner Trustee (as hereafter defined).

1.47A Monthly Net Capital Amount - Shall mean \*\*\*\*

1.48 Moving Average Actual Cost - Shall mean \*\*\*\*

1.49 Net Distributed Cost - Shall mean \*\*\*\*

1.50 Net Sales Price - Shall mean \*\*\*\*

1.51 Nitric Acid Specifications - Shall mean the specifications for Nitric Acid set forth in Section 2.2 hereof.

1.52 Operating Period - Shall mean the First Operating

Period and any subsequent calendar year beginning on the first (1st) day of January immediately after the conclusion of the First Operating Period and ending on the last day of each December until the end of the Term; provided, however, that the final Operating Period shall terminate on the date of termination or expiration of this Agreement.

1.53 Operative Agreements - Shall mean the following financing documents:

- (A) Participation Agreement;
- (B) Leveraged Lease (as defined in Section 1.47 hereof);
- (C) Tax Indemnity Agreement;
- (D) Trust Indenture and Security Agreement;
- (E) Ground Lease Sublease;
- (F) Construction Loan and Security Agreement;
- (G) Bayer Agreement (as defined in Section 1.10 hereof);

(H) Lessor's Consent to Ground Lease Sublease and Non-Disturbance Agreement;

(I) Bayer Support Agreement (as defined in Section 1.12(A) hereof); and

(J) Security Agreement and Collateral Assignment of Facility Documents,

by and among the parties thereto, and including any other documents pertaining to such financing of the EDNC Baytown Plant, which documents Bayer shall have the right to approve in its sole discretion pursuant to Section 8.1(L) hereof.

1.54 Owner Trustee - Shall mean the equipment lessor under the Leveraged Lease.

1.55 Permits - All necessary federal, state and local governmental permits, approvals, licenses, authorizations and consents required in connection with the design, construction and operation of the EDNC Baytown Plant, including, without limitation, all construction and environmental permits.

1.56 Production Shortfall - Shall mean \*\*\*\*

1.57 Profit Component - Shall mean \*\*\*\*

1.58 Project Agreements - Shall collectively mean this Agreement, the Ground Lease, the Services Agreement, the Technology Agreement and the Supplemental Agreement.

1.59 Rebate Reconciliation Statement - Shall have the meaning \*\*\*\*

1.60 Renewal Term - Any renewal term of this Agreement subsequent to the Initial Term, each of which shall be five (5) years in duration unless sooner terminated as provided hereunder.

1.61 Right of First Refusal - Shall have the meaning set forth in Section 21 hereof.

1.62 Safety Improvement Program - Shall have the meaning set forth in Section 8.1(E)(2)(b) hereof.

1.63 Services Agreement - That certain Services Agreement, dated as of the Effective Date and in the form of the attached Exhibit B.

1.64 Spill - Shall have the meaning set forth in the Services Agreement.

1.65 Start-up Expenses - Shall mean \*\*\*\*

1.66 Start-up Nitric Acid - Shall have the meaning set forth in Section 2.2 hereof.

1.67 Stipulated Loss Value - Shall have the meaning set forth in the Bayer Agreement.

1.68 Substitute Blended Nitric Acid - Shall have the meaning set forth in Section 2.2 hereof.

1.69 Surplus Nitric Acid - Shall mean any Nitric Acid

produced by EDNC at the EDNC Baytown Plant that is sold to any party other than Bayer and its Affiliates.

1.70 Technology Agreement - That certain Technology Agreement, by and between Bayer, EDNC, ICF Kaiser Engineers, Inc. and La Grande Paroisse S.A., in the form of the attached Exhibit E.

1.71 Term - The Initial Term and all Renewal Terms of this Agreement, as determined in accordance with Section 20 hereof.

1.72 Termination Date - The date of termination of the Project Agreements pursuant to Section 17 or Section 21 hereof.

1.73 Total Capital Invested - Shall mean, at any given time: (a) the Initial Capital Investment plus (b) the aggregate amount of any Additional Capital Investments in the EDNC Baytown Plant.

1.74 Total Estimate - Shall have the meaning specified in Section 3.11(C) hereof.

1.75 Utilities - Shall have the meaning specified in the Services Agreement.

1.76 Variable Costs Adjustments - \*\*\*\*

1.77 Variable Costs Component - Shall mean \*\*\*\*

1.78 Waste - Shall have the meaning specified in the Services Agreement.

## SECTION 2: NITRIC ACID

2.1 Supply - From the Commencement Date until the Termination Date, Bayer and EDNC agree that Bayer shall acquire, and EDNC shall supply, Bayer's monthly requirements of Nitric Acid meeting the requirements set forth in Section 2.2(A) hereof, to the extent of Bayer's needs for facilities located at the Bayer Baytown Plant, from the EDNC Baytown Plant, up to the maximum monthly production of the EDNC Baytown Plant. Bayer may obtain any Nitric Acid requirements at the Bayer Baytown Plant in excess of the available production of the EDNC Baytown Plant from El Dorado or from any other source whatsoever. During any start-up period and in the event of any planned or unplanned outage, Bayer, EDNC and El Dorado agree that the Back-up and Start-up Supply Plan, attached hereto as Exhibit D, shall become operative. EDNC will use reasonable efforts to have the EDNC Baytown Plant on-line by September 1, 1998. Bayer will use reasonable efforts to have the Delivery Systems, excluding ammonia and steam, on-line by February 1, 1998.

2.2(A) Nitric Acid Specifications - EDNC covenants that it will construct the EDNC Baytown Plant to provide Nitric Acid of:

(i) an assay of at least sixty-five percent (65%);

(ii) an iron content of not more than one and three-tenths parts per million (1.3 ppm) on a thirty (30) day rolling average, and in no event to exceed ten parts per million (10 ppm);

(iii) total oxides of nitrogen, as N2O3, of not more than one hundred parts per million (100 ppm);

(iv) color of less than one hundred (100) APHA units;

(v) a chloride content of not more than ten parts per million (10 ppm); and

(vi) a sulfate content of not more than ten parts per million (10 ppm);

During the first hour and a half following start-up of the EDNC Baytown Plant, EDNC may provide Nitric Acid meeting the minimum criteria set forth in Section 2.2(B) hereof ("Start-up

Nitric Acid"). During any planned or unplanned outage, EDNC shall be permitted to provide nitric acid meeting the minimum criteria set forth in Section 2.2(B) hereof ("Substitute Blended Nitric Acid") pursuant to the Back-up and Start-up Supply Plan set forth in Exhibit D hereto.

2.2(B) Start-up Nitric Acid and Substitute Blended Nitric Acid: Specifications - EDNC covenants that Start-up Nitric Acid and Substitute Blended Nitric Acid shall meet the following minimum specifications:

- (i) an assay of at least sixty-four percent (64%);
- (ii) an iron content of not more than ten parts per million (10 ppm);
- (iii) total oxides of Nitrogen, as N2O3, content of not more than one hundred fifty parts per million (150 ppm);
- (iv) a color of not more than one hundred fifty (150) APHA units;
- (v) a chloride content of not more than ten parts per million (10 ppm); and
- (vi) a sulfate content of not more than one hundred fifty parts per million (150 ppm).

Notwithstanding the above, Bayer may, in its sole discretion, waive the specifications set forth in Sections 2.2(A) and 2.2(B) hereof. EDNC's lab test results or lab test results performed by Bayer on behalf of EDNC shall constitute conclusive findings that the nitric acid provided hereunder meets or fails to meet the specifications set forth in this Section 2.2.

2.3 Place of Delivery - Unless otherwise provided herein, Bayer shall accept physical delivery of Nitric Acid that is purchased hereunder at EDNC's product output flange at the Battery Limits.

2.4 Most Favored Customer -  
\*\*\*\*

2.5 Sales Optimization - EDNC hereby covenants that it will exercise diligent efforts to maximize sales to third parties of Nitric Acid produced at the EDNC Baytown Plant to the extent such Nitric Acid is not purchased by Bayer.

2.6 Swaps - All in-kind transfers ("swap" arrangements) entered into by EDNC shall provide for the return of inventory to, or replacement of inventory by, the EDNC Baytown Plant.

### SECTION 3: PRICE

\*\*\*\* APPROXIMATELY TWENTY-ONE (21) PAGES HAVE BEEN OMITTED FROM THIS SECTION PURSUANT TO A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION. SUCH PAGES HAVE BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO SUCH REQUEST.

3.11 Miscellaneous (Invoices, Forecasts and Planned Outages) Provisions -

(A) Forecasts by Bayer - Prior to the Commencement Date and not less than ninety (90) days before the end of each Operating Period, Bayer shall provide to EDNC an eighteen (18) month written forecast as to the anticipated quantity of Nitric Acid to be purchased by Bayer during each month of the following Operating Period and as to the schedule on which Nitric Acid is to be purchased. Such forecasts shall include anticipated daily average and minimum and maximum daily use rates of Nitric Acid by Bayer.

(B) Forecasts by EDNC - Prior to the Commencement Date and not less than ninety (90) days before the end of each Operating Period, EDNC shall provide to Bayer (a) an eighteen (18) month written sales forecast as to the quantity of Nitric Acid produced at the EDNC Baytown Plant to be sold to third parties by EDNC during the subsequent eighteen (18) month period

and the schedule on which Nitric Acid is to be sold and (b) an estimate of Additional Capital Investment(s) to be undertaken by EDNC during the subsequent calendar year.

(C) Effect of Forecasts - The parties shall add five percent (5%) to the daily, monthly and total estimates provided by Bayer under Section 3.11(A), the sum of each of which shall be hereinafter referred to as the "Total Estimates." EDNC may enter into long-term commitments to sell to third parties at any time nitric acid produced at the EDNC Baytown Plant on a daily, monthly or annual basis in excess of the Total Estimates, and Bayer shall have no claim to nitric acid produced at the EDNC Baytown Plant in excess of the Total Estimate. Except as provided in the foregoing sentence, all forecasts and estimates provided under this Section 3.11 shall be for information and planning purposes only and shall not be construed as firm orders or firm commitments on either party's part.

(D) Monthly Purchase Orders/Monthly Sales  
Forecasts - Not less than five (5) days prior to the end of each month, Bayer shall place monthly purchase orders for Nitric Acid to be acquired in the next succeeding month. Such purchase orders shall be subject to reasonable revision, modification or cancellation, and to unplanned outages at the Bayer Baytown Plant or the EDNC Baytown Plant. Not less than five (5) days prior to the end of each month, EDNC shall provide Bayer with a monthly sales forecast for nitric acid to be sold to third parties in a given month. Such EDNC forecasts shall be subject to reasonable revisions, modification or cancellation and to unplanned outages at the Bayer Baytown Plant, the EDNC Baytown Plant or plants of third party customers (including El Dorado's Arkansas plant).

(E) Planned Outages - EDNC shall provide to Bayer at least sixty (60) days' notice of any planned outage of the EDNC Baytown Plant, and shall schedule any such outage only with the prior written consent of Bayer (which shall not be unreasonably withheld). Bayer shall provide to EDNC at least sixty (60) days' notice of any planned outage of any relevant production unit located at Baytown and shall schedule any such outage only with the prior written consent of EDNC (which shall not be unreasonably withheld). The parties will work together to coordinate outages to prevent any adverse impact that may be caused by a planned outage of the EDNC Baytown Plant or any other relevant production unit in Baytown.

(F) Contract Maintenance Expenditures - EDNC will consult with Bayer on all major contract maintenance activities to manage contract maintenance costs as referenced in Schedule 1.33 hereof.

3.12 Taxes - All new taxes, excises and other governmental charges, including, without limitation, all charges for waste, sewer, solid waste disposal and similar services, and all increases in existing taxes, excises and charges, except taxes on or measured by revenues or income or similar taxes imposed after the Effective Date of this Agreement, or after the date any price is determined or modified, on or as a result of the production, sale or transportation of the goods sold hereunder that EDNC may be required to pay, may be added to the Baseline Fixed Costs (but shall not adjust the Fixed Costs Monthly Charge).

#### SECTION 4: BAYER REBATE AND EGRESS FEE

##### 4.1 Rebate -

(A)\*\*\*\*

(B) Within forty-five (45) days after the end of each Operating Period, EDNC shall determine the actual rebate for such Operating Period in accordance with Section 4.1(A) above and shall deliver to Bayer a statement containing the amount of such actual rebate, together with the calculation of the amount of the reconciliation payment due from EDNC to Bayer for such Operating Period (a "Rebate Reconciliation Statement").

(C) For purposes of this Section 4, at the end of each Operating Period EDNC shall provide Bayer a sales report reflecting the total quantity and sales of Surplus Nitric Acid sold from the Leased Premises during that Operating Period.

##### 4.2 Egress Fees - \*\*\*\*

## SECTION 5: TITLE AND RISK OF LOSS

5.1 Ammonia - EDNC shall have title to and risk of loss of Ammonia when such Ammonia enters the input flange to the EDNC Baytown Plant.

5.2 Nitric Acid Produced by EDNC at the EDNC Baytown Plant for Bayer - When Bayer receives the Nitric Acid at the Nitric Acid output flange, title to and risk of loss of the Nitric Acid shall pass to Bayer.

5.3 Nitric Acid From El Dorado and Third Party Suppliers Under the Start-up Supply Plan - When Nitric Acid is shipped from El Dorado or a third party to Bayer at the Bayer Baytown Plant pursuant to the Start-up Supply Plan, title to and risk of loss of the Nitric Acid shall pass to Bayer at the battery limits of the El Dorado plant or the third party plant, F.O.B. such producing plant.

5.4 Nitric Acid From El Dorado and Third Party Suppliers Under the Back-up Supply Plan - When Nitric Acid is shipped from El Dorado or a third party to Bayer at the Bayer Baytown Plant pursuant to the Back-up Supply Plan, title to and risk of loss of the Nitric Acid shall pass to Bayer at the battery limits of the El Dorado plant or the third party plant, F.O.B. such producing plant.

5.5 Surplus Nitric Acid - When Surplus Nitric Acid is shipped from the EDNC Baytown Plant to a third party customer, EDNC's standard terms and conditions of sale shall be F.O.B. EDNC Baytown Plant and shall provide that title to and risk of loss of the Nitric Acid pass to the third party customer at the Battery Limits of the EDNC Baytown Plant.

## SECTION 6: NITRIC ACID WARRANTY AND TECHNOLOGY

6.1 Title - EDNC warrants that the Nitric Acid delivered by it shall conform to the Nitric Acid Specifications and shall be free of all liens and encumbrances. Upon delivery to Bayer, Bayer shall obtain good and marketable title to the Nitric Acid. EDNC shall be released from this warranty if and to the extent that the failure to meet the Nitric Acid Specifications was attributable to Bayer's failure to meet the specifications for, or quantities of, Ammonia or Utilities set forth in the Services Agreement. The parties hereby agree to take reasonable efforts to mitigate the application of this Section by promptly notifying the other party of any detected deficiency in the Ammonia and Utilities provided.

6.2 Technology Approval - EDNC shall select the technology and engineering services necessary for the design, construction and operation of the EDNC Baytown Plant with the approval of Bayer, which approval shall not be unreasonably withheld. The technology agreement shall be in form and substance satisfactory to Bayer and shall provide that Bayer shall have the right to continue to use the technology necessary to operate the EDNC Baytown Plant from and after the Termination Date.

## SECTION 7: LEASE OF REAL PROPERTY FOR AND CONSTRUCTION OF EDNC BAYTOWN PLANT

7.1 Ground Lease - Contemporaneously herewith, Bayer and EDNC have entered into the Ground Lease pursuant to which Bayer agrees to lease and EDNC agrees to rent the Leased Premises for the Term. The Ground Lease shall be recorded by Bayer in the land records of the office of the County Clerk of Chambers County, Texas. EDNC shall hold and possess the Leased Premises for the Term in accordance with the terms and conditions of the Ground Lease (subject to the terms of any Operative Agreements entered into by EDNC and approved by Bayer in accordance with Section 8.1(L) hereof).

7.2 Construction -

(A) Subject to the issuance of all required Permits, EDNC shall diligently proceed with the design and construction of the EDNC Baytown Plant on the Leased Premises. The EDNC Baytown Plant shall be designed and constructed (i) to

meet the criteria set forth on the attached Exhibit C and (ii) in accordance with detailed plans and specifications that will be made available to Bayer upon Bayer's reasonable request.

(B) Bayer shall consult with EDNC regarding the construction schedule of the EDNC Baytown Plant, and Bayer shall not direct activities of EDNC's contractors performing construction services with respect to the EDNC Baytown Plant except in emergency circumstances or situations requiring immediate attention (e.g., obstruction of roadways, safety or environmental issues).

(C) In order to avoid delays in the construction of the EDNC Baytown Plant, Bayer shall use reasonable efforts to respond to a request for a time-critical change order within two (2) working days, but in no event shall Bayer's response time exceed three (3) working days.

(D) In designing and constructing the EDNC Baytown Plant, the parties have assumed that the combination of Bayer's Nitric Acid demand and third party Nitric Acid demand ("Combined Demand") will equal or exceed the technology provider's guaranteed turndown rate, which is currently estimated to be \*\*\*\*. If the Combined Demand does not equal or exceed such guaranteed turndown rate, the parties will exercise reasonable efforts to mitigate the negative consequences of such weak Combined Demand. If the Combined Demand in any Operating Period is insufficient to achieve the guaranteed turndown rate, Bayer and EDNC agree to negotiate in good faith appropriate temporary adjustments to the Fixed Costs component, the Variable Costs component, the Nitric Acid Specifications and any other aspects of the Project Agreements that are negatively affected.

7.3 Ownership, Operation and Maintenance - EDNC shall construct, operate and maintain all Leasehold Improvements on the Leased Premises in connection with the EDNC Baytown Plant, subject to the terms and conditions of the Ground Lease. Owner Trustee will own the Leasehold Improvements and will lease the same to EDNC pursuant to the Operative Agreements.

#### SECTION 8: REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 Representations, Warranties and Covenants of EDNC - EDNC hereby represents and warrants to Bayer as follows:

(A) Corporate Standing - EDNC is a corporation duly organized, validly existing and in good standing under the laws of the State of Oklahoma, and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business requires such qualification. EDNC has the full corporate power and authority to enter into and perform this Agreement and all Project Agreements and to consummate the transactions therein. The execution, delivery and performance of the Project Agreements are authorized by all necessary corporate action of EDNC.

(B) Binding Effect of Project Agreements - The Project Agreements constitute legal, valid and binding obligations of EDNC, enforceable against EDNC in accordance with their terms. The execution, delivery and performance of the Project Agreements do not violate or conflict with any provision of the Articles of Incorporation or Bylaws of EDNC.

(C) Consents - Except for the Permits, no consent, approval or authorization from, notice to, or filing or registration with, any governmental authority or agency, or from, to or with any other person or entity under any contract, license or agreement to which EDNC is a party, is necessary or required to be obtained or made by EDNC in connection with the execution, delivery or performance of the Project Agreements by EDNC or the consummation by EDNC of the transactions contemplated by the Project Agreements.

(D) Conflicts - There is no:

(1) litigation or governmental proceeding pending or, so far as is known to any officer of EDNC, threatened;

(2) asserted claim or basis for any claim of default, breach of liability under or violation of any law, rule

or regulation applicable to EDNC; nor

(3) any agreement or order to which EDNC is a party or by which EDNC is bound, which in any such case, would prohibit or materially delay the ability of EDNC to execute, deliver and perform the Project Agreements in accordance with their terms.

(E) Health and Safety Covenants -

(1) EDNC hereby agrees (a) to have "practice in place" for all Chemical Manufacturers' Association Responsible Care Codes within one (1) year of the Commencement Date and (b) to enter the review/implementation phase of the Responsible Care Codes within three (3) years of the Commencement Date.

(2)(a) EDNC hereby agrees to exercise reasonable efforts to design and operate the EDNC Baytown Plant with the objective of achieving an Occupational Health and Safety Administration total Recordable Occupational Injury or Illness rate (as defined in 29 C.F.R. Section 1904.12 (1996); hereinafter "Recordable Incidence Rate") goal consistent with Bayer's Recordable Incidence Rate goal for the Bayer Baytown Plant.

(b) In the event that injuries at the EDNC Baytown Plant indicate to Bayer in its reasonable discretion that there exists (i) a pattern of improper safety practice by EDNC at the EDNC Baytown Plant, (ii) a failure of EDNC to maintain a safe working environment at the EDNC Baytown Plant or (iii) a failure to follow EDNC's safety plan (as previously approved by Bayer) at the EDNC Baytown Plant, then (x) EDNC shall meet with representatives of Bayer to develop a safety improvement program ("Safety Improvement Program") for the EDNC Baytown Plant to bring its operations into compliance or to cure the shortcomings Bayer has identified to EDNC and (y) EDNC shall take all reasonable steps to implement such Safety Improvement Program.

(F) Notices Under the Operative Agreements - EDNC hereby agrees to notify promptly, and agrees to require Owner Trustee to notify promptly, Bayer of any EDNC default under the Operative Agreements.

(G) Compliance with Laws & Permits - (1) EDNC will construct and operate the EDNC Baytown Plant in full compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, orders, codes, judgments, decrees and other governmental requirements applicable to EDNC and/or the EDNC Baytown Plant (including, without limitation, Environmental, Health and Safety Laws) (collectively, "Laws") and in compliance with the terms of all applicable operating, environmental, occupancy and other permits and similar requirements. EDNC will promptly notify Bayer of the occurrence of any violation of any such Law and/or the occurrence of any Spill (as defined in the Services Agreement) at the EDNC Baytown Plant.

(2) In the event that any occurrences at the EDNC Baytown Plant indicate to Bayer in its reasonable discretion that there exists a pattern of conduct resulting in frequent or material violations of Laws, EDNC shall meet with representatives of Bayer promptly and upon request of Bayer to develop a remedial program ("Compliance Program") for the EDNC Baytown Plant to bring its operations into compliance with Laws or to cure the shortcomings identified to EDNC by Bayer, and EDNC shall take all reasonable steps to implement such Compliance Program.

(H) EDNC Baytown Plant Capacity - EDNC shall design and construct the EDNC Baytown Plant to have a production capacity of 443,000 short tons of Nitric Acid per year.

(I) Hazards Analyses - EDNC shall perform a process safety hazards analysis of the proposed Nitric Acid manufacturing process. In addition, EDNC shall perform a safety hazards analysis of the transportation and handling of Nitric Acid (including Nitric Acid provided under the Back-up and Start-up Supply Plan). Representatives of Bayer shall participate in such safety hazards analyses.

(J) Common Carriers - EDNC shall select common carriers for the transportation of Nitric Acid from a list of

common carriers that has been pre-approved by Bayer.

(K) Termination for Uneconomic or Surplus

Condition - EDNC will not terminate the Leveraged Lease for uneconomic or surplus condition pursuant to the Leveraged Lease without first obtaining the prior written consent of Bayer, which consent Bayer may grant or withhold in its sole discretion.

(L) Operative Agreements - EDNC hereby agrees to

obtain Bayer's prior written consent (which consent Bayer may grant or withhold in its sole discretion) before executing any of the Operative Agreements. EDNC further agrees not to amend any of the Operative Agreements in a manner that could materially adversely affect Bayer without the prior written consent of Bayer, which consent may not be unreasonably withheld.

(M) Assignment and Sublease of EDNC Baytown Plant

- EDNC agrees not to assign or sublease (or to allow the Owner Trustee to assign or sublease) the EDNC Baytown Plant or any portion thereof to a third party without first obtaining the express written consent of Bayer, which consent Bayer may grant or withhold in its sole discretion.

(N) Bankruptcy Remote - EDNC will execute a

Supplemental Agreement substantially in the form of the attached Exhibit H. EDNC covenants that the corporate purpose of EDNC, as set forth in its articles/certificate of incorporation, is (a) to engage in all activities reasonably related to (i) the production of Nitric Acid at the EDNC Baytown Plant, (ii) the provision of Nitric Acid to Bayer pursuant to the Project Agreements and (iii) the sale of nitric acid produced at the EDNC Baytown Plant to third parties and (b) to engage in all activities reasonably related to obtaining financing for the construction, maintenance and operation of the EDNC Baytown Plant.

(O) Quality Standards - EDNC will cooperate with

Bayer to achieve such quality standards and certifications (for example, ISO 9000 standards) as either party may reasonably request.

(P) Fixed Price Purchase Option - EDNC shall

promptly notify Bayer not less than sixty (60) days prior to the date upon which EDNC may exercise the Fixed Price Purchase Option (as such date is determined under the Operative Agreements) of EDNC's intention to exercise or to decline to exercise such Fixed Price Purchase Option. EDNC agrees not to exercise the Fixed Price Purchase Option without first obtaining the written consent of Bayer, which consent Bayer may grant or withhold in its sole and absolute discretion. Bayer may, in the event that EDNC notifies Bayer of its intention not to exercise the Fixed Price Purchase Option, direct EDNC to exercise the Fixed Price Purchase Option. In such event, EDNC shall act in accordance with Bayer's instructions. If Bayer either (i) consents to the exercise of the Fixed Price Purchase Option by EDNC or (ii) requires the exercise thereof by EDNC, then Bayer shall pay the Fixed Price Purchase Option Amount. The rights of Bayer and EDNC in such circumstances shall be governed by the provisions of Section 17.5 hereof.

8.2 Representations, Warranties and Covenants of

El Dorado - El Dorado hereby represents and warrants to Bayer as follows:

(A) Corporate Standing - El Dorado is a

corporation duly organized, validly existing and in good standing under the laws of the state of Oklahoma, and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business requires such qualification. El Dorado has the full corporate power and authority to enter into and perform this Agreement and all Project Agreements and to consummate the transactions therein. The execution, delivery and performance of the Project Agreements are authorized by all necessary corporate action of El Dorado.

(B) Binding Effect of Project Agreements - The

Project Agreements constitute legal, valid and binding obligations of El Dorado, enforceable against El Dorado in accordance with their terms. The execution, delivery and performance of the Project Agreements do not violate or conflict with any provision of the Articles of Incorporation or Bylaws of El Dorado.

(C) Consents - Except for the Permits, no consent, approval or authorization from, notice to, or filing or registration with any governmental authority or agency, or from, to or with any other person or entity under any contract, license or agreement to which El Dorado is a party is necessary or required to be obtained or made by El Dorado in connection with the execution, delivery or performance of the Project Agreements by El Dorado or the consummation by El Dorado of the transactions contemplated by the Project Agreements.

(D) Conflicts - There is no:

(1) litigation or governmental proceeding pending or, so far as is known to any officer of El Dorado, threatened;

(2) asserted claim or basis for any claim of default, breach of liability under or violation of any law, rule or regulation applicable to El Dorado; nor

(3) any agreement or order to which El Dorado is a party or by which El Dorado is bound, which, in any such case, would prohibit or materially delay the ability of El Dorado to execute, deliver and perform the Project Agreements in accordance with their terms.

(E) Back-up and Start-up Supply - El Dorado will supply back-up and Start-up Nitric Acid to Bayer in accordance with the Back-up and Start-up Supply Plan set forth in Exhibit D hereof.

(F) Health and Safety - El Dorado represents and warrants that El Dorado is a member of the Chemical Manufacturers' Association.

8.3 Representations, Warranties and Covenants of Bayer - Bayer hereby represents and warrants to EDNC as follows:

(A) Corporate Standing - Bayer is a corporation duly organized, validly existing and in good standing under the laws of the State of Indiana. Bayer is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business requires such qualification. Bayer has the full corporate power and authority to enter into and perform this Agreement and all Project Agreements to which Bayer is a party and to consummate the transactions therein. The execution, delivery and performance of the Project Agreements are authorized by all necessary corporate action of Bayer.

(B) Binding Effect of Project Agreements - The Project Agreements constitute legal, valid and binding obligations of Bayer, enforceable against Bayer in accordance with their terms. The execution, delivery and performance of the Project Agreements do not violate or conflict with any provision of the Articles of Incorporation or Bylaws of Bayer.

(C) Consents - Except for the Permits, no consent, approval or authorization from, or notice to, or filing or registration with any governmental authority or agency, or from, to or with any other person or entity under any contract, license or agreement to which Bayer is a party is necessary or required to be obtained or made by Bayer in connection with the execution, delivery or performance of the Project Agreements by Bayer or the consummation by Bayer of the transactions contemplated by the Project Agreements.

(D) Conflicts - There is no:

(1) litigation or governmental proceeding pending or, so far as is known to any officer of Bayer, threatened;

(2) asserted claim or basis for any claim of default, breach of liability under or violation of any law, rule or regulation applicable to Bayer; nor

(3) any agreement or order to which Bayer is a party or by which Bayer is bound; which, in any such case, would prohibit or materially delay the ability of Bayer to

execute, deliver and perform the Project Agreements in accordance with their terms.

(E) Quality Standards - Bayer will cooperate with EDNC to achieve such quality standards and certifications (for example, ISO 9000 standards) as either party may reasonably request.

## SECTION 9: AMMONIA

9.1 Supply by Bayer - Bayer shall supply to EDNC at the Battery Limits of the EDNC Baytown Plant the Ammonia for EDNC's use in manufacturing Nitric Acid; provided, however, that Bayer shall not be obligated to supply EDNC with more than One Hundred Fifteen percent (115%) of the monthly nameplate requirements of the EDNC Baytown Plant. \*\*\*\* Bayer warrants that the Ammonia supplied hereunder shall meet the applicable Ammonia Specifications set forth on the attached Schedule 9. Bayer covenants that such Ammonia shall be free of all liens and encumbrances. The Ammonia shall be delivered by or on behalf of Bayer to EDNC at the Battery Limits of the EDNC Baytown Plant via the Delivery System or other agreed-upon mechanism. Bayer shall invoice EDNC monthly for Ammonia provided by Bayer.

9.2 Supply by EDNC - Subject to the terms of any ammonia procurement contracts between Bayer and its ammonia supplier(s) and subject to the satisfactory resolution of any logistical issues between Bayer and EDNC regarding the segregation and maintenance of ammonia inventory, the parties hereby agree that upon EDNC's request the parties will negotiate in good faith the possibility of the sourcing of ammonia for third party sales by EDNC on its own behalf (provided, however, that this clause shall not be interpreted to require Bayer to pay any premium, increased cost or penalty for Ammonia under its procurement contracts as a result of such direct sourcing by EDNC).

### 9.3 Measurement of Ammonia Supplied

(A) Metering - EDNC shall install, operate and maintain, at its expense, metering equipment to measure EDNC's consumption of the Ammonia supplied by pipeline. EDNC's readings will be the basis upon which any charges will be assessed against EDNC for the consumption of Ammonia.

(B) Calibration - EDNC shall calibrate all meters in accordance with manufacturer's recommendations. If dual in-line meters are installed, EDNC shall also calibrate the meters relative to each other. EDNC shall designate one meter as the primary meter from which all readings shall be taken. The second meter's readings shall be used during failure, testing or recalibration of the first meter and to periodically verify the reading of the first meter. EDNC shall give Bayer three (3) days notice of, and the right to observe, the calibration of any meters installed by EDNC. EDNC shall recalibrate each meter as recommended by the manufacturer. If during any such periodic recalibration the meter is found to be inaccurate by more than one-half of one percent (0.50%) of indicated value, or the second of the dual meters differs by more than one half of one percent with the first meter, then EDNC shall repair or recalibrate such meter to the lesser of: (i) manufacturer's tolerances; or (ii) plus or minus one-half of one percent (0.50%) of indicated value. If a meter is inaccurate by more than one-half of one percent (0.50%) of indicated value, the party that has benefitted from the inaccuracy shall refund to the other party one hundred percent (100%) of the discrepancy, back to the date of the last calibration or, if identifiable, back to the date of the failure that triggered the inaccuracy. If feasible, EDNC shall affix its seal to each meter after each calibration. EDNC agrees to exercise reasonable efforts to conduct all meter readings, inspections, recalibrations and repairs in a manner that will not unreasonably interfere with Bayer's operations at the Bayer Baytown Plant. EDNC shall also permit Bayer, at Bayer's expense, to inspect the meters at any time, provided such inspection does not unreasonably interfere with EDNC's operations at the EDNC Baytown Plant.

## SECTION 10: UTILITIES

In accordance with and subject to the terms, conditions and limitations of the Services Agreement, Bayer shall supply to EDNC at the Battery Limits of the EDNC Baytown Plant the Utilities.

#### SECTION 11: WASTE

In accordance with and subject to the terms, conditions and limitations of the Services Agreement, Bayer shall accept at the Battery Limits of the EDNC Baytown Plant and shall be responsible for the proper treatment and disposal, in accordance with all applicable Environmental, Health and Safety Laws, of certain Waste produced in connection with the operation of the EDNC Baytown Plant.

#### SECTION 12: INTERRUPTION OF AMMONIA, UTILITIES OR NITRIC ACID

12.1 Interruption of EDNC Feedstock - If Bayer is unable to or fails to deliver Ammonia or Utilities to the EDNC Baytown Plant as required by the Project Agreements, then EDNC may procure such Ammonia or Utilities elsewhere through any commercially reasonable source. Notwithstanding the foregoing, EDNC may supply such Ammonia and Utilities through the infrastructure of the Bayer Baytown Plant only with the prior approval of Bayer, which may not be unreasonably withheld. Any procurement by EDNC of Ammonia or Utilities from parties other than Bayer shall be at EDNC's risk, and shall have no effect on the warranty made to Bayer by EDNC pursuant to Section 6 hereof. If Bayer is unable to or fails to deliver Ammonia or Utilities as required by the Project Agreements, EDNC's remedy for such failure is set forth in Section 16 hereof.

12.2 Interruption of Nitric Acid - If EDNC is unable to or fails to provide Bayer's monthly Nitric Acid requirements for the Bayer Baytown Plant and EDNC is unable to provide back-up supply to Bayer, then Bayer may procure such Nitric Acid elsewhere through any commercially reasonable source. EDNC shall permit Bayer to use EDNC's four (4) spot truck loading and un-loading rack if Bayer requires use of the same for the receipt of nitric acid from third party suppliers.

#### SECTION 13: PIPELINE AND DELIVERY SYSTEM CONSTRUCTION AND MAINTENANCE

13.1 Delivery Systems - Bayer shall design, engineer and construct the Delivery Systems. However, Bayer shall be under no obligation to design, engineer or construct any improvement within the Battery Limits of the Leasehold Premises, including without limitation any improvement that relates to the transportation of Ammonia, Utilities, Waste or other material to or from the EDNC Baytown Plant to tie-in points with the Delivery Systems at the Battery Limits.

13.2 Plant Systems - EDNC shall design, engineer and construct the improvements necessary to transport Ammonia, Utilities, Waste or other material provided or handled by the Delivery Systems to or from tie-in points at the Battery Limits to the EDNC Baytown Plant.

13.3 Connection Points - Bayer and EDNC shall agree upon the connections at the Battery Limits between the Delivery Systems and EDNC's connections thereto. Bayer shall be responsible for operating and maintaining and shall own the Delivery Systems outside of the Battery Limits of the EDNC Baytown Plant. EDNC shall be responsible for operating and maintaining and shall own or lease from the Owner Trustee (on terms that have been approved by Bayer) all of the improvements inside the Battery Limits of the EDNC Baytown Plant.

#### SECTION 14: PERMITS

EDNC shall be responsible for the preparation, filing and cost of obtaining all Permits related to the construction, lease/ownership and operation of the EDNC Baytown Plant. Bayer shall have ten (10) Business Days from its receipt of draft permit applications to review and approve, or to disapprove, all

Permit applications prepared by EDNC. Bayer shall provide EDNC reasonable assistance necessary to obtain the Permits. The parties' respective obligations hereunder are conditioned upon the issuance of all required Permits.

## SECTION 15: INSURANCE

15.1 EDNC's Insurance - EDNC shall maintain, or cause to be maintained, the following insurance:

### (A) Builders Risk (Course of Construction)

Insurance - EDNC shall maintain from the commencement of and until the completion of the construction of the EDNC Baytown Plant, builders risk insurance on an all-risk basis, including perils of earthquake, windstorm and flood, on the work and all property to be incorporated into the EDNC Baytown Plant. Such coverage shall be in an amount not less than the full replacement value of the completed EDNC Baytown Plant.

(B) Insurance Against Loss or Damage - After completion of the construction and installation of the EDNC Baytown Plant, EDNC shall maintain or cause to be maintained in effect at all times during the Term of this Agreement and the other Project Agreements property insurance for the EDNC Baytown Plant. EDNC shall keep all of the equipment, machinery, apparatus and buildings comprising the EDNC Baytown Plant insured for full replacement value on an all-risk basis, including, without limitation, perils of earthquake, windstorm and flood, against loss or damage from fire or other casualty, with vandalism, malicious mischief, replacement costs and cost of demolition endorsements and with comprehensive boiler and machinery coverage.

(C) Insurance Against Public Liability - EDNC shall procure and maintain in effect at all times from the Effective Date until the expiration or termination of this Agreement automobile liability, comprehensive general and excess liability insurance policies applying to bodily injury (including death) and third party property damage arising from the activities of EDNC under the Project Agreements. Such coverage shall have a minimum combined single limit of liability of at least Five Million Dollars (\$5,000,000) and a general aggregate limit of Five Million Dollars (\$5,000,000). All such policies shall be written to apply to all bodily injury, property damage, personal injury and other losses occurring during the policy term. Such coverage shall also contain endorsements:

(A) deleting any employee exclusion on personal injury coverage; (B) including employees as additional insureds; (C) deleting any liquor liability exclusion; (D) providing for coverage of employer's automobile non-ownership liability; (E) providing for fire legal liability coverage; (F) providing for explosion, collapse and underground liability coverage; and (G) providing for contractual liability.

(D) Workers' Compensation and Other Insurance - EDNC shall also carry workers' compensation insurance and such other forms of insurance that EDNC is required by law to provide, covering loss resulting from injury, sickness, disability or death of the employees of EDNC arising out of and in the course of their employment to the extent required by law, together with employer's liability coverage with a limit of One Million Dollars (\$1,000,000).

15.2 Bayer's Insurance - Bayer shall maintain, or cause to be maintained, the following insurance:

### (A) Builders Risk (Course of Construction)

Insurance - Bayer shall maintain from the commencement of and until the completion of the construction of the Delivery Systems for which it is responsible, builders risk insurance on an all-risk basis, including perils of earthquake, windstorm and flood, on the work and all property to be incorporated into the Delivery Systems located at the Bayer Baytown Plant. Such coverage shall be in an amount not less than the full replacement value of the completed Delivery Systems.

(B) Insurance Against Loss or Damage - Bayer shall maintain or cause to be maintained in effect at all times during the Term property insurance for the Bayer Baytown Plant and keep it, and all of the equipment, machinery, apparatus and

buildings comprising the Bayer Baytown Plant insured for full replacement value on an all-risk basis, including, without limitation, perils of earthquake, windstorm and flood, against loss or damage from fire or other casualty, with vandalism, malicious mischief, replacement costs and cost of demolition endorsements and with comprehensive boiler and machinery coverage.

(C) Insurance Against Public Liability - Bayer shall procure and maintain in effect at all times from the Effective Date until the expiration or termination of this Agreement, automobile liability, comprehensive general and excess liability insurance policies applying to bodily injury (including death) and third party property damage arising from the activities of Bayer under the Project Agreements. Such coverage shall have a minimum combined single limit of liability of at least Five Million Dollars (\$5,000,000) and a general aggregate limit of Five Million Dollars (\$5,000,000). All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered losses occurring during the policy term. Such coverage shall also contain endorsements: (A) deleting any employee exclusion on personal injury coverage; (B) including employees as additional insureds; (C) deleting any liquor liability exclusion; (D) providing for coverage of employer's automobile non-ownership liability; (E) providing for fire legal liability coverage; (F) providing for explosion, collapse and underground liability coverage; and (G) providing for contractual liability.

(D) Workers' Compensation and Other Insurance - Bayer shall also carry workers' compensation insurance and such other forms of insurance that Bayer is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of Bayer arising out of and in the course of their employment to the extent required by law, together with employer's liability coverage with a limit of One Million Dollars (\$1,000,000).

15.3 Waiver of Subrogation Rights - Anything in this Agreement to the contrary notwithstanding, EDNC and Bayer each waive all rights of recovery, claim, action or cause of action against the other, its agents, officers, directors, shareholders or employees for any loss or damage that may occur to the EDNC Baytown Plant or the Bayer Baytown Plant, or any personal property of either party hereto, by reason of any cause or origin that is insured against under insurance coverages hereunder, excluding the sole negligence of the other party hereto, its agents, officers or employees. The insurance policies required hereunder shall be endorsed if necessary to waive the insured's rights of subrogation against EDNC or Bayer as applicable.

15.4 Miscellaneous Insurance Provisions - Each party shall provide the other party with thirty (30) days notice of cancellation or material change in terms of any of the coverage described in this Section 15 required to be maintained by the party. If at any time during the Term the amount or type of insurance coverage that each party is required to carry under this Section 15 is, in the reasonable judgment of the other party, materially deficient under Sections 15.1, 15.2 or 15.3 hereof, the party not in default of this Section 15 may, at its option: (A) notify the defaulting party that it has thirty (30) days in which to cure such deficiency or the defaulting party shall be in default hereunder, or (B) pay any premiums or take any other steps necessary to cure the deficiency, in which case the defaulting party shall be liable to the non-defaulting party for all premiums and other costs associated with such cure.

15.5 Form of Policies - All insurance policies required to be carried under this Agreement shall be obtained from insurance companies of good national or international reputation. Any deductible amounts exceeding Five Hundred Thousand Dollars (\$500,000) under any insurance policies required hereunder shall be subject to the other party's prior written approval. In any event, deductible amounts shall not exceed ten percent (10%) of the limit of liability in dollars for each required insurance. However, the above conditions of approval and limitations of amounts of deductible shall not apply when the conditions of self-insurance set forth in Section 15.6 below are satisfied. Each party shall deliver to the other party, within ten (10) days following the Effective Date, and annually thereafter,

certificates evidencing continued maintenance of the insurance required under this Section 15.

15.6 Self-Insurance - Any insurance required to be maintained by either party under this Agreement (other than workers' compensation insurance) may be maintained under a plan of self-insurance. However, either party shall be entitled to use such self-insurance only (A) during periods when such party's net worth exceeds Two Hundred Fifty Million Dollars (\$250,000,000), and (B) if such party maintains adequate reserves or liquid assets for payment of claims of liability against the other party, including the replacement value of the EDNC Baytown Plant in the case of EDNC and the Bayer Baytown Plant in the case of Bayer.

15.7 Blanket Coverage - Any policy required to be maintained by either party under this Agreement may be maintained under a "blanket policy" that insures other parties or locations. However, the amount of insurance and the type of coverage required to be provided hereunder may not be thereby diminished, changed or adversely affected.

15.8 Failure of EDNC to Insure - If EDNC fails to procure or maintain the insurance that EDNC is required to maintain pursuant to Section 15.1 hereof, Bayer may procure, on behalf of EDNC, the minimum amount of insurance coverage required under Section 15.1 hereof, and EDNC shall promptly reimburse Bayer for the same.

## SECTION 16: DEFAULT AND REMEDIES

16.1 EDNC Events of Default - An "EDNC Event of Default" shall occur upon the occurrence of any one or more of the following events, unless the event is caused by Bayer or any of its agents or contractors:

(A) If EDNC is unable to provide, for any reason substantially related to EDNC's negligence or any material breach of EDNC's obligations hereunder, a minimum of the lesser of (i) Bayer's monthly Nitric Acid requirements for the Bayer Baytown Plant or (ii) \*\*\*\* per month of Nitric Acid, in each case under any combination of this Agreement and the Back-up and Start-up Supply Plan, provided, however, that EDNC shall have no obligation to purchase substitute ammonia or utilities;

(B) If EDNC fails to meet, for thirty (30) days during any one hundred eighty (180) day period or forty-five (45) days during any three hundred sixty-five (365) day period, its obligations to provide to Bayer Nitric Acid meeting the Nitric Acid Specifications in Section 2.2 hereof, provided such failure to provide Nitric Acid meeting the Nitric Acid Specifications has a material adverse effect on the DNT/SAC or MNB/Aniline plants;

(C) If EDNC fails to pay to Bayer any amount due Bayer pursuant to Sections 3.7 ("Fixed Costs Reimbursements"), 3.8 ("Capital Costs Reimbursements by EDNC"), 3.9 ("Profit Component Reimbursements by EDNC"), 4 ("Rebate and Egress Fee") or 15.8 ("Failure of EDNC to Insure") hereof, or any amount due pursuant to the Services Agreement, the Ground Lease or the Technology Agreement when and as due, and such payments are not being contested in good faith by appropriate proceedings;

(D) If EDNC breaches any of its covenants set forth in Section 8.1(E) hereof ("Health and Safety Covenants");

(E) If EDNC defaults in its obligations under the Operative Agreements and such default is not cured or waived within any applicable cure period set forth therein;

(F) If EDNC breaches its covenants set forth in Section 8.1(G) ("Compliance with Laws & Permits") hereof; or

(G) If EDNC materially defaults in the due performance or observance of any other term, covenant or agreement on its part to be performed or observed pursuant to any of the provisions of this Agreement or any of the other Project Agreements.

16.2 EDNC Cure Periods - In the event any EDNC Event of Default occurs, EDNC shall have the following cure periods

following notice by Bayer to EDNC:

(A) Sixty (60) days in the case of a default under Section 16.1(A) hereof;

(B) Zero (0) days, in the case of a default under Section 16.1(B) hereof;

(C) Five (5) Business Days, in the case of a default under Section 16.1(C) hereof;

(D) Ten (10) days, in the case of a default under Section 16.1(D) hereof (provided, however, that in the event of a default under Section 16.1(D) that is caused by a breach by EDNC of its covenant under Section 8.1(E)(2), EDNC shall have a reasonable period of time, which in no event shall exceed one hundred eighty (180) days, to implement the Safety Improvement Program described in Section 8.1(E)(2)(b) hereof);

(E) Zero (0) days in the case of a default under Section 16.1(E) hereof;

(F) In the case of a default under Section 16.1(F) hereof, a reasonable period of time which in no event shall exceed one hundred eighty (180) days, to implement the Compliance Program described in Section 8.1(G)(2) hereof and to obtain results which indicate to Bayer in its reasonable discretion that EDNC has substantially addressed and corrected the issues identified pursuant to Section 8.1(G)(2) hereof; and

(G) Forty-five (45) days, in all other cases, unless such EDNC Event of Default cannot reasonably be cured in forty-five (45) days and EDNC has, during such forty-five (45) day period, undertaken reasonably effective curative measures, in which case the cure period for such EDNC Event of Default shall be the number of days reasonably required to effectuate such cure.

If any EDNC Event of Default is remedied within the aforementioned cure periods, such EDNC Event of Default shall not constitute a continuing EDNC Event of Default and this Agreement shall continue in full force and effect as if said EDNC Event of Default had not occurred. The waiver of any EDNC Event of Default under this Agreement shall not constitute a waiver of any subsequent EDNC Event of Default.

16.3 Bayer Events of Default - A "Bayer Event of Default" shall occur upon the occurrence of any one or more of the following events, unless the event is caused by EDNC or any of its agents or contractors:

(A) If Bayer is unable to provide, for any reason substantially related to Bayer's negligence or any material breach of Bayer's obligations hereunder, a minimum of the lesser of the Ammonia necessary to produce (i) Bayer's monthly Nitric Acid requirements for the Bayer Baytown Plant or (ii) \*\*\*\* per month of Nitric Acid (less any amounts supplied to Bayer under the Back-up and Start-up Supply Plan);

(B) If Bayer fails to meet, for thirty (30) days during any one hundred eighty (180) day period or forty-five (45) days during any three hundred sixty-five (365) day period, its obligations to supply to EDNC certain Ammonia, Utilities or Services (as defined in the Services Agreement) to be supplied by Bayer and such failure to provide Ammonia, Utilities or Services has a material adverse effect on the EDNC Baytown Plant;

(C) If Bayer fails to pay to EDNC any amount due EDNC pursuant to Section 3 hereof when and as due; or

(D) If Bayer materially defaults in the due performance or observance of any other term, covenant or agreement on its part to be performed or observed pursuant to any of the provisions of this Agreement or any of the other Project Agreements.

16.4 Bayer Cure Periods - In the event of any Bayer Event of Default occurs, Bayer shall have the following cure periods following notice by EDNC to Bayer:

(A) Sixty (60) days, in the case of a default under Section 16.3(A); or

(B) Zero (0) days, in the case of a default under Section 16.3(B) hereof;

(C) Five (5) Business Days, in the case of a default under Section 16.3(C) hereof; and

(D) Forty-five (45) days, in all other cases, unless such Bayer Event of Default cannot reasonably be cured in forty-five (45) days and, during such forty-five (45) day period, Bayer has undertaken reasonably effective curative measures, in which case the cure period for such Bayer Event of Default shall be the number of days reasonably required to effectuate such cure.

If any Bayer Event of Default is remedied within the aforementioned cure periods, such Bayer Event of Default shall not constitute a continuing Bayer Event of Default and this Agreement shall continue in full force and effect as if said Bayer Event of Default had not occurred. The waiver of any Bayer Event of Default under this Agreement shall not constitute a waiver of any subsequent Bayer Event of Default.

16.5 Bayer Remedies for EDNC Events of Default - The parties agree that upon the occurrence of an EDNC Event of Default (and subject to the continuation of such Event of Default beyond any applicable cure periods), Bayer shall have the following rights and remedies (in addition to the indemnification rights provided for in Section 18.1 hereof):

(A) If an EDNC Event of Default occurs pursuant to Section 16.1(A) hereof, Bayer shall have the termination rights specified in Section 17.1 hereof and EDNC shall pay to Bayer the difference between the reasonable cost of any purchase of substitute nitric acid (including cost of transportation, storage, handling and any other direct costs associated with procuring substitute nitric acid) and the Variable Costs Component in respect of all Nitric Acid ordered by Bayer and not delivered by EDNC during the existence of and continuation of the EDNC Event of Default;

(B) If an EDNC Event of Default occurs pursuant to Section 16.1(B) hereof, Bayer shall have the termination rights specified in Section 17.1 hereof and EDNC shall pay to Bayer its actual damages incurred in connection with the provision of nitric acid failing to meet the Nitric Acid Specifications during the existence and continuation of the EDNC Event of Default;

(C) If an EDNC Event of Default occurs pursuant to Section 16.1(C) hereof, Bayer shall have the termination rights specified in Section 17.1 hereof; provided, however, that if EDNC contests the amounts due Bayer, EDNC and Bayer shall first resolve such payment dispute in accordance with Section 22 hereof;

(D) If an EDNC Event of Default occurs pursuant to Section 16.1(D) hereof, Bayer shall have the termination rights specified in Section 17.1 hereof and EDNC shall pay to Bayer its damages incurred; and

(E) In all other EDNC Events of Default, Bayer shall have the termination rights specified in Section 17.1 hereof and EDNC shall pay to Bayer its damages incurred and Bayer shall have any and all other rights and remedies available, whether at law or at equity.

In addition to any and all other remedies available to Bayer as specified above, Bayer shall have the right to offset its damages incurred pursuant to any Event of Default against any payments due EDNC under the Project Agreements or otherwise, subject to the following limitations:

(1) Bayer may offset damages incurred pursuant to an EDNC Event of Default under Section 16.1(A) or Section 16.1(B) hereof against any payments due EDNC except that amount equal to EDNC's periodic payments under the Leveraged Lease.

(2) Bayer may offset damages incurred pursuant to an EDNC Event of Default under Section 16.1(C) hereof against any payments due EDNC except that amount equal to EDNC's periodic

lease payments under the Leveraged Lease, provided Bayer and EDNC have first employed the dispute resolution procedures set forth in Section 22 hereof; and

(3) Bayer may offset any damages incurred pursuant to an EDNC Event of Default under Section 16.1(D), Section 16.1(F) or Section 16.1(G) hereof against any payments due EDNC except (i) that amount equal to EDNC's periodic lease payments under the Leveraged Lease, (ii) the Fixed Costs Monthly Charge and (iii) the Variable Costs Component.

Upon the occurrence of an EDNC Event of Default, Bayer may, at its election, deliver Leveraged Lease payments directly to the Owner Trustee.

16.6 EDNC Remedies for Bayer Events of Default - The parties agree that upon the occurrence of a Bayer Event of Default (and subject to the continuation of such Event of Default beyond any applicable cure periods), EDNC shall have the following rights and remedies (in addition to the indemnification rights provided for in Section 18.2 hereof):

(A) If a Bayer Event of Default occurs due to Bayer's failure to provide sufficient quantities of Ammonia pursuant to Section 16.3(A) hereof or Bayer's failure to provide sufficient quantities of Utilities or Services pursuant to Section 16.3(B) hereof, EDNC shall have the termination rights specified in Section 17.2 hereof and Bayer shall pay to EDNC the difference between the cost of any reasonable purchase of ammonia, utilities or services, as the case may be (including cost of transportation, storage, handling and any other direct costs associated with procuring substitute ammonia, utilities or services) and the price of Ammonia, Utilities or Services, as the case may be, under the Project Agreements in respect of all Ammonia, Utilities and/or Services ordered by EDNC from Bayer during the existence and continuation of the Bayer Event of Default;

(B) If a Bayer Event of Default occurs due to Bayer's failure to provide Ammonia, Utilities or Services that meet specifications pursuant to Section 16.3(B) hereof, EDNC shall have the termination rights specified in Section 17.2 hereof and Bayer shall pay to EDNC its actual damages incurred in connection with the provision of Ammonia, Services or Utilities failing to meet the specifications for Ammonia, Services and Utilities during the existence and the continuation of the Bayer Event of Default;

(C) If a Bayer Event of Default occurs pursuant to Section 16.3(C) hereof, EDNC shall have the termination rights specified in Section 17.2 hereof; provided, however, that if Bayer contests the amounts due EDNC, Bayer and EDNC shall first resolve such payment dispute in accordance with Section 22 hereof. Following such resolution in EDNC's favor, EDNC shall have the termination rights specified in Section 17.2 hereof and Bayer shall pay to EDNC its damages incurred; and

(D) In all other Bayer Events of Default, EDNC shall have the termination rights specified in Section 17.2 hereof and Bayer shall pay to EDNC its damages, and EDNC shall have any and all other rights and remedies available, whether at law or at equity.

In addition to any and all other remedies available to EDNC as specified above, EDNC shall have the right to offset its damages incurred pursuant to an Event of Default against any payments due Bayer under the Project Agreements or otherwise.

## SECTION 17: TERMINATION/FIXED PRICE PURCHASE OPTION

17.1 Bayer's Optional Termination Rights - Bayer shall have an option to terminate this Agreement by written notice to EDNC upon an occurrence of any one of the following events:

(A) Failure by EDNC to complete construction and commence the operations of the EDNC Baytown Plant prior to \*\*\*\* (provided such failure is not substantially related to a material breach by Bayer of its obligations under the Project Agreements); provided, however, that if such failure is by reason of a Force Majeure Event, then Bayer shall not have the option to terminate

this Agreement if EDNC provides, within sixty (60) days of the occurrence of such Force Majeure Event, a reasonable plan to remedy such Force Majeure Event and such plan is reasonably acceptable to Bayer;

(B) An EDNC Event of Default that is not cured within any applicable cure period (provided, however, that Bayer shall have complied with any continuing obligations under the Bayer Agreement);

(C) Failure by EDNC to obtain construction financing, evidenced by definitive signed agreements approved by Bayer (the approval of which Bayer may withhold in its sole discretion), by July 15, 1997; or

(D) Failure by EDNC to obtain permanent financing, evidenced by definitive signed agreements approved by Bayer (the approval of which Bayer may withhold in its sole discretion), by \*\*\*\*

17.2 EDNC's Optional Termination Rights - EDNC shall have an option to terminate this Agreement by written notice to Bayer upon an occurrence of any one of the following events:

(A) Failure by Bayer to complete construction of the Delivery Systems prior to \*\*\*\* (provided such failure is not substantially related to a material breach by EDNC of its obligations under the Project Agreements); provided, however, that if such failure is by reason of a Force Majeure Event, then EDNC shall not have the option to terminate this Agreement if Bayer provides, within sixty (60) days of the occurrence of such Force Majeure Event, a reasonable plan to remedy such Force Majeure Event and such plan is reasonably acceptable to EDNC; or

(B) A Bayer Event of Default that is not cured within any applicable cure period.

17.3 Automatic Termination - This Agreement shall be automatically terminated:

(A) at the expiration of the Term, if the Term of this Agreement is not extended beyond either the Initial Term or any current Renewal Term;

(B) in the event that either Bayer, on the one hand, or EDNC or El Dorado on the other hand (collectively, "EDNC Parties") (i) makes an assignment for the benefit of creditors, becomes insolvent or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or a petition seeking reorganization, liquidation, dissolution or similar relief under any law or regulation; (ii) either Bayer or one of the EDNC Parties applies for, consents to or acquiesces in the appointment of a trustee, receiver or liquidator for itself or any of its property; or (iii) an involuntary bankruptcy or involuntary insolvency proceeding is commenced by either Bayer or either of the EDNC Parties and such involuntary bankruptcy or involuntary insolvency proceeding is not dismissed within ninety (90) days of its commencement.

#### 17.4 Effects of Termination

(A) In the event that (i) the Term of this Agreement is not extended beyond either the Initial Term or any current Renewal Term, (ii) is terminated as a result of an EDNC Event of Default, (iii) is terminated as a result of a Bayer Event of Default or (iv) is automatically terminated pursuant to Section 17.3 hereof, Bayer shall pay to EDNC the appropriate termination fee (as hereinafter provided); the Project Agreements shall terminate (except as otherwise provided in Section 17.4(B) hereof); and all right and interest of EDNC to and under the Ground Lease and the Leasehold Improvements shall automatically terminate without further action by Bayer, EDNC or any other party. In the case of a termination due to (a) the expiration of the Initial Term or any Renewal Term, any automatic termination under Section 17.3 hereof, Bayer shall pay to EDNC the Expiration Termination Fee; (b) an EDNC Event of Default, Bayer shall pay to EDNC the EDNC Default Termination Fee; and (c) a Bayer Event of Default, Bayer shall pay to EDNC the Bayer Termination Fee. The Bayer Agreement shall govern Bayer's rights and obligations in respect of the Owner Trustee in the case of such a termination. Any election by Bayer pursuant to the Bayer Agreement shall not

release EDNC or El Dorado from liability for any deficiencies EDNC owes pursuant to any of the Project Agreements. EDNC's interest in and title to the Leasehold Improvements shall be transferred to Bayer upon payment to EDNC (or to the Owner Trustee on behalf of EDNC) of the Expiration Termination Fee, the EDNC Default Termination Fee or the Bayer Termination Fee, whichever is applicable. If the Bayer Default Termination Fee, the EDNC Default Termination Fee or the Expiration Termination Fee is a negative number, then EDNC shall pay to Bayer the deficiency.

(B) The termination contemplated by this Section 17 shall be conditioned upon and subject to the receipt of any necessary regulatory approvals, including without limitation the expiration of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (if applicable), and any necessary approvals under the Exon-Florio Act, as amended (if applicable). The termination shall be effective (A) within thirty (30) days following the expiration of the Term of this Agreement, (B) within ninety (90) days following the date of termination in the event the Project Agreements are terminated pursuant to Section 17.1, 17.2 or 17.3 hereof or (C) within ninety (90) days following the exercise of the Right of First Refusal described in Section 21 hereof; provided, however, that in no event shall the transaction be consummated until the expiration of the waiting period, if any, imposed by the Hart-Scott-Rodino Antitrust Improvements Act, as amended (if applicable), and the receipt by the parties of all other necessary regulatory approvals. At the termination, EDNC shall take all action necessary (in the sole discretion of Bayer and its counsel) to transfer its interest in the Leasehold Improvements and other assets comprising the EDNC Baytown Plant and to surrender the Leased Premises free and clear of any and all liens, encumbrances and liabilities (direct, contingent and otherwise) other than the Permitted Exceptions (as such term is defined in the Ground Lease), the Leveraged Lease liabilities assumed by Bayer (if any) and such other liens, encumbrances and liabilities imposed by or through Bayer. The rights set forth in Section 16, the obligations set forth in this Section 17, and the indemnification obligations contained in Section 18 and elsewhere in the Project Agreements shall survive any termination or expiration of the Project Agreements, and the payment of the Expiration Termination Fee, the Bayer Default Termination Fee or the EDNC Default Termination Fee shall be subject to offset by Bayer for damages otherwise recoverable by Bayer hereunder.

(C) In the event that the termination of the Project Agreements and the payment of the Expiration Termination Fee, the Bayer Default Termination Fee or the EDNC Default Termination Fee (as applicable) shall be prohibited or materially delayed by the operation of the Hart-Scott-Rodino Antitrust Improvements Act, as amended, the Exon-Florio Act, as amended, or any other applicable federal, state or local law, EDNC and Bayer agree to negotiate in good faith appropriate agreements that will permit EDNC to continue to operate the EDNC Baytown Plant for the continued production of Nitric Acid for Bayer. Such agreements shall include a continuation of term of the Ground Lease and mutually acceptable terms pertaining to the provision of the Ammonia, Utilities and Services necessary for the continuing operation by EDNC of the EDNC Baytown Plant.

(D) Upon termination of this Agreement pursuant to this Section 17 or exercise of the Right of First Refusal pursuant to Section 21 hereof, the nondefaulting party or parties shall be entitled to recover from the defaulting party or parties, in addition to all other sums due and payable by the defaulting party or parties hereunder, all expenses incurred in enforcing this Agreement, including without limitation, all reasonable attorneys' fees and out-of-pocket litigation expenses. Termination of this Agreement for any cause whatsoever shall not interfere with, affect or prevent the collection by the nondefaulting party or parties of any and all sums of money accrued hereunder or otherwise due to the nondefaulting party or parties prior to the date such termination becomes effective. Termination of this Agreement for any reason shall not relieve the defaulting party or parties of any of its or their unfulfilled obligations under this Agreement, including, without limitation, its or their indemnification obligations hereunder.

(A) Not less than twelve (12) months nor more than eighteen (18) months prior to the scheduled end of the Lease Term (as such term is defined in the Operative Agreements), Bayer may, in its sole and absolute discretion: (i) direct EDNC to exercise the Fixed Price Purchase Option (provided, however, that if Bayer elects such option, Bayer shall pay Boatmen's Trust Company of Texas (or any successor Lessor appointed pursuant to the Operative Agreements) the Fixed Price Purchase Option Amount, thereby terminating the Leveraged Lease); (ii) direct EDNC to exercise the Fixed Price Purchase Option, thereby terminating the Leveraged Lease, and terminate the Project Agreements (provided, however, that if Bayer elects such option, Bayer shall pay Boatmen's Trust Company of Texas (or any successor Lessor appointed pursuant to the Operative Agreements) the Fixed Price Purchase Option Amount, thereby terminating the Leveraged Lease, and shall pay EDNC the Expiration Termination Fee, thereby terminating the Project Agreements); or (iii) refuse its consent to the exercise by EDNC of the Fixed Price Purchase Option, in which case the Fixed Price Purchase Option shall not be payable, and Bayer may permit the Project Agreements to expire pursuant to Section 17.3 (provided, however, that if Bayer elects such option, Bayer shall pay to EDNC the EDNC Expiration Termination Fee and shall enter into new Project Agreements with Boatmen's Trust Company of Texas (or any successor Lessor appointed pursuant to the Operative Agreements) or its designee pursuant to Section 8 of the Lessor's Consent to Ground Sublease and Non-Disturbance Agreement.) In the event that Bayer directs EDNC to exercise the Fixed Price Purchase Option, then EDNC shall have the option, and is hereby granted the option, to (i) exercise the Fixed Price Purchase Option in its own name (or any assignee approved by Bayer), or (ii) assign the Fixed Price Purchase Option to Bayer (or its designee) prior to any exercise of the Fixed Price Purchase Option and Bayer hereby consents to such assignment. If the Fixed Price Purchase Option is assigned to Bayer hereunder, the parties hereto agree that title to the EDNC Baytown Plant will automatically revert to Bayer.

## SECTION 18: INDEMNIFICATION

### 18.1 EDNC Indemnification

(A) EDNC shall indemnify and save Bayer and its Affiliates harmless from and against any and all claims, actions, obligations, suits, damages (whether direct, actual, special, consequential or otherwise, but excluding lost profits), fines, penalties, losses, costs, liabilities and expenses, including, without limitation, reasonable attorneys' fees, out-of-pocket litigation expenses and other costs incurred in connection with (i) any negligence or misconduct on the part of EDNC or its officers, employees, agents, invitees or contractors, (ii) any bodily injury, loss of life, personal injury or death to persons or damage to property occurring in or on the EDNC Baytown Plant or the Construction Laydown Area (as such term is defined in the Ground Lease) not attributable, in whole or in part, to the negligence or intentional misconduct of the party seeking to be indemnified, (iii) any breach by EDNC of any Environmental, Health and Safety Law, any Spill or the remediation, abatement, containment, clean-up, disposal or response costs associated with environmental conditions at the Bayer Baytown Plant or the EDNC Baytown Plant caused by EDNC, (iv) any failure by EDNC to observe or comply with any applicable laws or government rules or regulations, (v) any tax or other indemnity payments due Owner Trustee, Owner Participant or any other party under the Operative Agreements incurred as a result of any act, omission or misrepresentation occurring on or prior to the date of the exercise of any option by Bayer under the Bayer Agreement, or (vi) a breach of any other EDNC covenant or agreement hereunder or under any of the Project Agreements, provided, however, that until the occurrence of an EDNC Event of Default: (a) Bayer's remedy for EDNC's failure to supply Nitric Acid is expressly limited to the difference between all costs associated with the procurement of substitute Nitric Acid and the Variable Costs Component and (b) Bayer's remedy for off-specification nitric acid is expressly limited to actual damages.

(B) If EDNC's indemnification obligations under Section 18.1(A) hereof arise or result from EDNC's sole negligence, EDNC shall (subject to any limitations set forth in Section 18.1(A) hereof) remain entirely responsible for the

results and consequences of its sole negligence, and if EDNC's indemnification obligations under Section 18.1(A) hereof arise or result from joint or concurrent negligence of more than one party, EDNC shall be responsible (subject to any limitations set forth in Section 18.1(A) hereof) for only that portion of the claim, loss, damage, cost or expense caused by the negligence of EDNC, EDNC's agents or employees, subcontractors retained by EDNC or agents or employees of such subcontractors. In all other cases, all remedies under Section 16 hereof and at law and equity are available to Bayer.

## 18.2 Bayer Indemnification

(A) Bayer shall indemnify and save EDNC and its Affiliates harmless from and against any and all claims, actions, obligations, suits, damages (whether direct, actual, special, consequential or otherwise, but excluding lost profits), fines, penalties, losses, costs, liabilities and expenses, including, without limitation, reasonable attorneys' fees, out-of-pocket litigation expenses and other costs incurred in connection with (i) any negligence or misconduct on the part of Bayer or its officers, employees, agents, invitees or contractors, (ii) any bodily injury, loss of life, personal injury or death to persons or damage to property occurring in or on the Bayer Baytown Plant (other than the EDNC Baytown Plant or the Construction Laydown Area (as such term is defined in the Ground Lease)) not attributable, in whole or in part, to the negligence or intentional misconduct of the party seeking to be indemnified, (iii) any breach by Bayer of any Environmental, Health and Safety Law or any Spill or the remediation, abatement, containment, clean-up, disposal or response costs associated with environmental conditions at the Bayer Baytown Plant or the EDNC Baytown Plant caused by Bayer, (iv) any failure by Bayer to observe or comply with any applicable laws or government rules or regulations or (v) a breach of any other Bayer covenant or agreement hereunder or any of the Project Agreements, provided, however, that until the occurrence of a Bayer Event of Default, EDNC's remedy for Bayer's failure to provide Ammonia, Utilities or Services is expressly limited to the difference between all costs associated with the purchase of substitute ammonia, utilities or services, as the case may be, and the price of Ammonia, Utilities or Services, as the case may be, under the Project Agreements.

(B) If Bayer's indemnification obligations under Section 18.2(A) hereof arise or result from Bayer's sole negligence, Bayer shall (subject to any limitations set forth in Section 18.2(A) hereof) remain entirely responsible for the results and consequences of its sole negligence, and if Bayer's indemnification obligations under Section 18.2(A) hereof arise or result from joint or concurrent negligence of more than one party, Bayer shall be responsible (subject to any limitations set forth in Section 18.2(A) hereof) for that portion of the claim, loss, damage, cost or expense caused by the negligence of Bayer, Bayer's agents or employees, subcontractors retained by Bayer or agents or employees of such subcontractors. In all other cases, all remedies under Section 16 hereof and at law and equity are available to EDNC.

18.3 Notice of Proceedings - The indemnitee shall give the indemnitor notice of any suit, proceeding or action (whether pending or threatened) commenced by any party which could give rise to damages under this Section 18. Such notice shall be given within thirty (30) days of indemnitee's discovery or receipt of such matter (but the failure to notify within such time period shall not rescind the indemnitor's duty to indemnify but shall only reduce the amount of the indemnification amount to the extent that the indemnifying party is damaged by such delay). The indemnitor shall then have the option, at its own cost and expense, to participate in or assume control of such proceedings by retaining counsel reasonably acceptable to the indemnitee. If the indemnitor does not make its election within thirty (30) days of its receipt of the indemnitee's notice, the indemnitee may proceed with the defense of the matter and indemnitor shall be bound by the result.

18.4 Insurance - Notwithstanding anything contained in this Section 18 to the contrary, it is the intention of the parties to avail themselves, to the maximum extent possible, of the proceeds of the insurance policies required to be maintained pursuant to this Agreement and to the extent the damages or

expenses referenced by this Section 18 are paid by such insurance policies (including deductibles), this indemnity shall be inapplicable.

#### SECTION 19: INJUNCTIVE RELIEF

The parties acknowledge that irreparable damage may occur in the event that any of the material provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached and such performance does not occur or such breach is not cured within the period set forth above. Each of the parties therefore agrees that the other parties shall be entitled to an injunction or injunctions to prevent nonperformance or breach of material provisions of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity.

#### SECTION 20: TERM AND RENEWALS

20.1 Initial Term - The Initial Term of this Agreement shall commence on the Effective Date.

20.2 Renewals - The Term of this Agreement shall be automatically renewed for six (6) successive Renewal Terms of five (5) years each unless either Bayer or EDNC has given the other party written notice of its intention not to renew the Term of this Agreement not less than twelve (12) nor more than eighteen (18) months before the expiration of the Initial Term or the current Renewal Term, as the case may be. If Bayer gives such notice, then not more than ninety (90) days nor less than sixty (60) days before the end of the Term Bayer shall pay to EDNC the Expiration Termination Fee and shall terminate the Project Agreements pursuant to Section 17 hereof.

#### SECTION 21: RIGHT OF FIRST REFUSAL

21.1(A) Change of Control Event - Upon the occurrence of a Change of Control Event, EDNC shall notify Bayer of Bayer's option and right to pay the EDNC Default Termination Fee and to terminate the Project Agreements pursuant to Section 17 hereof. Bayer shall have a reasonable amount of time, not to exceed sixty (60) days, from its receipt of notice of a Change of Control Event to exercise an option to pay to EDNC the EDNC Default Termination Fee and to terminate the Ground Lease and the other Project Agreements in accordance with Section 17 hereof.

21.1(B) Third Party Offer - If EDNC desires to sell and receives a bona fide third-party offer to purchase any voting equity securities of EDNC or any portion of the assets of the EDNC Baytown Plant (other than purchases of product in the ordinary course of business) that EDNC would like to accept, EDNC shall notify Bayer of Bayer's option and right to pay either the Expiration Termination Fee or the amount of the third party offer, whichever is lower, and to terminate the Project Agreements pursuant to Section 17 hereof (the "Right of First Refusal"). Bayer shall have a reasonable amount of time, not to exceed sixty (60) days, from its receipt of the notice of a bona-fide third party offer to exercise an option to pay to EDNC the Expiration Termination Fee or the amount of the third party offer and to terminate the Ground Lease and the other Project Agreements in accordance with Section 17 hereof.

21.2 Injunctive Relief and Specific Performance - The parties acknowledge that irreparable damage may occur in the event that any of the material provisions of this Section 21 are not performed in accordance with their specific terms or are otherwise breached and such performance does not occur or such breach is not cured within the period set forth above. Each of the parties therefore agrees that the other party will be entitled to an injunction or injunctions to prevent nonperformance or breach of material provisions of this Section 21 and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity.

#### SECTION 22: DISPUTE RESOLUTION

22.1 General - Unless otherwise provided herein or in the Project Agreements, any dispute arising hereunder or under the Project Agreements shall be resolved in the manner specified in this Section 22.

22.2 Mediation - The parties agree to exercise reasonable efforts to resolve any dispute promptly and within a reasonable period of time. If any such dispute cannot be resolved within fifteen (15) Business Days, either party shall have the right to notify the other party that it wishes to convene a personal meeting between the senior management of Bayer's Polymers Division and the senior management of EDNC. Such meeting shall take place within fifteen (15) Business Days of the delivery of such notice. The representatives of the parties shall then meet and attempt in good faith to resolve the subject dispute. If such attempt is unsuccessful, either party may proceed to litigate the matter at issue. Any such negotiation or series of negotiations shall be maintained as confidential by the parties and the parties covenant that they shall not disclose (other than to their respective Affiliates) either the existence of such proceedings or the content thereof to any other party without the express written consent of the opposite party. Any participation in or initiation of such discussions shall not be deemed to be an admission of liability and no statement made or provided in or related to such negotiations shall be construed as a statement against interest or otherwise disclosed or used in any proceeding involving the parties.

22.3 Commencement of Legal Actions - In the absence of irreparable harm or material damages, the parties agree that no party shall be entitled to commence any legal action to resolve any dispute hereunder prior to the completion of the procedures specified in Section 22.2 hereof. If a party declines or fails to participate in the meeting contemplated by Section 22.2 hereof, the other party shall be entitled to request any court of competent jurisdiction to grant a stay of litigation while the parties attempt to settle the litigation through this negotiation method. The party declining to participate agrees not to oppose such a stay.

22.4 Governing Law - The construction and interpretation of this Agreement shall be governed by the internal laws of the State of Texas, without regard to conflicts-of-laws provisions.

22.5 Submission to Jurisdiction - The parties hereto hereby irrevocably submit to the jurisdiction of the United States District Court for the Southern District of Texas over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby. Each party hereby irrevocably agrees that all claims in respect of such dispute or proceeding shall be heard and determined in such court. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the venue of any such dispute brought in such court, any defense of inconvenient forum and any right to trial by jury of any dispute under the Project Agreements.

22.6 Consent to Service of Process - Each of the parties hereto hereby consents to process being served by either party to this Agreement in any suit, action or proceeding by mailing of a copy thereof in accordance with the provisions of Section 28 hereof.

#### SECTION 23: ENTIRE AGREEMENT

This Agreement, the Project Agreements and the Bayer Agreement, together with all the schedules attached hereto and thereto, contain the entire understanding of the parties and supersede any prior understanding and agreements among them respecting the subject matter hereof and thereof. There are no agreements, arrangements or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement and the other Project Agreements that are not set forth or expressly referred to herein or therein.

#### SECTION 24: MODIFICATION

This Agreement shall not be modified or amended, except by written instrument executed by the duly authorized officers of the parties hereto.

#### SECTION 25: PAYMENTS

All amounts payable hereunder shall be paid in lawful money of the United States on a net fifteen (15) day basis, with interest to accrue thereafter at a rate equal to the prime rate charged by Citibank, N.A. The acceptance by either party of bank drafts, checks or other media of payment will be subject to immediate collection of the full face amount thereof and the payment shall not be deemed to have been paid until actually received in cash by the respective party, except that no interest shall be charged after receipt of any bank drafts, checks or other media of payment that is collected in cash in the ordinary course of business and without unusual delay.

#### SECTION 26: DEMURRAGE

Bayer or EDNC shall unload and release all transportation equipment promptly to minimize demurrage or other out-of-pocket expense resulting from delivery. The amount of any demurrage or out-of-pocket expense resulting to either party from the other party's delay in unloading or releasing transportation equipment will be paid by the responsible party.

#### SECTION 27: COOPERATION

The parties hereto shall cooperate and take all such reasonable and necessary actions required to achieve the stated purposes of the Project Agreements during the Term hereof.

#### SECTION 28: NOTICES

Any notice, communication or statement required or permitted to be given hereunder shall be in writing and deemed to be sufficiently given when delivered in person, or on the second Business Day following the date of transmission by U.S. certified or registered mail, return receipt requested, or on the Business Day following the date of transmission by overnight courier to the address of the respective party below:

Bayer Corporation  
100 Bayer Road  
Pittsburgh, Pennsylvania 15205-9741  
Attn: Controller, Polymers Division  
Attn: Assistant General Counsel,  
Polymers Division

El Dorado Nitrogen Company  
16 South Pennsylvania Avenue  
Oklahoma City, Oklahoma 73107  
Attn: President

El Dorado Chemical Company  
655 Craig Road, Suite 322  
St. Louis, Missouri 63141  
Attn: Vice President, Industrial Chemicals

and: LSB Industries, Inc.  
16 South Pennsylvania Avenue  
Oklahoma City, Oklahoma 73107  
Attn: General Counsel

Either party may, by notice given as aforesaid, change its address or its party that receives notices for all subsequent notices.

#### SECTION 29: BINDING AGREEMENT

This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto, as the case may be, and may not be terminated, modified, changed or amended, except by a written instrument signed by the party to be charged.

#### SECTION 30: WAIVER

No waiver by Bayer or EDNC of any default or breach of any covenant, condition or stipulation herein shall be treated as a waiver of any subsequent default, or breach of the same or any other covenant, condition or stipulation hereof.

#### SECTION 31: CONSTRUCTION

The singular form of any word used herein shall include the plural, and vice versa. The use herein of a word of any gender shall include each of the masculine, feminine and neuter genders. The headings or titles of the several sections and paragraphs of this Agreement are for convenience only. They shall not affect the meaning, construction or effect of the provisions hereof and do not constitute a part of this Agreement.

Nothing contained in or done pursuant to this Agreement or any of the other Project Agreements shall be deemed or construed by the parties hereto, or by any third party, to create the relationship of principal and agent, partnership, joint venture or any association whatsoever between Bayer and EDNC. It is expressly understood and agreed that no provisions contained in this Agreement, nor any act or acts of the parties hereto, shall be deemed to create any agency, partnership or joint venture relationship between Bayer and EDNC.

#### SECTION 32: COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together constitute one instrument.

#### SECTION 33: ASSIGNMENT

EDNC may not assign its respective rights and obligations under the Project Agreements to any other party without first obtaining the express written consent of Bayer, which consent may be granted or withheld by Bayer in its sole discretion; provided, however, that EDNC shall be permitted to sublease the Leased Premises and to encumber the Ground Lease Sublease (as defined in the Ground Lease) in accordance with Section 15.3 of the Ground Lease, and to collaterally assign its rights under the Project Agreements to the Construction Loan Agent, the Owner Trustee and/or the Indenture Trustee under the Operative Agreements.

#### SECTION 34: AUDIT RIGHTS

Each calculation, adjustment, payment or estimate made pursuant to the Project Agreements shall be supported by appropriate work papers and background data and shall be made in conformity with GAAP. Each party shall have the right, at its own expense, to employ a firm of independent certified public accountants to conduct an audit of any adjustment or calculation made pursuant to the Project Agreements. Such auditors shall execute agreements of confidentiality reasonably acceptable to both parties, approval of the form of which shall not be unreasonably withheld.

#### SECTION 35: GUARANTY

The Guarantor hereby unconditionally guarantees the full and faithful performance by EDNC of all of the terms, provisions, representations, warranties and obligations of EDNC pursuant to the Project Agreements, including without limitation the indemnification and remedial provisions of the Project Agreements. The Guarantor further agrees that Bayer may, without notice to or further assent of the Guarantor, and without in any

way releasing or impairing the obligations of the Guarantor hereunder (i) waive compliance with, or any default under, the Project Agreements; (ii) modify or amend any provisions of the Project Agreements with the written consent of EDNC only; (iii) grant extensions or renewals of any of the obligations of EDNC; and (iv) in all respects deal with EDNC as if this guaranty were not in effect. The obligations of the Guarantor under this guaranty shall remain in force notwithstanding any event that would, in the absence of this clause, result in the release or discharge by operation of law of the Guarantor from the performance of its obligations hereunder. The liability of the Guarantor under this guaranty to Bayer shall be a guaranty of performance and of payment, not merely a guaranty of collection, and the liability of the Guarantor under this guaranty shall not be contingent upon the exercise by Bayer of any right it may have in respect of the Guarantor. This guaranty obligation is not intended to and shall not release or extinguish any obligations of EDNC to Bayer. The provisions of this Section 35 are not intended to create and shall not create or impose any obligations on the Guarantor in favor of any third party, the provisions of this Section 35 being only for the benefit of Bayer.

SECTION 36: FORCE MAJEURE

Upon the occurrence of a Force Majeure Event, the obligations of the parties shall be suspended pending removal, termination or cure of the Force Majeure Event. This Section 36 shall apply to all provisions, terms and conditions of this Agreement, notwithstanding anything seemingly to the contrary herein.

SECTION 37: CONTROLLING AGREEMENT

To the extent any of the Project Agreements contain conflicting provisions, the terms of this Agreement shall control.

IN WITNESS WHEREOF, the undersigned have executed this Baytown Nitric Acid Project and Supply Agreement effective as of the date first above written.

BAYER CORPORATION

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

EL DORADO NITROGEN COMPANY

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

El Dorado Chemical Company executes this Baytown Nitric Acid Project and Supply Agreement solely for purposes of the representations, warranties and covenants set forth in Section 8.2 hereof, the provisions of Section 17.4 hereof, the guaranty set forth in Section 35 hereof and the Back-up and Start-up Supply Plan attached hereto as Exhibit D.

EL DORADO CHEMICAL COMPANY

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

EXHIBIT A  
GROUND LEASE

Filed as a separate exhibit.

EXHIBIT B  
SERVICES AGREEMENT

Filed as a separate exhibit.

EXHIBIT C  
DESIGN CRITERIA

1.1 Plant Capacity

One dual pressure nitric unit. The EDNC Baytown Plant will be built in Baytown, Texas at the existing Bayer Baytown Plant. The EDNC Baytown Plant will have the annual capacity to produce 443,000 short tons per year (403,000 metric tons per year or 1265 short tons/day), one hundred percent (100%) basis, with the nitric acid at sixty-five percent (65%) by weight concentration. Bayer Baytown Plant demand will be impacted by scheduled EDNC Baytown Plant unit shutdowns. Either the toluene diisocyanate train or the methyl diphenyl diisocyanate train can be down for up to six weeks each for maintenance. The EDNC Baytown Plant will operate with a minimum on-stream time of ninety-two percent (92%).

1.2 Nitric Acid Specification at Battery Limits

1. Assay At least 65%	
2. Iron content	Not more than 1.3 ppm on a thirty (30) day rolling average, and in no event to exceed 10 ppm
3. Total oxides of nitrogen as N2O3	Not more than 100 ppm
4. Color	Less than 100 APHA units
5. Chloride content	Not more than 10 ppm
6. Sulfate content	Not more than 10 ppm
7. Temperature	45-50 degrees C, maximum
8. Pressure	75 P.S.I.G.

1.3 Absorber Feed Water

Bayer will supply demineralized Water for absorber feed water only, not for boiler water makeup.

1.4 Environmental

NOx Abatement

The EDNC Baytown Plant is located in an ozone nonattainment zone. EDNC is to provide any continuous on-line analyzers for final tailgas stream monitoring as required the Texas Natural Resources Conservation Commission.

All EDNC Baytown Plant start-up and shutdown NOx plumes are to be colorless unless otherwise approved by Bayer. The parties agree to work together to minimize, if feasible, the occurrence of visible stack emissions caused by a compressor trip.

Effluent Disposal

EDNC shall collect waste water in a sump and shall neutralize the waste water as required in Schedule 6 of the Services Agreement.

EDNC will pump the neutralized water to the existing Bayer Baytown Plant overhead waste water line.

Storm Water - The Bayer Baytown Plant has limits on quality of storm water runoff. EDNC shall include necessary paving and curbs to contain spills and acid from maintenance activities and routine discharges. EDNC shall collect spills and acid from maintenance activities and routine discharges along with the first inch of rainfall into the waste water sump. EDNC shall neutralize the same as required by Schedule 6 of the Services Agreement. EDNC will also send this water to the overhead waste water line. Rain water that is not collected in this sump will overflow to grade to the plant storm water system.

Sanitary sewer - Underground gravity tie-in point will be provided for disposal.

Boiler Blowdown - EDNC shall dispose of boiler blowdown via process trench to waste water sump for pumping overhead or to EDNC cooling tower for part of the cooling tower makeup.

Ammonia Stripper Blowdown - EDNC shall dispose of ammonia stripper blowdown (without oil) via process trench to waste water sump for pumping overhead.

Cooling Tower Blowdown - EDNC shall pipe blowdown from the EDNC Baytown Plant to a separate header that collects all cooling tower blowdown.

### 1.5 Utilities

The Bayer Baytown Plant has normal steam distribution levels of 630 and 135 P.S.I.G.. The EDNC Baytown Plant shall export steam at 700 P.S.I.G. minimum and import from the 630 P.S.I.G. Bayer header for start-up (instantaneous rate of 110,000 lbs/hr).

Bayer will supply utilities to the Battery Limits of the EDNC Baytown Plant as stated in Section 3 of the Services Agreement.

#### Utility Characteristics

EDNC shall design the EDNC Bayer Baytown Plant on the basis of the following utility characteristics:

	Pressure (P.S.I.G.)		Temperature (degrees Celsius)	
	Normal	Design	Normal	Design
M.P. Steam	135	175	181	210
H.P. Steam	650	750	258	282
M.P. Condensate	135	175	181	210
H.P. Condensate	650	750	258	282
Boiler Feed Water	250	300	115	145
Plant Water	80	150	Ambient	60
Nitrogen (1)	110	150	Ambient	60
Plant Air	75	150	Ambient	60
Instrument Air (1)(2)75		150	Ambient	60

(1) Nitrogen can be used to back up instrument air in an emergency.

(2) Dew Point -40 degrees F.

#### Electricity:

over 200 Hp	2300v	3 phase	60 Hz
0.2 - 200 Hp	460v	3 phase	60 Hz
below 0.2 Hp	100v	1 phase	60 Hz

Electricity will be metered by HL&P to EDNC from the Bayer electrical distribution system. Bayer will charge EDNC an allocation for the use of Bayer's electrical system infrastructure. EDNC may operate motors over 200 Hp at other voltages with Bayer approval. Bayer electrical distribution will be at 13,800 volts.

## Natural Gas:

- -----

Natural gas will be supplied to the Battery Limits at 50 P.S.I.G. and ambient temperatures. The gross heating value is 1032 BTU/SCF (934 net).

### 1.6 Instrumentation and Electrical

Any interface with Bayer to share information needs to be defined. Bayer needs to know the waste water flow, pH, environmental flows, utilities flows and product flows.

EDNC shall install emergency communications systems in accordance with Bayer specifications.

### 1.7 Location and Site Data

Plant Location: Baytown, Texas, on portion of Block 12C

Typical Climatological Data used by Bayer for design:

Height above sea level  
23 feet  
Minimum Winter temperature  
17 F  
Maximum summer temperature  
102 F  
Design air temperature for air  
cooled exchangers  
105 F  
Direction of Prevailing Winds  
S/SE  
Design max. wind strength  
125 mph for the absorber  
column; others per 1995 Code  
Design max. rainfall intensity  
2.5 inches/hour

### 1.8 Product Storage

Bayer requires storage tanks to have secondary containment for product storage. Tanks are to be sized to provide three days storage at plant capacity. EDNC shall include product pumps and necessary piping to users. EDNC shall also provide acid piping to battery limits with a separate metering station for nitration and MNB.

### 1.9 Civil Engineering Information

Refer to Fugro-McClelland (Southwest), Inc. report of August 29, 1996. The piling on all absorbers should be no lower than thirty-two feet (32') below mean sea level assuming a grade of at least 23' above mean sea level. IF EDNC requires any additional soil investigation, EDNC shall arrange for the performance of such investigations and shall bear the cost of the same. Bayer requests one copy of any soil investigation done by EDNC.

## EXHIBIT D

### BACK-UP AND START-UP SUPPLY PLAN

\*\*\*\*INDICATES INFORMATION IN THIS DOCUMENT WHICH HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

#### SUPPLY FOR PLANNED OUTAGES:

ASSUMPTIONS: . Beginning storage at minimum level of 95%  
capacity, 3605 tons (100% basis)  
  
Storage capacity of 3 days production, 3795  
tons (100% basis)

- . Third party Nitric Acid at approximately 61% assay; El Dorado Arkansas Nitric Acid at 65% assay
- . Storage must be re-built to 50% level from excess production capacity or from outside sources
- . During outage, Bayer maintains usage rate at 100% of capacity
- . Supply of nitric acid from outside sources will be reduced accordingly to coincide with Bayer usage rates below 1265 tons per day

Example 1:

Day No.	Estimated Total Trucks	APPROXIMATE DIVISION BETWEEN SOURCES				Ending Storage Level	
		El Dorado Trucks/Tons	Third Party Trucks/Tons	Use From Storage			
1	15	15	234	0	0	1031	2574
2	15	15	234	0	0	1031	1543
3	30	20	320**	10	156	789	754
* 4	20	20	312	0	0	0	1129
5	20	20	312	0	0	0	1504
6	20	20	312	0	0	0	1879
	----	---	---				
	120	1724	0	156			
		Tons		Tons			

\* Back in full production at 105% of nameplate capacity. Rates reduced to nameplate capacity after Day 6.

\*\* One truck will supply Nitric Acid at 98% assay, and the balance of the trucks will supply Nitric Acid of 65% assay.

Note 1: The supply plan for planned outage is subject to availability of drivers and transportation equipment suitable for Nitric Acid services, which EDNC currently believes will be available. Nitric Acid that cannot be delivered due to unavailability of transportation equipment shall not be included as Production Shortfall.

Note 2: EDNC will use reasonable efforts to supply Nitric Acid hereunder at the lowest cost to Bayer, subject to the availability of Nitric Acid at the El Dorado, Arkansas plant at the time of the planned outage.

Note 3: EDNC shall invoice Bayer for all costs incurred in the delivery of Nitric Acid hereunder. The price for Nitric Acid shipped from the El Dorado, Arkansas plant shall be the then-current price for Nitric Acid to Bayer under the Project and Supply Agreement, plus the applicable transportation charges. The price for Nitric Acid shipped from third parties shall be the price billed to EDNC or El Dorado, whichever is applicable, plus the applicable transportation charges. When possible, Nitric Acid shall be supplied on a swap basis, whether from El Dorado or a third party.

Note 4: EDNC will return storage to the fifty percent (50%) minimum level by running the Nitric Acid Plant at one hundred five percent (105%) of nameplate capacity. Nitric Acid would be supplied from El Dorado or third party sources as needed to supplement the incremental production above Bayer's usage rate; provided, however, that EDNC must be able to return the storage to the fifty percent (50%) level within a reasonable period after the re-start of the EDNC Baytown Plant.

Note 5: EDNC will use reasonable efforts to supply ninety-eight percent (98%) concentrated nitric acid to blend with third party acid to bring the average assay to sixty-four percent (64%). EDNC will invoice Bayer at El Dorado's then-current average price for ninety-eight percent (98%) concentrated nitric acid sales from

Arkansas plus transportation charges.

Note 6: Bayer reserves the right to supply the ninety-eight percent (98%) concentrated nitric acid from its own facilities rather than from El Dorado's Arkansas plant.

Note 7: The data in Example 1 above are illustrative only and in no way bind EDNC or El Dorado to the schedule of shipments shown.

SUPPLY FOR UNPLANNED OUTAGES:

- ASSUMPTIONS:
- . Beginning storage at minimum level of 50% capacity, 1898 tons (100% basis)
  - . Storage capacity of 3 days production, 3795 tons (100% basis)
  - . Third party Nitric Acid at approximately 61% assay; El Dorado Nitric Acid at 65% assay
  - . Storage must be re-built to 50% level from excess production capacity or from outside sources
  - . El Dorado will not hold capacity idle to cover unplanned outages
  - . During outage, Bayer cuts rate to 52.5% of capacity, 665 tons per day
  - . Supply of acid from outside sources will be reduced accordingly to coincide with Bayer usage rates below 1265 tons per day

Example 2:

APPROXIMATE DIVISION  
BETWEEN SOURCES

Day No.	Estimated Total Trucks	El Dorado Trucks/Tons	Third Party Trucks/Tons	Use From Storage	Ending Storage Level		
1	6	6	94	0	0	571	1327
2	6	6	94	0	0	571	756
3	25	15	242**	10	156	267	489
4	30	20	320**	10	156	189	300
5	30	20	320**	10	156	189	111
* 6	20	20	312	0	0	0	486
7	20	20	312	0	0	0	861
8	20	20	312	0	0	0	1236
9	20	20	312	0	0	0	1611
10	14	14	218	0	0	0	1892
--	--	---	---	---	---	---	---
	214	2894	468				
		Tons	Tons				

\* Back in full production at 105% of nameplate capacity. Rates reduced to nameplate capacity after Day 10.

\*\* One truck will supply Nitric Acid at 98% assay.

Note 1: The parties will meet to determine ways to mitigate the effects of any unplanned outage on Bayer or EDNC, whether or not such unplanned outage is due to EDNC's negligence. If an unplanned outage is due to the negligence of EDNC, Bayer shall have the indemnification rights set forth in Section 18.1 hereof.

Note 2: The supply plan for unplanned outage is subject to availability of drivers and transportation equipment suitable for Nitric Acid services, which EDNC currently believes will be available. Nitric Acid that cannot be delivered due to unavailability of transportation equipment shall not be included as Production Shortfall.

Note 3: EDNC shall invoice Bayer for all costs incurred in the delivery of Nitric Acid hereunder. The price for Nitric Acid shipped from El Dorado, Arkansas shall be the then-current price for Nitric Acid to Bayer under the Project and Supply Agreement, plus the applicable transportation charges. The price for Nitric Acid shipped from third parties shall be the price billed to EDNC or El Dorado, whichever is applicable, plus the applicable transportation charges. When possible, Nitric Acid shall be supplied a swap basis, whether from El Dorado or third parties.

Note 4: EDNC will return storage to the fifty percent (50%) minimum level by running the Nitric Acid Plant at one hundred five percent (105%) of the nameplate capacity. Nitric Acid would be supplied from El Dorado or from other sources as needed to supplement the incremental production above Bayer's usage rate beyond day five, provided, however, that EDNC must be able to return the storage to the fifty percent (50%) level within a reasonable period after the re-start of the Plant.

Note 5: EDNC will use reasonable efforts to supply ninety-eight percent (98%) concentrated nitric acid to blend with third party acid to bring the average assay to sixty-four percent (64%). EDNC will invoice Bayer at El Dorado's then-current average price for ninety-eight percent (98%) concentrated nitric acid sales from El Dorado, Arkansas plus transportation charges.

Note 6: Bayer reserves the right to supply the ninety-eight percent (98%) concentrated nitric acid from its own facilities rather than from El Dorado, Arkansas.

Note 7: The data in Example 2 herein are illustrative only and in no way bind EDNC or El Dorado to the schedule of shipments shown.

#### START-UP SUPPLY PLAN

- CONDITIONS:
- (a) Supply plan for 65% Nitric Acid requirements up to 260 tons per day (100% acid basis).
  - (b) Storage systems available beginning March 1, 1998. EDNC may elect to build inventory prior to the start of the 4/1/98 - 8/31/98 requirement.
  - (c) Storage capacity of 3 days production, 3795 tons (100% basis).
  - (d) Third party Nitric Acid at approximately 61% assay. El Dorado Nitric Acid at 65% assay. One full truck of 98% concentrated Nitric Acid per ten trucks of 61% Nitric Acid.
  - (e) Purchases will be steady and continuous to allow trucks and drive teams to be dedicated to the shipments.

#### NOTES:

Note 1: Subject to condition (e) above, the supply plan ensures the availability of drivers and transportation equipment suitable for Nitric Acid service.

Note 2: EDNC will use reasonable efforts to supply Nitric Acid hereunder at the lowest cost to Bayer.

Note 3: EDNC shall invoice Bayer for all costs incurred in the delivery of Nitric Acid hereunder. The price for Nitric Acid shipped from El Dorado's plant in El Dorado, Arkansas shall be: \*\*\*\*

The price for Nitric Acid shipped from third parties shall be the price billed to EDNC plus the applicable transportation charges. To the extent possible, Nitric Acid will be supplied to the Bayer Baytown Plant on a swap basis from El Dorado

or third parties.

Note 4: When a load is not shipped, Bayer may be charged a "non-user" charge, estimated to be \*\*\*\* per unit, to cover out-of-pocket expenses for the tractor/trailer/driver unit standing-by idle. These charges would apply seven (7) days per week for the sixteen (16) units in service.

Note 5: EDNC will supply 98% concentrated nitric acid to blend with third party acid to bring the average assay to 65%. EDNC will invoice Bayer for the nitric acid against the existing swap agreement between Bayer and EDNC, plus transportation charges.

If the exchange balance exceeds 1,500 tons in favor of EDNC, EDNC has the option to supply additional tons of 98% concentrated nitric acid at EDNC's then-current average price for sales from Arkansas.

Note 6: Bayer reserves the right to supply the 98% concentrated nitric acid from its own facilities rather than from El Dorado's Arkansas plant.

Note 7: This start-up supply plan is intended to be a five month supply plan.

Note 8: Within fifteen (15) days of the end of each calendar month under this start-up supply plan, EDNC will invoice Bayer for its actual handling and unloading costs for Nitric Acid.

#### EXHIBIT E

Note: This draft agreement must be reviewed by Bayer team, EDNC, ICF Kaiser and La Grande Paroisse S.A.

#### TECHNOLOGY SUBLICENSE AND NON-DISCLOSURE AGREEMENT

THIS AGREEMENT made and effective this \_\_\_ day of \_\_\_\_\_, 1997 by and between ICF KAISER ENGINEERS, INC. whose address is Gateway View Plaza, 1600 West Carson Street, Pittsburgh, Pennsylvania 15219-1031 ("ICF KAISER"), LA GRANDE PAROISSE S.A., Immeuble Iris 12, Place de L'Iris, 92062, Paris La Defense 2) ("G-P"), EL DORADO NITROGEN COMPANY, P.O. Box 419082, St. Louis, Missouri 63141-1782 ("EDNC") and BAYER CORPORATION, 100 Bayer Road, Pittsburgh, Pennsylvania 15205-9741 ("Bayer").

WHEREAS, EDNC has contracted with ICF Kaiser pursuant to an agreement dated \_\_\_\_\_, 1997 (hereinafter referred to as the "CONTRACT"), to design, procure and construct a nitric acid plant having a capacity of 1265 short tons per day (100% acid basis) of nitric acid to be installed at the Baytown, Texas site (hereinafter referred to as the "UNIT"); and

WHEREAS, the UNIT shall be designed and constructed utilizing a process developed by G-P for producing nitric acid by oxidation of a mixture of air and anhydrous ammonia over a platinum/rhodium catalyst and by oxidation and absorption under pressure of the produced nitrous gas, together with a catalytic reduction of the tall gas by ammonia (hereinafter referred to as the "Process"); and

WHEREAS, ICF Kaiser will utilize certain patented or unpatented inventions and improvements, modifications, trade secrets and technical information relating to the Process (hereinafter referred to as "TECHNICAL INFORMATION") and provided to ICF Kaiser by G-P; and

WHEREAS, in connection with the CONTRACT, G-P has granted to ICF Kaiser a license to practice and use said TECHNICAL INFORMATION for engineering and constructing the UNIT using the Process, and operation and maintaining said UNIT, and selling the product thereby obtained;

NOW THEREFORE, in consideration of the mutual covenants

set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. A. ICF Kaiser and G-P hereby grant to EDNC, its assignees, designees or affiliates, an irrevocable, royalty-free sub-license under G-P's TECHNICAL INFORMATION to practice and use said TECHNICAL INFORMATION for operating and maintaining the UNIT using the Process, and for selling the product thereby obtained, excluding the use of said TECHNICAL INFORMATION for extension of said UNIT or any similar unit in the United States of America and abroad, or for the design or construction of any new similar unit wherever located, except as is normally accepted industry practice for the periodic upgrade, modernization or debottlenecking for increased or modified production of the UNIT. Said exception shall be limited to increase of production capacity of the UNIT to a maximum of 20% beyond the higher of the guaranteed operating capacity or the actual operating capacity as determined during the performance test as defined in the CONTRACT. G-P's TECHNICAL INFORMATION for further increase of production capacity of the UNIT shall not be used without the prior written consent of G-P, which consent shall not be unreasonably withheld.
- B. Upon any acquisition of the UNIT by Bayer in accordance with the terms of the Project and Supply Agreement by and among EDNC, El Dorado Chemical Company and Bayer, ICF Kaiser and G-P hereby grant to Bayer, its assignees, designees or affiliates, an irrevocable, royalty-free sub-license under G-P's TECHNICAL INFORMATION to practice and use said TECHNICAL INFORMATION for operating and maintaining the UNIT using the Process and for selling the product thereby obtained. The parties agree that internal transfers of employees of EDNC, El Dorado Chemical Company and Bayer from the UNIT to other units not licensed to use the TECHNICAL INFORMATION shall not be deemed a violation of this license, provided that such employees agree in writing to be individually bound by the confidentiality provisions contained herein.
2. A. In consideration of G-P's and ICF Kaiser's use and disclosure of said TECHNICAL INFORMATION, EDNC agrees to receive and maintain in confidence and not to use (except as otherwise permitted by paragraph 1, above) or disclose to any third party or parties the said TECHNICAL INFORMATION, or any part thereof, disclosed to EDNC by ICF Kaiser or G-P, without the prior written consent of both ICF Kaiser and G-P, for a period of ten (10) years from the date of this Agreement or from the date the UNIT completely ceases operation, whichever date occurs later. The term "third party" shall mean any person, legal or natural, other than EDNC or Bayer, parents, subsidiaries and affiliated companies of EDNC or Bayer.
- B. In consideration of G-P's and ICF Kaiser's use and disclosure of said TECHNICAL INFORMATION, Bayer agrees to receive and maintain in confidence and not to use (except as otherwise permitted by paragraph 1, above) or disclose to any third party or parties the said TECHNICAL INFORMATION, or any part thereof, disclosed to Bayer by ICF Kaiser or G-P, without the prior written consent of both ICF Kaiser and G-P, for a period of ten (10) years from the date of this Agreement or from the date the UNIT completely ceases operation, whichever date occurs later. The term "third party" shall mean any person, legal or natural, other than EDNC or Bayer, parents, subsidiaries and affiliated companies of EDNC or Bayer.
3. A. EDNC will disclose said TECHNICAL INFORMATION only to those of EDNC's or Bayer's employees, contractors or agents who require it in connection with their duties related to the aforesaid use, and will bind these employees, contractors and agents to the confidentiality obligations described in this Agreement. Not included in the foregoing confidentiality obligations and restricted use

obligations is:

- i. Information that at the time of disclosure is in the public domain, or which later becomes part of the public domain by publication or otherwise through no act of EDNC or Bayer;
- ii. Information that can be demonstrated to be in EDNC's or Bayer's possession prior to ICF Kaiser's or G-P's disclosure;
- iii. Information that is furnished to EDNC or Bayer by a third party, as a matter of right without restriction on disclosure, and which was not received directly or indirectly from ICF Kaiser or G-P; or
- iv. Information that is by reasonable proof independently developed by EDNC.

B. Bayer will disclose said TECHNICAL INFORMATION only to those of Bayer's or EDNC's employees, contractors or agents who require it in connection with their duties related to the aforesaid use, and will bind these employees, contractors and agents to the confidentiality obligations described in this Agreement. Not included in the foregoing confidentiality obligations and restricted use obligations is:

- i. Information that at the time of disclosure is in the public domain, or which later becomes part of the public domain by publication or otherwise through no act of Bayer or EDNC;
- ii. Information that can be demonstrated to be in Bayer's or EDNC's possession prior to ICF Kaiser's or G-P's disclosure;
- iii. Information that is furnished to Bayer or EDNC by a third party, as a matter of right without restriction on disclosure, and which was not received directly or indirectly from ICF Kaiser or G-P; or
- iv. Information that is by reasonable proof independently developed by Bayer.

4. For the purpose of this Agreement, any combination of TECHNICAL INFORMATION shall not be deemed to be within the foregoing exceptions because individual terms of TECHNICAL INFORMATION are in the public domain or in EDNC's or Bayer's possession unless the combination itself is in the public domain or in EDNC's or Bayer's possession. This Agreement shall be construed and governed under the same laws and venue as the CONTRACT.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on their behalf by their respective representative, each such representative having been first duly authorized so to act, as of the date first above written.

ICF KAISER ENGINEERS, INC.

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(print name)

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

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

LA GRANDE PAROISSE S.A.

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(print name)

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

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

EL DORADO NITROGEN COMPANY

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(print name)

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

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

BAYER CORPORATION

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_  
(print name)

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

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

EXHIBIT F  
BAYER AGREEMENT

\*\*\*\*THIS ENTIRE EXHIBIT HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION AND HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

EXHIBIT G  
BAYER SUPPORT AGREEMENT

\*\*\*\*THIS ENTIRE EXHIBIT HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION AND HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

EXHIBIT H  
SUPPLEMENTAL AGREEMENT

Filed as a separate exhibit.

SCHEDULE 1.14A  
CAPITAL COSTS MONTHLY CREDIT

See attached copy.

SCHEDULE 1.33

FIXED COST ESTIMATE: EDNC BAYTOWN NITRIC ACID PLANT

LA GRANDE PAROISSE PROCESS  
65% ACID - COST ON 100% BASIS

ANNUAL PRODUCTION = 443,000 TONS

\*\*\*\*THE REMAINDER OF THIS SCHEDULE HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION AND HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

SCHEDULE 1.42(A)

INITIAL CAPITAL INVESTMENT

\*\*\*\*THIS ENTIRE SCHEDULE HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION AND HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

SCHEDULE 1.42(B)

INITIAL CAPITAL INVESTMENT

\*\*\*\*THIS ENTIRE SCHEDULE HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION AND HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

SCHEDULE 1.77

VARIABLE COST ESTIMATE: EDNC BAYTOWN NITRIC ACID PLANT

LA GRANDE PAROISSE PROCESS  
65% ACID - COST ON 100% BASIS

ANNUAL PRODUCTION IN 100% TONS = 1265 TONS/DAY \* 350 DAYS/YEAR = 443,000

\*\*\*\*THE REMAINDER OF THIS SCHEDULE HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION AND HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

SCHEDULE 9

AMMONIA

Purchased Anhydrous Ammonia Specification

Ammonia, Anhydrous - Commercial Grade  
Properties:

Appearance	Clear, colorless Liquid
Oil, PPM	5.0 ppm
Water, weight %	0.5% maximum
Iron (Fe), PPM	1 maximum
Nonvolatile	0.5% maximum
Delivery Pressure	200 P.S.I.G.
Delivery Temperature, expected	Ambient

## SERVICES AGREEMENT

\*\*\*\*INDICATES INFORMATION IN THIS DOCUMENT WHICH HAS BEEN OMITTED FROM THIS PUBLIC FILING PURSUANT TO A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.

THIS SERVICES AGREEMENT (the "Agreement") is made effective as of June \_\_, 1997 (the "Effective Date") between BAYER CORPORATION, an Indiana corporation ("Bayer") and EL DORADO NITROGEN COMPANY, an Oklahoma corporation ("EDNC").

## W I T N E S S E T H:

WHEREAS, Bayer owns and operates a chemical manufacturing facility located in Baytown, Chambers County, Texas (the "Bayer Baytown Plant") where, among other manufacturing processes, it engages in a manufacturing process that consumes Nitric Acid; and

WHEREAS, pursuant to a certain Baytown Nitric Acid Project and Supply Agreement (the "Project and Supply Agreement") between Bayer, EDNC and El Dorado (as hereafter defined), dated as of the Effective Date, and pursuant to a Ground Lease between Bayer and EDNC (the "Ground Lease"), also dated as of the Effective Date, Bayer has leased to EDNC a portion of the Bayer Baytown Plant so that EDNC may design, construct, maintain and operate Leasehold Improvements (as defined below) for the manufacture and supply of Nitric Acid to Bayer;

WHEREAS, in connection with its occupancy of the Leased Premises (as hereafter defined), EDNC desires to use or share the use of certain facilities and services situated on or to be constructed at the Bayer Baytown Plant;

WHEREAS, in connection with the operation of the EDNC Baytown Plant (as defined below), Bayer agrees to supply to EDNC certain utilities and waste treatment services that are required for, or incidental to, the production of Nitric Acid;

NOW THEREFORE, in consideration of the premises and the agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

## SECTION 1: DEFINITIONS

Capitalized terms not otherwise defined herein shall have the meanings specified in the Project and Supply Agreement. Unless otherwise defined herein, the following terms shall have the meanings assigned to them below for purposes of this Agreement:

1.1 Battery Limits - The boundary lines of the Leased Premises (as hereafter defined).

1.2 Boiler Blowdown - Shall mean water discharged from the EDNC Baytown Plant to maintain optimum boiler operations at the EDNC Baytown Plant.

1.3 Condensate - Shall have the meaning set forth in Section 5 hereof.

1.4 Easements - Shall have the meaning set forth in the Ground Lease.

1.5 EDNC Baytown Plant - That certain manufacturing facility to be constructed, leased and operated on the Leased Premises (as hereafter defined) by EDNC for the purpose of producing Nitric Acid in accordance with the terms of the Project and Supply Agreement.

1.6 El Dorado - Shall mean El Dorado Chemical Company, an Oklahoma corporation.

1.7 Environmental, Health and Safety Laws - All applicable federal, state and local laws relating to pollution or protection of human health or the environment including, without limitation, all laws, statutes, ordinances, rules, regulations, orders, codes and notices relating to releases or threatened releases of pollutants, contaminants, toxic or hazardous substances or wastes into the environment, including, without limitation, the following statutes, as amended from time to time: (i) Resource Conservation and Recovery Act ("RCRA"); (ii) Comprehensive Environmental Response, Compensation and Liability Act of 1980; (iii) Superfund Amendments and Reauthorization Act of 1986; (iv) Clean Air Act, 42 U.S.C. Section 7401 et seq.; (v) The Clean Water Act, 33 U.S.C. Section 1251 et seq.; (vi) Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; and (vii) Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.

1.8 Excess Steam - All excess steam that meets the requirements of Section 5 hereof and results from EDNC's production of Nitric Acid at the EDNC Baytown Plant and is not required for the operation of the EDNC Baytown Plant.

1.9 Fugitive Emissions - Shall mean any gaseous or particulate contaminant entering the atmosphere without first passing through a vent designed to direct or control its flow.

1.10 Fully Operational - When the EDNC Baytown Plant has first operated for (i) up to two hundred forty (240) hours (such duration to be fixed at EDNC's option, but in no event shall such duration be less than seventy-two (72) consecutive hours) at full capacity producing Nitric Acid meeting the Nitric Acid Specifications at a rate of not less than 1265 short tons (1150 metric tons) per day during each day of operation and (ii) at least seventy-two (72) hours at the turndown rate producing Nitric Acid meeting the Nitric Acid Specifications.

1.11 Leased Premises - Shall have the meaning specified in the Ground Lease.

1.12 Leasehold Improvements - Shall have the meaning specified in the Ground Lease.

1.13 Maximum Use - Shall have the meaning set forth in Section 4 hereof.

1.14 Net Distributed Cost - Shall have the meaning set forth in the Project and Supply Agreement.

1.15 Services - Shall mean all services provided by Bayer to EDNC hereunder.

1.16 Spills - Shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, pumping or dispersing of gaseous, solid or liquid substances into the environment, excluding discharges allowed or permitted under Environmental, Health and Safety Laws.

1.17 Termination Date - Shall have the meaning set forth in the Project and Supply Agreement.

1.18 Utilities - The utilities to be provided to EDNC by Bayer pursuant to Sections 3.1(A)-(E) of this Agreement.

1.19 Washdown Water - Shall mean waste water periodically generated from essential maintenance activities within the EDNC Baytown Plant's Battery Limits and meeting the specifications in Schedule 6.

1.20 Waste - The water-borne liquid, gaseous or solid substances resulting from the Nitric Acid manufacturing process conducted by EDNC at the EDNC Baytown Plant and falling within at least one of the following categories:

(A) Sanitary Sewage - Non-Waste effluent generated in kitchens, change rooms and bathrooms by EDNC at the EDNC Baytown Plant as a result of activities necessary to preserve and maintain human health and hygiene.

(B) Cooling Tower Blowdown - Shall mean waste water discharged from the EDNC Baytown Plant meeting the specifications in Schedule 6.

(C) Routine Process Waste - Shall have the meaning set forth in Section 6.3.

(D) Stormwater - Shall mean the following three types of precipitation falling within the Battery Limits and meeting the specifications in Schedule 6:

(1) Initial Stormwater - Shall mean the first inch of precipitation falling on the padded areas within a twenty-four (24) hour period;

(2) Additional Stormwater - Shall mean any precipitation falling on the padded areas in excess of the Initial Stormwater; and

(3) Uncollected Stormwater - Shall mean any precipitation falling on unpadded areas within the Battery Limits.

(E) Other Wastes - Shall mean any waste other than the wastes defined in Section 1.18(A) through (D) hereof generated by EDNC at the EDNC Baytown Plant (including, without limitation, oily sludge generated in the blowdown process, waste lubricating oils, construction debris and production/maintenance generated wastes.)

1.21 Waste Treatment Facilities - The portion of the Bayer Baytown Plant that accepts the Waste for necessary treatment and all pipelines, equipment, fixtures and improvements appurtenant thereto.

1.22 Waste Treatment Services - The services for the treatment and disposal of Waste to be provided to EDNC by Bayer pursuant to the requirements of Section 6 of this Agreement.

## SECTION 2: TERM AND ACCESS

### 2.1 Term

This Services Agreement shall commence on the Effective Date and shall terminate upon the Termination Date.

### 2.2 Parking and Access

EDNC officers, directors, employees, agents, contractors and invitees may park in the parking lots located on the Bayer Baytown Plant, and such parties shall use access routes designated by Bayer to reach the Leased Premises, in each case, as more particularly described in the Ground Lease. EDNC officers, directors, employees, agents, contractors and invitees shall observe all conditions imposed by Bayer for parking at the Bayer Baytown Plant. EDNC officers, directors, employees, agents, contractors and invitees shall have access to the EDNC Baytown Plant at all times during the term of this Agreement (as set forth in Section 2.1 hereof); provided, however, that EDNC officers, directors, employees, agents, contractors and invitees must observe Bayer Baytown Plant security procedures at all times. Bayer may restrict the access of EDNC officers, directors, employees, agents, contractors and invitees in the event of an emergency.

### 2.3 Truck and Pipeline Access

(A) EDNC shall design, construct and maintain a four (4) spot truck loading and unloading rack. EDNC shall be responsible for all costs associated with the truck loading rack.

(B) Bayer grants EDNC the right to use Bayer's pipelines for the transportation of Nitric Acid and Ammonia to the consuming units. EDNC shall use Bayer's designated pipelines in a manner that will not unreasonably interfere with Bayer's operations at the Bayer Baytown Plant.

## SECTION 3: UTILITIES AND AMMONIA

### 3.1 Provision of Utilities

Bayer shall supply certain utilities in specified quantities (each, a "Utility" and collectively, the "Utilities") based on certain assumptions set forth in Schedule 3.1, to the

Leased Premises for EDNC's use in the manufacture of Nitric Acid and operation, construction and maintenance of the Leased Premises, such supply to be in the amounts and manner provided in this Section 3. EDNC warrants that the quantities provided in Schedules 3.1(A)-(G) are a good faith estimate of the quantities of Utilities it will consume at an annual production rate of 443,000 short tons of nitric acid per year. It is expressly understood that Bayer shall not be obligated to supply any Utilities other than those specifically listed in this Agreement and that Bayer shall not be obligated to supply such Utilities in excess of the quantities provided for in Schedules 3.1(A)-(G). Bayer's obligations hereunder shall at all times remain subject to any competing priorities Bayer may have at the Bayer Baytown Plant for such Utilities. Bayer shall provide all such Utilities to EDNC at the Battery Limits in accordance with the specifications and the prices (if applicable) set forth on Schedules 3.1(A)-(G) hereto and at Bayer's Net Distributed Cost.

(A) Water - The Bayer Baytown Plant is served by public utility-supplied and plant-supplied water that is piped through and from the Bayer Baytown Plant. Bayer agrees to supply to the Leased Premises at the Battery Limits: (i) boiler feed water (makeup); (ii) fire water; (iii) potable water; (iv) plant (non-potable) water; and (v) demineralized water in the amounts and at the specifications set forth in Schedule 3.1(A), subject to the availability of such water from the utility supplying same. Bayer shall supply all water at Bayer's Net Distributed Cost.

(B) Nitrogen - Bayer agrees to supply to the Leased Premises at the Battery Limits, at Bayer's Net Distributed Cost, nitrogen gas through pipelines located at or on the Bayer Baytown Plant in the amounts and in the specifications set forth in Schedule 3.1(B).

(C) Air - Bayer agrees to supply to the Leased Premises at the Battery Limits, at Bayer's Net Distributed Cost: (i) plant air and (ii) instrument air through pipelines located at or on the Bayer Baytown Plant in the amounts and in the specifications set forth in Schedule 3.1(C).

(D) Steam - Bayer agrees to supply to the Leased Premises at the Battery Limits, at Bayer's Net Distributed Cost, six hundred thirty pounds per square inch gauged steam ("630 P.S.I.G. Steam") during start-up and one hundred fifty pounds per square inch gauged steam during normal operations through pipelines located at or on the Bayer Baytown Plant in the amounts and in the specifications set forth in Schedule 3.1(D).

(E) Natural Gas - Bayer agrees to supply to the Leased Premises at the Battery Limits, at Bayer's Net Distributed Cost, natural gas through pipelines located at or on the Bayer Baytown Plant in the amounts and at the specifications set forth in Schedule 3.1(E).

(F) Chlorine - Bayer agrees to supply to the Leased Premises at the Battery Limits at Bayer's Net Distributed Cost, chlorine through pipelines located at or on the Bayer Baytown Plant in the amounts and in the specifications set forth in Schedule 3.1(F).

(G) Caustic - Bayer agrees to supply to the Leased Premises at the Battery Limits at Bayer's Net Distributed Cost, caustic through pipelines located at or on the Bayer Baytown Plant in the amounts and in the specifications set forth in Schedule 3.1(G).

(H) Electricity - Bayer agrees to cause Houston Light & Power to supply electricity to EDNC. Bayer will bill EDNC the actual cost per kilowatt hour of electricity plus a reasonable pro rata portion of the capital invested for electrical capacity infrastructure development.

### 3.2 Utility Quality

(A) Bayer makes no warranty with regard to the quality or quantity of the Utilities made available to EDNC under this Agreement.

(B) EDNC shall be released from the warranty contained in Section 6 of the Project and Supply Agreement as to

nitric acid produced at the EDNC Baytown Plant if and to the extent EDNC can establish that the failure to meet the Nitric Acid Specifications was attributable to Bayer's failure to meet the relevant specifications for, or quantities of, Ammonia or Utilities provided to EDNC. EDNC shall exercise reasonable efforts to mitigate the application of this section by promptly notifying Bayer of any detected deficiency in the Utilities provided.

### 3.3 Utility Cross Connections

All Utilities cross connections will be designed, engineered and installed in accordance with Bayer's Utilities Cross Connections Engineering Standards, copies of which are attached as Schedule 3.3. EDNC agrees to maintain and operate these systems as originally designed to prevent possible cross contamination between EDNC's processes and a given Utility or possible cross contamination between two Utility streams.

### 3.4 Utility Meters

(A) EDNC shall install, operate and maintain, at its expense, demand metering equipment to measure EDNC's demand and consumption of the Utilities. EDNC's readings will be the basis upon which any charges will be assessed against EDNC for the consumption of Utilities, unless any reading is proven to be in error in accordance with Section 3.4(B).

(B) EDNC shall calibrate all meters in accordance with manufacturer's recommendations. EDNC shall give Bayer three (3) days notice of, and the right to observe, the calibration of any meters installed by EDNC. EDNC shall recalibrate each meter as recommended by the manufacturer. If during any such periodic recalibration any meter is found to be inaccurate by more than one-half of one percent (0.50%), then EDNC shall repair or recalibrate such meter to the lesser of (i) manufacturer's tolerances or (ii) plus or minus one-half of one percent (0.50%). If a meter is inaccurate by more than one-half of one percent (0.50%), the party that has benefitted from the inaccuracy shall refund to the other party one hundred percent (100%) of the discrepancy, back to the date of the last calibration or, if identifiable, back to the date of the failure that triggered the inaccuracy. If feasible, EDNC shall affix its seal to each meter after each calibration. EDNC agrees to exercise reasonable efforts to conduct all meter readings, inspections, recalibrations and repairs in such a manner that it will not unreasonably interfere with Bayer's operations at the Bayer Baytown Plant. EDNC shall also permit Bayer, at Bayer's expense, to inspect the meters at any time, provided such inspection does not unreasonably interfere with EDNC's operations at the EDNC Baytown Plant.

(C) If any inspection by Bayer reveals an inaccurate meter (as determined under the preceding paragraph), then the parties shall negotiate an appropriate adjustment to be made to the cost of the affected Utility.

### 3.5 Resale of Utilities

EDNC covenants that it will not sell, transfer or distribute to any other party (including Affiliates of EDNC) those Utilities provided to EDNC by Bayer pursuant to this Agreement.

### 3.6 Construction Utilities

Bayer shall supply certain utilities to the Leased Premises for EDNC's use in the construction of the EDNC Baytown Plant. Bayer shall invoice EDNC monthly for such construction utilities at Bayer's Net Distributed Cost.

### 3.7 Electrical Distribution Lines and Equipment

Bayer will install necessary electrical distribution lines and equipment to provide electricity to the Battery Limits of the EDNC Baytown Plant, for which Bayer will charge EDNC a monthly fee as set forth in 3.1(H) hereof.

## SECTION 4: PRO-RATA SHARE OF INFRASTRUCTURE CAPITAL INVESTMENT

Upon start-up, EDNC is expected to use up to the

monthly quantities of Utilities as outlined in Schedules 3.1(A)-(G) ("Maximum Use"). If for any reason EDNC increases its use of any Utility above the Maximum Use and such increase in use would cause a reduction in the amount of the particular Utility otherwise available for Bayer's use, and the remedy of the limitation requires a capital investment, Bayer may include a reasonable portion of the capital investment in Bayer's Net Distributed Cost for the Utility.

#### SECTION 5: EXCESS STEAM

(A) To the extent that EDNC has or generates Excess Steam or condensate that meets the requirements of Schedule 3.1(D) hereof ("Condensate"), and subject to the provisions of this Section 5, EDNC shall deliver the Excess Steam and Condensate to Bayer \*\*\*\*. The Excess Steam shall be saturated, have a minimum pressure of seven hundred (700) P.S.I.G. at the inlet control/letdown valve at the Battery Limits and shall have a minimum of five hundred eight degrees (508) superheat. Bayer shall accept all excess steam that does not meet the specifications set forth in this Section 5 and condensate that does not meet the requirements set forth in Schedule 3.1(D) hereof; provided, however, that Bayer shall have the right to surcharge EDNC for any damages caused by the off-specification steam or condensate. EDNC shall install and maintain meters at such boundary points mutually agreed upon by the parties to measure the quantity of Excess Steam supplied.

(B) Boiler water treatment chemicals used by EDNC shall be approved by Bayer for compatibility with Bayer equipment and piping and acceptability for treatment in the Waste Treatment Facilities. In particular, hydrazine hydrate shall be used for oxygen scavenging.

#### SECTION 6: USE OF SANITARY SEWERS AND DISPOSAL OF WASTE

Wastes from the EDNC Baytown Plant may be described by the following categories:

1. Sanitary Sewage;
2. Cooling Tower Blowdown;
3. Routine Process Wastes;
4. Stormwater; and
5. Other Wastes.

EDNC shall provide at its sole cost and expense Nitric Acid process sewers, collection sump(s) and pH neutralization for Routine Process Wastes and Stormwater.

Bayer reserves the right to test the Waste streams and, in the event Bayer notifies EDNC that the Waste streams do not comply with Schedule 6, EDNC shall promptly take all appropriate action to bring the Waste streams into compliance with Schedule 6. In addition, Bayer may assess EDNC a surcharge to cover the actual costs of all special handling and extra treatment incurred by Bayer for waste that fails to meet established specifications. In no case shall Bayer be required to accept Waste that will cause Bayer to exceed limits imposed by permits. With Bayer's prior approval, which shall not unreasonably be withheld, EDNC may construct and locate additional lines for transportation of its Waste, provided that all such Waste, other than Sanitary Sewage, is processed and directed above ground. Bayer shall invoice EDNC for such use of the Waste Treatment Facilities on a Net Distributed Cost basis.

##### 6.1 Use of Sanitary Sewers

EDNC may, at no cost to EDNC, discharge Sanitary Sewage into the existing sanitary sewer system located on or near the Leased Premises. EDNC shall not allow any third party or any other site source to cause any substance, including without limitation Waste, to be discharged into the sanitary sewer system on the Leased Premises or the Bayer Baytown Plant. EDNC shall make no discharges that violate any applicable: (i) governmental laws, ordinances, orders, permits, rules or regulations (including, without limitation, Environmental, Health and Safety Laws); (ii) insurance or underwriting rules or regulations disclosed to or known by EDNC on or prior to the Effective Date; or (iii) revised insurance or underwriting rules or regulations reasonably imposed by Bayer's loss prevention consultants and insurance carriers following the Effective Date. EDNC shall

grant Bayer access to all records and files that relate in any manner to any discharge by EDNC into the sanitary sewer system during the term of this Agreement. Bayer reserves the right to analyze, at its sole cost and expense, Sanitary Sewage at the tie-in points.

## 6.2 Cooling Tower Blowdown

EDNC may discharge into Bayer's Cooling Tower Blowdown header, via existing lines or lines to be constructed, Cooling Tower Blowdown that meets the quality and quantity specifications set forth in Schedule 6. To ensure that the Cooling Tower Blowdown is acceptable for treatment in the Waste Treatment Facilities, any chemicals EDNC uses in its cooling tower must be approved by Bayer.

## 6.3 Routine Process Waste

(1) In connection with the production of Nitric Acid by EDNC at the EDNC Baytown Plant, EDNC anticipates producing Routine Process Waste of the general types listed below, with the characteristics set forth in the attached Schedule 6:

- (a) Washdown Water;
- (b) Lab Samples;
- (c) Process Purges;
- (d) Leaks;
- (e) Boiler Blowdown; and
- (f) Ammonia Vaporizer Blowdown.

(2) Subject to any contrary provisions of this Section 6, EDNC may discharge into the overhead waste water piping to the Waste Treatment Facilities, via existing lines or those to be constructed, Routine Process Waste from the Leased Premises that meets the quality and quantity specifications set forth in Schedule 6. With Bayer's prior approval, which shall not unreasonably be withheld, EDNC may construct and locate additional lines for transportation of its Routine Process Waste, provided that all such Routine Process Waste is processed and directed above ground.

## 6.4 Initial Stormwater and Additional Stormwater

EDNC shall install, operate and maintain facilities to capture all Initial Stormwater and Additional Stormwater that falls on padded areas. EDNC shall construct such facilities so that the Initial Stormwater is segregated from the Additional Stormwater. EDNC shall discharge (pump) the Initial Stormwater along with the Routine Process Wastes, via existing pipelines or those to be constructed, into the Waste Treatment Facilities. EDNC shall sample the Additional Stormwater and analyze the pH and general appearance of the Additional Stormwater to ensure that it does not exceed the permissible contamination levels for Additional Stormwater described in Schedule 6. If the Additional Stormwater does not exceed the permissible contamination levels set forth in Schedule 6, then EDNC shall discharge the Additional Stormwater, via existing pipelines or those to be constructed, into the Bayer Baytown Plant's stormwater system. If the Additional Stormwater exceeds the permissible contamination levels set forth in Schedule 6, then EDNC shall hold the Additional Stormwater until it can be discharged, via existing pipelines or those to be constructed, into the Waste Treatment Facilities, provided that Bayer has analyzed the Additional Stormwater and determined that based on level of contamination and volume, the Waste Treatment Facilities can accept such Additional Stormwater.

## 6.5 Uncollected Stormwater

Uncollected Stormwater will be directed, via pipelines, existing or to be built, or by ground elevation, to Bayer's underground stormwater piping. EDNC will not allow contamination of Uncollected Stormwater.

## 6.6 EDNC's Disposal of Other Wastes

EDNC shall be solely responsible for the proper segregation, storage and disposal of any other waste (including, without limitation, oily sludge from the ammonia separation system, waste lubricating oils, construction debris and production/maintenance generated wastes) generated by EDNC at the

EDNC Baytown Plant, the storage, conveyance, treatment and disposal of which shall be performed in accordance with all applicable Environmental, Health and Safety Laws and all Bayer guidelines and procedures. EDNC shall use waste management services mutually agreed upon by the parties for the segregation and disposal of such other wastes. Bayer will not reimburse EDNC for any costs associated with the storage, conveyance, treatment and disposal process of other waste except as otherwise provided in the Project Agreements.

## 6.7 General

(A) Bayer shall maintain the Waste Treatment Facilities in good condition and repair and in such a manner as to allow the Waste to be treated and discharged in compliance with all applicable laws, including, without limitation, Environmental, Health and Safety Laws. EDNC shall maintain any pipelines, sumps, sump pumps or other facilities located on the Leased Premises in compliance with all applicable laws, including without limitation, Environmental, Health and Safety Laws.

(B) Upon reasonable notice, EDNC and Bayer shall each grant to the other access to all properties, records and files relating to the deliveries and discharge of Waste. Bayer and EDNC shall submit written reports to each other containing such matters and information as are reasonably requested by the other party.

(C) EDNC shall be responsible for ensuring that the EDNC Baytown Plant maintains compliance with all leak detection and repair programs related to Fugitive Emissions as mandated by all applicable Environmental, Health and Safety Laws.

(D) EDNC shall be responsible, at its expense, for all costs associated with the proper containment, clean-up, treatment and disposal of all Spills and materials contaminated by such Spills arising from EDNC's operation of the EDNC Baytown Plant. EDNC shall employ the Spill remediation services and disposal outlets mutually agreed upon by the parties.

(E) EDNC shall discharge all Sanitary Sewage or Waste into the existing sanitary sewer system or Waste Treatment Facilities in such a manner as to ensure that such discharges do not unreasonably interfere with Bayer's operations at the Bayer Baytown Plant. EDNC shall promptly correct any nonconforming discharges.

(F) EDNC shall install, operate and maintain, at its expense, metering equipment to measure EDNC's discharge of Routine Process Waste and Cooling Tower Blowdown into the Waste Treatment System.

## SECTION 7: PIPELINE AND PIPERACK CONSTRUCTION AND MAINTENANCE

### 7.1 Pipeline Construction

At least thirty (30) days prior to the date on which the EDNC Baytown Plant becomes Fully Operational, EDNC shall complete the construction of those pipelines that are necessary to transport: (i) Excess Steam and pipeline-borne Waste from the EDNC Baytown Plant to the appropriate Battery Limits tie-in points designated by mutual agreement of the parties, and (ii) all specified Utilities from the appropriate tie-in points at the Battery Limits designated by mutual agreement of the parties. Bayer shall design, engineer and construct the Delivery Systems in accordance with the provisions of Section 13.1 of the Project and Supply Agreement.

### 7.2 Pipeline Backflushing

If it is necessary to backflush the pipelines, EDNC shall make an estimate of Nitric Acid or other material remaining in the pipelines and the appropriate credit will be applied to the relevant Bayer or EDNC account.

## SECTION 8: FIRE PROTECTION, SAFETY AND SECURITY

### 8.1 Fire Protection

(A) The fire protection system for the Bayer Baytown Plant and the Leased Premises shall be located partly at or on the Bayer Baytown Plant and partly on the Leased Premises. With the prior written approval of Bayer, which will not be unreasonably withheld, EDNC may make such additions to the fire protection system on the Leased Premises as EDNC requires for the protection of the Leased Premises and Leasehold Improvements. Bayer, at its cost and expense, shall maintain in good condition and repair and shall make available for the benefit of the Leased Premises in case of an emergency the portion of the fire protection system located at or on the Bayer Baytown Plant. EDNC, at its cost and expense, shall maintain in good condition and repair and shall make available for the benefit of the Bayer Baytown Plant in case of an emergency the portion of the fire protection system located on the Leased Premises. Each party shall be responsible for notifying the designated authority of emergencies occurring on its property. EDNC shall only use water from the fire protection system for emergency purposes and shall immediately report any such use to the designated authority at the Bayer Baytown Plant.

(B) (1) EDNC shall incorporate in the design of the EDNC Baytown Plant the specific recommendations for fire protection on the Leased Premises that are recommended by Bayer's loss prevention consultants as described generally in Schedule 8.1 or mandated by insurance requirements.

(2) During the course of construction and operation of the EDNC Baytown Plant at or on the Leased Premises, further recommendations may be made by Bayer for changes in fire protection or personnel safety practices. These further recommendations must be submitted to EDNC in writing, and EDNC shall consult with EDNC's insurance carrier regarding such recommendations. EDNC shall implement any reasonable Bayer recommendations.

(3) Bayer agrees to furnish the fire-fighting services for the Leased Premises that Bayer has available for the protection of its own property and personnel. EDNC agrees to cooperate with Bayer in furnishing such services, including participating in any fire drill procedures on the Leased Premises, as reasonably requested by Bayer. Subject to the prior execution of confidentiality agreements in form and substance satisfactory to EDNC and its counsel, EDNC agrees to grant Bayer, and any insurer or agent of Bayer, access to the Leased Premises and Leasehold Improvements as required by Bayer's insurance carriers for inspection purposes. Subject to the prior execution of confidentiality agreements in form and substance satisfactory to Bayer and its counsel, Bayer agrees to grant EDNC and its insurance carriers access to the Bayer Baytown Plant and the improvements located thereon as required by EDNC's insurance carriers for inspections related to fire protection or other safety measures.

## 8.2 Safety

(A) EDNC will construct and operate the EDNC Baytown Plant according to sound engineering practice and all applicable laws and regulations. In the interest of promoting a safe manufacturing environment, EDNC and Bayer agree to meet every other month to discuss and review safety items of mutual interest.

(B) EDNC and Bayer will coordinate the installation at the EDNC Baytown Plant of a public address system that will be integrated with the Bayer Baytown Plant public address system so as to permit centralized emergency notification and other central announcements to personnel at the EDNC Baytown Plant. Bayer shall provide connections for the public address system at the Battery Limits.

(C) Bayer will provide EDNC with a list of VHF radio frequencies for routine use at the EDNC Bayer Baytown Plant and for emergency communication with the Bayer disaster response office. EDNC shall utilize radio equipment capable of transmitting and receiving information on the assigned frequencies.

(D) Bayer will provide EDNC with phosgene monitoring badges for use by EDNC personnel at the EDNC Baytown

Plant. EDNC shall require the use of such badges by all personnel at the EDNC Baytown Plant, and shall cause such badges to be handled and examined in accordance with Bayer safety rules applicable to the use and examination of such badges. Bayer shall provide EDNC with such safety rules prior to the date the EDNC Baytown Plant becomes Fully Operational.

### 8.3 Security

EDNC shall be responsible for providing security for the Leased Premises and the Construction Laydown Area (as such term is defined in the Ground Lease). Bayer shall have no responsibility for the internal security of the Leased Premises or the construction laydown area. On or about March 1, 1998, Bayer will provide perimeter security only at the Bayer Baytown Plant perimeter.

## SECTION 9: CUSTODIAL, MAINTENANCE AND LABORATORY SERVICES

EDNC is responsible for providing its own custodial, maintenance and laboratory services for the EDNC Baytown Plant. However, EDNC and Bayer may reach agreement regarding joint use of any or all of the same services used by Bayer at the Bayer Baytown Plant. EDNC may utilize Bayer's weigh scales.

## SECTION 10: ESTIMATED COSTS

If any fee or charge to be paid by one party to the other hereunder is based on the other party's distributed costs, and if such costs vary from time to time in a way that is not readily ascertainable by reference to suppliers' invoices and the like, then the parties shall endeavor in good faith to agree upon billings based on estimates of such costs. If estimates are used for billing purposes, then at the end of each quarter in which estimates were used, actual costs shall be compared to estimated costs and any underpayments will be paid or overpayments will be refunded.

## SECTION 11: AUDIT RIGHTS

Each calculation, adjustment or estimate made pursuant to this Agreement shall be supported by appropriate workpapers and background data and shall be made in conformity with GAAP. Each party shall have the right, at its own expense, to employ a firm of independent certified public accountants to conduct an audit of any calculation, adjustment or estimate made pursuant to this Agreement. Such auditors shall execute agreements of confidentiality acceptable to both parties, approval of which shall not be unreasonably withheld.

## SECTION 12: INTERRUPTION OF SERVICE

Neither party shall be liable to the other to provide Utilities or Waste Treatment Services pursuant to the terms of this Agreement if the failure to provide such Utilities or Waste Treatment Services was due to any cause or causes beyond the reasonable control of the party required to provide the Utilities or Waste Treatment Services. As a practice of good maintenance, events, whether involuntary or voluntary, may require temporary fluctuations or interruptions in Utilities or Waste Treatment Services. Both parties agree to exert reasonable efforts to minimize the frequency and duration of such interferences.

## SECTION 13: INDEMNIFICATION

The indemnification rights and obligations of the parties under this Agreement shall be determined in accordance with Section 18 of the Project and Supply Agreement.

## SECTION 14: EXERCISE OF RIGHTS UNDER THIS AGREEMENT

Bayer and EDNC covenant and agree that each party shall fulfill its obligations under this Agreement to maintain, repair or replace the equipment that each is obligated to maintain, repair or replace at standards equivalent to or surpassing those prevailing in the industry. Except as otherwise provided hereby, neither party has the right to enter the property of the other party to make any repairs or replacements or to perform maintenance or any other function unless immediate action is required because of an emergency. Bayer and EDNC each agree to

give the other party advance written notice and await approval before entering upon the other's property to perform any maintenance on or repair or replacement of any equipment or facilities located on the property of the other party.

## SECTION 15: REMEDIES AND FORCE MAJEURE

### 15.1 Remedies

If either party fails to comply with any term or condition or to fulfill any obligation imposed under this Agreement, then the other party may exercise any one of the remedies afforded such party under the Project and Supply Agreement.

### 15.2 Force Majeure

Both EDNC and Bayer will be excused from the obligations of this Agreement to the extent that performance is delayed or prevented as a result of a Force Majeure Event.

## SECTION 16: MISCELLANEOUS

### 16.1 Payment for Services

All amounts payable hereunder shall be paid in lawful money of the United States on a net fifteen (15) day basis, with interest to accrue thereafter at a rate equal to the prime rate charged by Citibank, N.A. The acceptance by either party of bank drafts, checks or other media of payment will be subject to immediate collection of the full face amount thereof and the payment shall not be deemed to have been paid until actually received in cash by the respective party, except that no interest shall be charged after receipt of any bank drafts, checks, or other media of payment that is collected in cash in the ordinary course of business and without unusual delay.

### 16.2 Material Default

Either party may recover for each delivery of goods, materials, utilities or raw materials hereunder as a separate transaction, without reference to any other delivery. If either party is in material default (after expiration of any cure period) with respect to any of the terms or conditions of this Agreement, the other party may, at its option, defer further deliveries of goods, materials, utilities or raw materials hereunder until such default is remedied, all without prejudice to any other legal or equitable remedy. If either party is in material default (after expiration of any cure period) with respect to any terms or conditions of this Agreement, the other party may, at its option, notify the defaulting party that it will suspend orders until it receives adequate assurance of due performance, all without prejudice to any other legal or equitable remedy. However, this Section 16.2 does not apply to situations in which either party's non-performance or delay is excused by applicable law or provisions of the Project Agreements. In addition to the remedies set forth above or otherwise available at law or in equity, a party not in default hereunder shall have the rights and remedies set forth in the Project and Supply Agreement.

### 16.3 Dispute Resolution

If any dispute arises concerning or related to this Agreement, the parties shall resolve such dispute in accordance with the dispute resolution provisions set forth in the Project and Supply Agreement.

### 16.4 Assignment

EDNC may not assign its respective rights and obligations under this Agreement or any of the Project Agreements to any other party without first obtaining the express written consent of Bayer, which consent may be granted or withheld by Bayer in its sole discretion; provided, however, that EDNC shall be permitted to sublease the Leased Premises and encumber the Ground Lease Sublease (as defined in the Ground Lease) in accordance with Section 15.3 of the Ground Lease and to collaterally assign its rights under the other Project Agreements to the Owner Trustee, the Construction Loan Agent and/or the Indenture Trustee pursuant to the Operative Agreements.

## 16.5 Notices

Any notice, communication or statement required or permitted to be given hereunder shall be in writing and deemed to be sufficiently given when delivered in person or by overnight mail to the address of the respective party below:

Bayer Corporation  
100 Bayer Road  
Pittsburgh, Pennsylvania 15205-9741  
Attn: Controller, Polymers Division  
Attn: Assistant General Counsel, Polymers Division

El Dorado Nitrogen Company  
16 South Pennsylvania Avenue  
Oklahoma City, Oklahoma 73107  
Attn: President

and to:

El Dorado Chemical Company  
655 Craig Road  
Suite 322  
St. Louis, Missouri 63141  
Attn: Vice President, Industrial Chemicals

LSB Industries, Inc.  
16 South Pennsylvania Avenue  
Oklahoma City, Oklahoma 73017  
Attn: General Counsel

Either party may, by notice given as aforesaid, change its address or the party that receives notice for all subsequent notices.

## 16.6 Modification

This Agreement shall not be modified or amended, except by written instrument executed by the duly authorized officers of the parties hereto.

## 16.7 Applicable Law; Submission to Jurisdiction; Consent to Service

The validity, interpretation and performance of this Agreement shall be governed by the internal laws of the State of Texas, without reference to conflicts of laws provisions. The parties hereto irrevocably submit to the jurisdiction of the United States District Court for the Southern District of Texas and consent to service of process in accordance with the provisions of Section 22 of the Project and Supply Agreement.

## 16.8 Invalidity of Particular Provisions

If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

## 16.9 Captions

The headings or titles used herein are for convenience only. They do not constitute a part of this Agreement and shall not affect the meaning, construction or effect of the provisions hereof.

## 16.10 Relationship of Parties

Nothing contained in or done pursuant to this Agreement or any of the other Project Agreements shall be deemed or construed by the parties hereto, or by any third party, to create the relationship of principal and agent, partnership, joint venture or any association whatsoever between Bayer and EDNC. It is expressly understood and agreed that no provisions contained in this Agreement, nor any act or acts of the parties hereto, shall be deemed to create any agency, partnership or joint

venture relationship between EDNC and Bayer.

16.11 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together constitute one instrument.

16.12 Entire Agreement

This Agreement and the other Project Agreements, together with all the schedules attached hereto and thereto, contain the entire understanding of the parties and supersede any prior understanding and agreements among them respecting the subject matter hereof and thereof. There are no agreements, arrangements or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement and the other Project Agreements that are not set forth or expressly referred to herein or therein.

16.13 Waiver

No waiver by Bayer or EDNC of any default or breach of any covenant, condition or stipulation herein shall be treated as a waiver of any subsequent default, breach of the same or any other covenant, condition or stipulation hereof.

16.14 Controlling Agreement

In the event of any conflict between the provisions hereof and the provisions of the Project and Supply Agreement, the provisions of the Project and Supply Agreement shall control.

16.15 Binding Effect

This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and delivered by their duly authorized officers and their corporate seals to be hereunto affixed the day and year first above written.

EL DORADO NITROGEN COMPANY

BAYER CORPORATION

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

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

SCHEDULE LIST

3.1 Utility Specifications

3.1(A) Water Specifications

3.1(B) Nitrogen Specifications

3.1(C) Air Specifications

3.1(D) Steam Specifications

3.1(E) Natural Gas Specifications

3.1(F) Chlorine Specifications

3.1(G) Caustic Specifications

3.3 Utilities Cross Connections Engineering Standards

6 Waste CERTAIN INFORMATION WITHIN THIS EXHIBIT HAS BEEN OMITTED AS IT IS THE SUBJECT OF A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FREEDOM OF INFORMATION ACT. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE

8.1 Fire Prevention Design Requirements

SCHEDULE 3.1  
UTILITY SPECIFICATIONS

The information set forth on Schedules 3.1(A)-(G) is based on the following assumptions:

1. Monthly quantities are based on one hundred twenty five percent (125%) of projected utility consumption rates necessary to produce 37,950 short tons of nitric acid (100% basis) in a thirty-day month at the EDNC Baytown Plant.
2. Annual production of nitric acid at the EDNC Baytown Plant is estimated to be 443,000 short tons.
3. Utility specifications represent the quality of such utilities at the Battery Limits.
4. Typical monthly limits reflect anticipated maximum usages during peak consumption periods.

SCHEDULE 3.1(A)  
WATER SPECIFICATIONS

(i) Boiler Feed Water (makeup)

Pressure	250 P.S.I.G. minimum
Temperature	250F (15F)
Hardness	0.2 ppm maximum
Oxygen	7 ppb maximum
pH	8.3 minimum - 10 maximum
Iron	0.1 ppm maximum
Copper	0.05 ppm maximum

Typical monthly volume of boiler feed water is estimated to be 58.3 million pounds. With an average rate of approximately 78,400 lbs/hr, the boiler feed water consumption shall not exceed a maximum rate of 98,000 lbs/hr.

Boiler feed water specifications may be subject to change based on final selection and design of the boiler. If a higher quality of boiler feed water is required, but cannot be met by Bayer, the installation of any additional water treatment facilities by EDNC, if needed, will be treated as a change order.

(ii) Fire Water

The Bayer Baytown Plant fire water grid consists of a series of sixteen inch (16") and twelve inch (12") underground water mains. The fire water grid will be extended north/south with sixteen inch (16") mains and east/west with twelve inch (12") mains as the new construction projects proceed.

The grid is supplied by two fire pump stations:

East Fire Water Pump Station

Located in Block 15A, the East Fire Pump Station has three 2500 gpm at 125 psi vertical turbine fire water pumps. These three pumps take suction from two reservoirs of at least 7.5 million gallons each. The reservoirs are automatically refilled by an overflow/refill pipe to the river. The reservoirs are interconnected by a seventy-two inch (72") concrete pipe. Individual thirty-six inch

(36") concrete pipes supply each of the three pumps from the seventy-two inch (72") pipe. There are isolation/diversion valves in the suction arrangement.

One of the three fire water pumps is electric motor driven. The other two pumps are diesel engine driven (designated as north diesel and south diesel). All three pumps/drivers are UL-listed. A large, electric 350 gpm "jockey" pump maintains a normal pressure of 140 psi.

"Start" pressure for the East Fire Pump Station pumps:

- |    |              |         |
|----|--------------|---------|
| 1. | Electric     | 100 psi |
| 2. | North Diesel | 80 psi  |
| 3. | South Diesel | 60 psi  |

The pumps discharge to a valved manifold, then to common piping distribution headers via two parallel sixteen inch (16") mains. Valving provides flexibility to accommodate and discharge combination.

#### West Fire Pump Station

Located at the extreme west end of the plant property, near the barge dock, the West Fire Pump Station has two 2500 gpm at 125 psi vertical turbine fire water pumps taking suction from a 2 million gallon reservoir. The reservoir is refilled by manual back fill through the fire water grid. A common wet well provides suction for both of the West Fire Pump Station pumps.

Both pumps are diesel engine driven. The pumps, drivers and control equipment are all UL-listed. A 60 gpm electric jockey pump is provided. This pump is a back-up to the 350 gpm jockey pump in the East Pump Station.

"Start" pressures for the West Fire Pump Station pumps:

- |    |              |        |
|----|--------------|--------|
| 1. | North Diesel | 75 psi |
| 2. | South Diesel | 55 psi |

Pump discharge is to a common header, complete with valving, that supplies a single sixteen inch (16") underground main connecting to the plant grid at the corner of D Street and 4th Avenue.

The pump discharge manifold in the pump house is arranged to accommodate a second discharge line. Bayer will install a second sixteen inch (16") discharge line tying into the plant grid at the northwest corner of Block 12C.

Bayer will supply fire water to the Battery Limits of the EDNC Baytown Plant at a sufficient pressure and flow rate to met EDNC design and insurance requirements.

#### (iii) Potable Water

Typical monthly volume is estimated to be approximately 25,000 gallons. Potable water consumption shall not exceed a maximum rate of 30,000 gallons. Potable water shall meet the minimum municipal guidelines.

#### (iv) Plant (Non-Potable) Water

Typical monthly volume is estimated to be 29.5 million gallons at an average rate of approximately 660 gpm. The plant water consumption shall not exceed a maximum rate of 870 gpm.

Chlorides	80 ppm maximum
Supply temperature	ambient
Chlorine	0.1 ppm maximum
Pressure	50 P.S.I.G. minimum

#### (v) Demineralized Water

Pressure	60 P.S.I.G.
----------	-------------

Conductivity	2.0 pMhos maximum
Temperature	90 F maximum
Chlorides	0.5 ppm maximum
Chlorine	0.1 ppm maximum

Typical monthly volume at capacity is estimated to be 2.23 million gallons at an average rate of 50 gpm. Demineralized water consumption shall not exceed a maximum rate of 63 gpm.

SCHEDULE 3.1(B)

NITROGEN SPECIFICATIONS

When EDNC is not using the Back-up or Start-up Supply Plan, typical monthly volume for continuous usage is estimated to be 0 SCF.

Nitrogen may be used to unload nitric acid trailers when EDNC is using the Back-up and Start-up Supply Plan. Peak flow for the unloading of nitric acid trailers shall not exceed 75 SCFM. During use of the Start-up Supply Plan, monthly requirements of nitrogen are estimated not to exceed 130,000 SCF.

SCHEDULE 3.1(C)

AIR SPECIFICATIONS

(i) Plant Air

Typical volume during truck unloading is estimated to be 300 SCFM. Typical monthly volume is estimated to be 3.38 million SCF at an average rate of approximately 75 SCFM. Plant air consumption shall not exceed a maximum rate of 400 SCFM.

(ii) Instrument Air

Typical monthly volume is estimated to be 7.23 million SCF at an average rate of approximately 165 SCFM. A maximum monthly volume is estimated to be 9.2 million SCF. The instrument air consumption shall not exceed a maximum rate of 206 SCFM. Instrument air shall meet the pressures of plant air, above, and have a maximum dew point of -40 Farenheit.

Pressure:

Minimum	60 P.S.I.G.
Design	75 P.S.I.G.
Maximum	150 P.S.I.G.

SCHEDULE 3.1(D)

STEAM SPECIFICATIONS

Except for each start-up of the EDNC Baytown Plant, during normal operation EDNC will not consume steam from Bayer. EDNC shall export approximately 40,000 to 70,000 lbs/hr to Bayer.

All steam treatment must be compatible with the Bayer steam treatment system.

The following is a brief description of Bayer Baytown Utilities Department Water Treatment and Control Limits:

Boiler Feedwater

pH - 8.3 minimum - 10 maximum

Conductivity - Record only (to check boiler cycles)

Total Hardness - 0.2 ppm maximum  
Silica - Record only

#### Boiler Water

Hydrazine hydrate is used as an oxygen scavenger. Control range is 150-500 ppb (in condensate return).

Chelate (BTC - 105) is used as a scale control agent. Control agent is 5-8 ppm (as CaCO<sub>3</sub>, in the Boiler water).

Silica - Control range is 50 ppm maximum (in Boiler water).

Conductivity - Control range is 2700-3000 Mhos (in Boiler water).

"0" Alkalinity - Control range is 150-550 ppm (in Boiler water).

#### Steam and Condensate System

The steam pH is controlled by adding Ammonia. Control range is 8.4-8.8 (in condensate return).

The steam and condensate piping corrosion is controlled by adding Amercor 8750. The feed rate is determined by corrosion reports.

Drew Industrial (division of Ashland Chemicals Inc.) is the water treating consultant for the Bayer Baytown Plant.

#### Condensate

Typical production levels will result in steam export with Boiler Feed Water makeup. No condensate import is anticipated. Upon start-up, the EDNC Baytown Plant will import 630 P.S.I.G. steam at a peak flow of 125,000 lbs/hour. Most of the resultant condensate will then be exported. Peak condensate export is approximately 125,000 lbs/hour. EDNC must verify that the condensate is not contaminated, as verified by EDNC with a conductivity meter. Control limits are 50 Mhos with condensate to be dumped at 100 Mhos. If the condensate is contaminated, EDNC shall dump the condensate to process waste water.

### SCHEDULE 3.1(E)

#### NATURAL GAS SPECIFICATIONS

Sulphur content	1 grain of hydrogen sulphide maximum or 20 grains of total sulfur maximum per 100 cubic feet
Water vapor content	7 pounds maximum per 1 million cubic feet maximum

No natural gas is consumed in the nitric acid manufacturing process. The gas may be used in the lab or in the offices and buildings for heat and air conditioning. Natural gas consumption is estimated to average less than 1 SCFM.

### SCHEDULE 3.1(F)

#### CHLORINE SPECIFICATIONS

Chlorine is used for water treatment at the cooling tower. Based on the anticipated blowdown rate, chlorine consumption will average 85 pounds per day, with a peak consumption of 170 pounds per day. The chlorine will be standard commercial grade with a minimum of 99.5% chlorine by weight.

### SCHEDULE 3.1(G)

#### CAUSTIC SPECIFICATIONS

Caustic (NaOH) will be used primarily for neutralization. Caustic consumption will average 140 pounds per day on a 100% basis with peak consumption of 1500 pounds per day. Initially Bayer will supply to EDNC a 50% caustic solution, ET grade. When another Bayer unit becomes operational (such unit is estimated to become operational in early 1999), Bayer will generally supply to EDNC 32% membrane grade caustic solution; provided, however, that Bayer may supply to EDNC 50% caustic solution as an alternative.

SCHEDULE 3.3  
UTILITIES CROSS  
CONNECTIONS ENGINEERING STANDARDS

See attached copy.

SCHEDULE 6  
WASTE

BASIS:

1. For pH control of Routine Process Waste, Initial Stormwater and Additional Stormwater, EDNC will neutralize with caustic soda.
2. EDNC will collect the Initial Stormwater and pump out the Initial Stormwater over a six (6) hour period to the waste water header. Additional Stormwater is to be routed to the Bayer Baytown Plant's stormwater system after verifying water quality.
3. EDNC will discharge Cooling Tower Blowdown into the Bayer Baytown Plant's cooling tower blowdown header.
4. The overhead waste water header backpressure is up to 50 P.S.I.G. during rains.
5. Normal flow rates below are based on EDNC Baytown Plant production of 443,000 short tons of nitric acid (100% basis) a year.
6. EDNC will continuously monitor pH and flow to waste water header as well as pH of Additional Stormwater to Bayer's storm sewer.
7. EDNC must keep Uncollected Stormwater free of contaminants.

Waste Stream -----	Quality -----	Peak Flow ----	Normal Flow -----
Flow to Cooling Tower Blowdown header	pH range 7.5 - 8.0	****	****
	Anticipated metal levels: Cr 0.013 lb/day Cu 0.045 lb/day Ni 0.014 lb/day Pb 0.007 lb/day Zn 0.767 lb/day		

Flow to Waste Water header

Routine Process Waste,  
gpm

Washdown Water                      warranted pH range of 5.0 to        \*\*\*\*                      \*\*\*\*  
 Lab Samples                            8.0 temperature 104 F max  
 Process Purges  
 Leaks  
 Boiler Blowdown

Ammonia Vaporizer

Water                                    210 lb/hr max  
 Free ammonia 2.0 lb/hr max        \*\*\*\*                      \*\*\*\*  
 Oil                                        0.15 lb/hr max\*

1

Metal levels of this water shall be no more than twice the anticipated metal levels.

Waste Stream	Quality	Peak Flow	Normal Flow
Initial Stormwater, gpm	warranted pH range of 5.0 to 8.0	****	****
Additional Stormwater	warranted pH range of 5.0 to 8.0 appearance - uncontaminated	--	--
Total Flow to Waste Water header, gpm		****	****

\* to be reverified by IFC Kaiser.

2

Additional Stormwater that is not pumped to the overhead waste water line must be monitored and warranted to above pH range as well as uncontaminated with other foreign substances, including but not limited to oils, as determined by visual inspection.

EDNC will not allow the streams specified above to contain any species other than those set forth above.

EDNC is expected to follow the Bayer Baytown Plant procedures for monitoring, communicating and controlling action levels for pH and species noted in the specifications, including notifying Bayer if the waste water is likely to deviate from the above parameters. Bayer will routinely monitor cooling Tower Blowdown and total flow of overhead waste water header.

SCHEDULE 8.1

FIRE PREVENTION DESIGN REQUIREMENTS

1. General

- (a) Monitor nozzle coverage should be provided around the perimeter of the unit, such that any process area can be reached by at least two monitor nozzles.
- (b) Drainage and curbing should be provided to direct fire water to the process water sump for collection.
- (c) Structural fireproofing is not anticipated. Bayer does not typically endorse fireproofing unless high explosion potentials exist.
- (d) The cooling tower should have sprinkler protection following current NFPA guidelines.
- (e) The compressor lube oil system should have sprinkler protection. Storage of these oils needs to be reviewed for fire protection comments. Bayer recommends that oil and other flammables in the storage area have sprinkler protection.
- (f) Bayer would not normally recommend sprinkler protection for the hydrogen bottles used for burner ignition provided the bottles are located in an open area and

remain disconnected except when in use.

- (g) The ammonia surge tank should be reachable from at least two monitors.

## 2. Control Room

At minimum, the building should provide a two-hour fire resistance (typically concrete block with brick facing, minimal wired glass windows and fire-rated doors). Due to proximity to neighboring units and depending on the insurance company's position, some level of blast resistance may be required.

Once building construction is agreed upon, the following fire protection should be provided:

- (a) At minimum, smoke detection throughout, with alarms locally and audible in a constantly attended location.
- (b) Fire protective cable coating and firestopping for significant electrical cable accumulations. Automatic suppression -- sprinkler or gas suppression system -- is an option if cable loading is significant.
- (c) If support areas (offices, labs, etc.) contain a combustible occupancy, automatic sprinkler or other appropriate protection should be provided.

## 3. Equipment Venting

- (a) Emergency relief calculations are to be done per OSHA 1910.106 and NFPA 30 guidelines with consideration given to DIERS Protocol where applicable.

## 4. Tank Farm

- (a) Monitors to provide water spray protection for the storage tanks.
- (b) The truck loading/unloading area should be covered by at least two monitor nozzles.

## GROUND LEASE

THIS GROUND LEASE (the "Ground Lease"), entered into and effective June\_\_ , 1997 (the "Effective Date"), is by and between BAYER CORPORATION, an Indiana corporation, ("Bayer") and EL DORADO NITROGEN COMPANY, an Oklahoma corporation ("EDNC").

## W I T N E S S E T H:

WHEREAS, Bayer owns and operates a chemical manufacturing facility located in Baytown, Chambers County, Texas (the "Bayer Baytown Plant") where, among other manufacturing processes, it engages in a manufacturing process that consumes nitric acid meeting certain agreed-upon specifications ("Nitric Acid");

WHEREAS, Bayer owns the real property on which the Bayer Baytown Plant is located ("Bayer Real Property");

WHEREAS, Bayer, EDNC and El Dorado (as hereafter defined) have entered into that certain Baytown Nitric Acid Project and Supply Agreement (the "Project and Supply Agreement"), dated as of the Effective Date, whereby the parties have agreed that EDNC will construct and operate a chemical manufacturing facility (the "EDNC Baytown Plant") for the manufacture of Nitric Acid at the Bayer Baytown Plant;

WHEREAS, Bayer and EDNC have also entered into that certain Services Agreement (the "Services Agreement"), dated as of the Effective Date, whereby Bayer has agreed to supply certain Utilities and Services (each as hereafter defined) to EDNC for the manufacture of Nitric Acid; and

WHEREAS, Bayer wishes to lease to EDNC a portion of the Bayer Real Property identified as the Leased Premises in Section 1.19 herein, upon which EDNC will construct and operate the EDNC Baytown Plant;

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereby agree as follows:

## SECTION 1: DEFINITIONS

Capitalized terms not otherwise defined herein have the respective meanings assigned to them in the Project and Supply Agreement or the Services Agreement. The following terms have the respective meanings assigned to them for purposes of this Ground Lease:

1.1 Benefitted Property - Shall have the meaning set forth in Section 5.14 hereof.

1.2 Chemical Delivery Date - Shall have the meaning set forth in Section 5.1 hereof.

1.3 Construction Access Easements - Shall have the meaning set forth in Section 5.1 hereof.

1.4 Construction Easement Term - Shall have the meaning set forth in Section 5.1 hereof.

1.5 Construction Laydown Area - Shall have the meaning set forth in Section 5.2 hereof.

1.6 Construction Parking Easements - Shall have the meaning set forth in Section 5.3 hereof.

1.7 Construction Staging Easements - Shall have the meaning set forth in Section 5.2 hereof.

1.8 Cross-Block Roads - Shall have the meaning set forth in Section 5.14 hereof.

1.9 Current Environmental Assessment - Shall mean the Geotechnical Study and Environmental Baseline Assessment to be

prepared by Geraghty & Miller, Inc. and relating to the Leased Premises, as more fully described in Section 4.4 hereof.

1.10 Easements - All easements granted to EDNC by Bayer in (or pursuant to) Section 5 of this Ground Lease for the purposes described therein.

1.11 EDNC Personnel - Shall mean all officers, directors, employees, agents and invitees of EDNC.

1.12 El Dorado - Shall mean El Dorado Chemical Company, an Oklahoma corporation.

1.13 Environmental, Health and Safety Laws - All applicable federal, state and local laws relating to pollution or protection of human health or the environment including, without limitation, all laws, statutes, ordinances, rules, regulations, orders, codes and notices relating to releases or threatened releases of pollutants, contaminants, toxic or hazardous substances or wastes into the environment including, without limitation, the following statutes, as amended from time to time: (a) Resource Conservation and Recovery Act ("RCRA"); (b) Comprehensive Environmental Response, Compensation and Liability Act of 1980; (c) Superfund Amendments and Reauthorization Act of 1986; (d) Clean Air Act, 42 U.S.C. Section 7401 et seq.; (e) The Clean Water Act, 33 U.S.C. Section 1251 et seq.; (f) Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; and (g) Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.

1.14 Existing Environmental Assessment - Shall mean the Geotechnical Study and Environmental Baseline Assessment, report number LA1387.001, dated December 9, 1996, prepared by Geraghty & Miller, Inc. and relating to the Leased Premises (as hereafter defined).

1.15 Ground Lease Sublease - Shall mean the Ground Lease Sublease that constitutes one of the Operative Agreements (as hereafter defined).

1.16 Industrial District Payments - Those taxes levied on the Bayer Baytown Plant by the City of Baytown, Texas, pursuant to the Industrial District Agreement dated April 13, 1992 and executed by and between Bayer and the City of Baytown, Texas, in the form attached hereto as Exhibit E, as it may be hereinafter amended from time to time.

1.17 Initial Term - The initial term of this Ground Lease, commencing on the Effective Date and ending on December 31 of the tenth (10th) calendar year following the Commencement Date; provided, however, that if the Commencement Date has not occurred prior to December 31, 2008, then the initial term shall end on December 31, 2008, unless (a) sooner terminated as provided for hereunder, (b) extended in accordance with Section 2 of this Ground Lease or (c) extended for a period equal to the duration of a Force Majeure Event (as such term is defined in the Project and Supply Agreement) as agreed by the parties.

1.18 Landlord's Lien - Shall mean any lien and/or security interest now or hereafter created under Texas statutory or common law in favor of a landlord of real property located in Texas with respect to any personal property located in or upon the Leased Premises as security for the rent payable to such landlord.

1.19 Leased Premises - That certain tract of land in Bayer Block 12C of approximately 2.755 acres, specifically described by metes and bounds on the attached Exhibit A, situated within the Bayer Baytown Plant in Baytown, Chambers County, Texas.

1.20 Leasehold Improvements - Any and all improvements constructed by EDNC (whether as construction agent or otherwise) or on its behalf on the Leased Premises, including without limitation, buildings, fixtures, tanks, pipes, piperacks, powerlines, roadways, cables, conduits and other structures located on the Leased Premises and comprising the EDNC Baytown Plant.

1.21 New Route Date - Shall have the meaning set forth in Section 5.1 hereof.

1.22 Operative Agreements - Shall mean the following financing documents:

- (A) Participation Agreement;
- (B) Leveraged Lease (as defined in Section 1.45 of the Project and Supply Agreement);
- (C) Tax Indemnity Agreement;
- (D) Trust Indenture and Security Agreement;
- (E) Ground Lease Sublease;
- (F) Construction Loan and Security Agreement;
- (G) Bayer Agreement (as defined in Section 1.10 of the Project and Supply Agreement); and
- (H) Lessor's Consent to Ground Lease Sublease and

Non-Disturbance Agreement;

by and among the parties thereto, and including any other documents pertaining to such financing of the EDNC Baytown Plant, which documents Bayer shall have the right to approve in its sole discretion pursuant to Section 8.1(L) of the Project and Supply Agreement.

1.23 Perimeter Fence - Shall have the meaning set forth in Section 5.1 hereof.

1.24 Permits - All necessary federal, state and local governmental permits, approvals, licenses, authorizations and consents required in connection with the design, construction and operation of the EDNC Baytown Plant, including, without limitation, all construction and environmental permits.

1.25 Permitted Exceptions - Those matters set forth on the attached Exhibit B.

1.26 Post-Construction Access Easements - Shall have the meaning set forth in Section 5.5 hereof.

1.27 Post-Construction Easement Term - Shall have the meaning set forth in Section 5.5 hereof.

1.28 Post-Construction Parking Easements - Shall have the meaning set forth in Section 5.6 hereof.

1.29 Post-New Route Date Access Easements - Shall have the meaning set forth in Section 5.4 hereof.

1.30 Renewal Term - Any renewal term of this Ground Lease subsequent to the Initial Term, each of which shall be five (5) years in duration.

1.31 Rent - Shall have the meaning set forth in Section 3.2 hereof.

1.32 Reserved Easements - Shall have the meaning set forth in Section 5.14 hereof.

1.33 Spills - Shall have the meaning set forth in the Services Agreement.

1.34 Tap Facilities - Shall have the meaning set forth in Section 5.7 hereof.

1.35 Term - The Initial Term and any and all Renewal Terms of this Ground Lease.

1.36 Termination Date - Shall mean the date of termination of the Project and Supply Agreement as that date is determined pursuant to Section 17 or Section 21 of the Project and Supply Agreement.

1.37 Termination Fee - Shall mean the Expiration Termination Fee, the EDNC Default Termination Fee or the Bayer Default Termination Fee (each as defined in the Project and Supply Agreement), whichever is applicable.

1.38 Utilities - Shall have the meaning set forth in the Services Agreement.

1.39 Waste - Shall have the meaning set forth in the Services Agreement.

SECTION 2: TERM

This Ground Lease shall commence on the Effective Date and end at the conclusion of the Initial Term, unless sooner terminated pursuant to any provision hereof or extended as provided for herein. The Term of this Ground Lease shall be automatically renewed for up to six (6) successive Renewal Terms unless either party to this Ground Lease has given the other party notice of its intention not to renew this Ground Lease for the relevant Renewal Term not less than twelve (12) nor more than eighteen (18) months before the expiration of the Initial Term or any Renewal Term, as the case may be. Bayer shall have the right pursuant to Section 17 of the Project and Supply Agreement to terminate this Ground Lease if EDNC fails to complete construction and commence operations of the EDNC Baytown Plant prior to February 1, 1999.

### SECTION 3: LEASE AND USE OF LEASED PREMISES

#### 3.1 Lease of Leased Premises

Bayer hereby leases to EDNC and EDNC does hereby rent and accept from Bayer the Leased Premises, provided, however, that Bayer further reserves for itself all of the oil, gas and other minerals in and under and that may be produced from the Leased Premises. EDNC hereby agrees to design and construct the EDNC Baytown Plant to meet the criteria set forth on Exhibit C of the Project and Supply Agreement.

#### 3.2 Rent

(A) EDNC agrees to pay Bayer as rental (the "Rent") for the use and occupancy of the Leased Premises the amount of One Hundred Dollars (\$100.00) in advance for the Initial Term and One Hundred Dollars (\$100.00) for each Renewal Term. Bayer acknowledges receipt of such payment for the Initial Term and further acknowledges that such rental shall be deemed adequate consideration for all rights granted herein to EDNC.

(B) Except as may be otherwise expressly set forth herein or in the Project Agreements, it is the intention of the parties that the Rent payable hereunder shall be absolutely net to Bayer, so that this Ground Lease shall yield to Bayer the net Rent during the Initial Term and each Renewal Term, and that all costs, expenses and obligations relating to the operation and maintenance of the Leased Premises and Leasehold Improvements shall be paid by EDNC.

#### 3.3 Use

(A) EDNC shall occupy and use the Leased Premises only for the production of Nitric Acid and all activities incidental thereto or associated therewith, including, without limitation, all storage, transport and research and development activities related to EDNC's production of Nitric Acid on the Leased Premises.

(B) Except as provided below, EDNC shall not drill or excavate on the Leased Premises without the prior written consent of Bayer, which consent shall not be unreasonably withheld. Bayer agrees that EDNC may drill or excavate, in accordance with Exhibit C of the Project and Supply Agreement, but in no event lower than thirty-two feet (32') below mean sea level (assuming a ruling grade of not less than twenty-three feet (23') above mean sea level), for:

(1) Soil testing related to foundation design or otherwise to determine the suitability of the Leased Premises for the EDNC Baytown Plant and any future Leasehold Improvements to be constructed with Bayer's approval under Section 4.1(D) hereof and otherwise made in conformity with the requirements of Section 4 hereof;

(2) The construction of the EDNC Baytown Plant and any future Leasehold Improvements to be constructed with Bayer's approval under Section 4.1(D) hereof and otherwise made in conformity with the requirements of Section 4 hereof;

(3) Safety or pollution control measures necessary in connection with the operation of the EDNC Baytown Plant;

(4) Determination of the extent of any contamination arising from any Spills; or

(5) Any additional environmental studies EDNC reasonably determines to be necessary in connection with the design and construction of the EDNC Baytown Plant, including, without limitation, monitor wells that may be requested by EDNC or required by any governmental entity.

#### SECTION 4: LEASEHOLD IMPROVEMENTS

##### 4.1 Construction and Ownership of Leasehold Improvements

(A) EDNC shall have the right and obligation to construct and install on the Leased Premises all Leasehold Improvements that EDNC determines are required or desirable for its operation of the EDNC Baytown Plant; provided, however, that EDNC agrees (i) it shall, on or before the Commencement Date, construct and install such Leasehold Improvements in accordance with the site design specifications agreed upon by the parties hereto and as described more particularly on the attached Exhibit C, and (ii) it shall design and construct such Leasehold Improvements in accordance with all applicable laws, codes and regulations. Bayer agrees that it will provide to EDNC revisions to provisions of the General Baytown Site Design Data on the attached Exhibit C relating to engineering standards, safety and industrial hygiene as updated or amended throughout the Term.

(B) During the Term, EDNC shall own and operate the Leasehold Improvements, provided, however, that during the term of the Ground Lease Sublease, the Sublessee thereunder shall own the Leasehold Improvements. At the expiration or termination of this Ground Lease, the Leasehold Improvements shall automatically become the property of Bayer without further action by Bayer, EDNC or any other party; provided, however, that in the event that the Termination Fee is payable by Bayer, Bayer shall pay such fee.

(C) EDNC shall prepare, file and pay all costs associated with obtaining all Permits that are required in order for EDNC to design, construct, repair, restore or operate the Leasehold Improvements on the Leased Premises, notwithstanding the fact that a Permit may be required to be issued in the name of Bayer and regardless of whether any such Permit relates to activity occurring on or outside of the Leased Premises. If requested by EDNC, Bayer shall provide to EDNC, in a timely manner, any necessary information or assistance to enable EDNC to obtain any Permits that are required in connection with design, construction, repair, restoration or operation of the Leasehold Improvements.

(D) Following the Commencement Date, EDNC shall not make any material modifications to the Leasehold Improvements without the prior written consent of Bayer, which consent shall not be unreasonably withheld.

##### 4.2 Maintenance and Repair

During the Term, EDNC shall keep and maintain the Leased Premises and the Leasehold Improvements in a good state of repair, reasonable wear and tear excepted.

##### 4.3 Removal

(A) At the expiration or termination of this Ground Lease and subject to the payment by Bayer of the Termination Fee, all Leasehold Improvements shall be surrendered by EDNC to Bayer in accordance with the provisions of this Section 4.3.

(B) Upon the expiration or termination of this Ground Lease and subject to the payment by Bayer of any applicable Termination Fee, EDNC shall surrender to Bayer the Leased Premises, together with all Leasehold Improvements, in a condition of good quality, order and repair (reasonable wear and tear excepted), provided, however, that EDNC shall not be required to surrender to Bayer any portion of the Leased Premises that has been permanently taken as a result of eminent domain

power or proceedings pursuant to Section 11.2 hereof.

#### 4.4 Current Environmental Assessment

Not more than thirty (30) days prior to the scheduled date of the groundbreaking for construction, Bayer shall cause Geraghty & Miller, Inc. to take all samples necessary to prepare the Current Environmental Assessment, and shall cause Geraghty & Miller, Inc. to prepare the Current Environmental Assessment and deliver copies thereof to Bayer and EDNC. In addition, at the termination of this Ground Lease, Bayer shall promptly cause a qualified environmental engineering firm to conduct an exit assessment and provide copies thereof to EDNC and Bayer.

### SECTION 5: EASEMENTS

#### 5.1 Construction Access Easements

Bayer hereby grants to EDNC the non-exclusive, temporary easements of ingress and egress over the Bayer Baytown Plant, at the locations and for the types of traffic, more particularly described on Exhibit D attached hereto, for the purposes of transporting vehicles, equipment and personnel during the initial design and subsequent construction of the Leasehold Improvements on the Leased Premises. These easements, designated "Construction Access Easements" on Exhibit D, shall have a term (the "Construction Easement Term") which commences on the Effective Date and ends on the New Route Date. The term "New Route Date" means the date upon which deliveries of process chemicals (such as nitric acid or benzene) to the EDNC Baytown Plant (or to the aniline plant which will be immediately adjacent thereto) begin in connection with the production of mononitrobenzene (the "Chemical Delivery Date"), or such earlier date which is reasonably deemed to be appropriate by Bayer if the fence which Bayer will construct around the EDNC Baytown Plant (the "Perimeter Fence") is completed prior to the Chemical Delivery Date.

#### 5.2 Construction Staging Easements

Bayer hereby grants to EDNC, for the Construction Easement Term, the exclusive, temporary easement on the Bayer Baytown Plant, at the location more particularly described on Exhibit D, for use as a staging and storage area (the "Construction Laydown Area") during the construction of the Leasehold Improvements on the Leased Premises. This easement is designated the "Construction Staging Easement" on Exhibit D. EDNC shall fence, at its own expense, all staging and storage areas during any period in which the use of such areas is required.

#### 5.3 Construction Parking Easements

Bayer hereby grants to EDNC, for the Construction Easement Term, the non-exclusive, temporary easement on the Bayer Baytown Plant, at the locations more particularly described on Exhibit D, for use as parking areas during the construction of the Leasehold Improvements on the Leased Premises. These easements are designated the "Construction Parking Easements" on Exhibit D.

#### 5.4 Post-New Route Date Access Easements

Bayer hereby grants to EDNC the non-exclusive, temporary easements of ingress and egress over the Bayer Baytown Plant, at the locations and for the types of traffic, more particularly described on Exhibit D attached hereto, for the purposes of transporting vehicles, equipment and personnel during the initial design and subsequent construction of the Leasehold Improvements on the Leased Premises. These easements, designated "Post-New Route Date Access Easements" on Exhibit D, shall have a term which commences on the New Route Date and ends on the Commencement Date.

#### 5.5 Post-Construction Access Easements

Bayer hereby grants to EDNC, for a term (the "Post-Construction Easement Term") which begins on the Commencement Date and ends on the date this Ground Lease expires or is terminated, non-exclusive, temporary easements of ingress and

egress over the Bayer Baytown Plant, at the locations, and for the types of traffic, more particularly described on Exhibit D and designated "Post-Construction Access Easements" thereon, for the purpose of providing EDNC reasonable access to the Leased Premises.

#### 5.6 Post-Construction Parking Easements

Bayer hereby grants to EDNC, for the Post-Construction Easement Term, non-exclusive, temporary easements of ingress and egress over the Bayer Baytown Plant, at the locations more particularly described on Exhibit D and designated "Post-Construction Parking Easements" thereon, for use as parking areas.

#### 5.7 Tap Easements

Bayer hereby grants to EDNC, for a term which commences on the Effective Date and ends on the date this Ground Lease expires or is terminated, non-exclusive, temporary easements to tap into (in each case, at such points as shall be designated by Bayer) and use the following systems:

- A. Bayer's sanitary and storm sewer systems as shown on Annex D-6 attached hereto;
- B. Bayer's electrical ground-loop system, as shown on Annex D-3 attached hereto;
- C. Bayer's fire water system, as shown on Annex D-4 attached hereto; and
- D. Bayer's pipe bridge system, as shown on Annex D-5 attached hereto to the extent necessary to supply ammonia, chlorine, caustic and the following utilities to the EDNC Baytown Plant:
  - water;
  - nitrogen;
  - air;
  - steam;
  - electricity;
  - communication equipment; and
  - natural gas;

provided, however, that (1) the commencement of the term of such easements to tap into and use such systems shall be delayed, in the case of any system which is not available for use as of the Effective Date, until such time as it becomes available for use and (2) EDNC shall (and is hereby granted the easements necessary to) maintain, repair and replace all such pipes, wires, valves and related equipment and facilities installed by EDNC (the "Tap Facilities") to accomplish and operate such Tap Facilities from the point where such Tap Facilities enter Bayer's system back to the point where such Tap Facilities leave the EDNC Baytown Plant.

#### 5.8 Additional Easements Related to Leasehold Repairs and Improvements

Bayer shall grant any other non-exclusive easements over property Bayer then owns, including, but not limited to, (A) construction and staging easements reasonably requested by EDNC and reasonably necessary for making repairs to the Leasehold Improvements or designing and constructing additional Leasehold Improvements and (B) such other easements which, in the reasonable judgment of EDNC, are or may be necessary in order for EDNC to (1) perform its obligations under this Ground Lease and the Services Agreement and/or (2) operate the EDNC Baytown Plant. Bayer shall have the sole right to designate the locations and terms of any further easements granted under this Section 5.8; provided, however, that Bayer shall act reasonably and in good faith consult with EDNC prior to designating the locations of any such additional easements.

#### 5.9 Bayer's Right to Use and Grant Other Easements

Bayer retains, reserves and shall continue to use and to grant to other parties the right to use all non-exclusive Easements and/or the areas affected thereby for any and all purposes, provided, however, that Bayer shall not materially interfere with EDNC's use of the Easements or grant to other

parties the right to do so.

#### 5.10 Granting of Alternative Easements

In the event the Easements or any part thereof interfere substantially with the use and occupation of the Bayer Baytown Plant or the operation of any of the improvements located at such Plant, or in the event it becomes necessary or desirable for Bayer or its successors or assigns to use the property that is subject to the Easements or any portion thereof for the construction, erection, transportation or installation of additional machinery, equipment, buildings or other facilities, then EDNC, upon receipt of written notice from Bayer, agrees to abandon, release and discharge the Easements conveyed herein, provided, however, that prior to or upon any such abandonment, release and discharge Bayer (1) promptly conveys to EDNC alternative easements that will provide EDNC with substantially equivalent rights under the same terms and conditions set forth herein and (2) promptly reimburses EDNC (either by means of direct reimbursement or by means of the Additional Capital Investment mechanism of Section 3.9 of the Project and Supply Agreement) for all reasonable costs incurred in relocating to and improving such alternative easements.

#### 5.11 General

Except as expressly stated herein, the Easements granted by Bayer under or pursuant to this Section 5 are non-exclusive and are expressly subject to all other easements, leases, rights and encumbrances, whether or not recorded, at or on the Bayer Real Property and are granted without any warranty of title, express or implied, by Bayer, provided, however, that Bayer warrants to EDNC the right to use the Easements (other than those granted under Section 5.8 hereof) consistent with their terms. Unless terminated sooner pursuant to this Section 5, EDNC's rights in such Easements shall terminate upon the earlier of the expiration of the Term or the Termination Date. EDNC shall exercise reasonable efforts to use such Easements in such a manner so as to minimize disruption to the operations of Bayer, its tenants and their respective successors and assigns at the Bayer Baytown Plant.

#### 5.12 Rules and Regulations

Use of all Easements granted by Bayer under or pursuant to this Section 5 shall be governed by reasonable rules and regulations promulgated by Bayer from time to time, which rules and regulations shall be uniformly applied and consistently enforced.

#### 5.13 Temporary Interruptions

If in the reasonable judgment of Bayer, it becomes necessary or advisable to relocate any parking or access easements on a temporary basis (i.e., for not more than six (6) months), Bayer may do so by giving EDNC at least thirty (30) days prior written notice thereof, provided, however, that Bayer shall in good faith consult with EDNC prior to designating such temporary relocations. If in the reasonable judgment of Bayer, it becomes necessary or advisable to relocate any access easements because of any emergency, Bayer may do so immediately without giving any formal notice to EDNC.

#### 5.14 Reserved Easements

Notwithstanding anything in this Ground Lease or any of the other Project Agreements, Bayer hereby reserves, for the benefit of all real property (other than the Leased Premises) which Bayer presently owns in Baytown, Texas, including without limitation, the Bayer Baytown Plant, and each portion thereof (collectively the "Benefitted Property"), the following non-exclusive, perpetual easements (collectively, the "Reserved Easements"): (A) to use, maintain, repair and replace those roads which are shown as the "Cross-Block Roads" on Annex D-6, attached hereto and (B) to locate, construct, use, operate, maintain, repair and replace and gain access to and from the following matters on, over, under and through the Leased Premises:

(1) The electrical ground loop system, as shown on Annex D-3 attached hereto, including all conduit, wires and other equipment and facilities necessary therefor or related

thereto;

(2) The fire water system, as shown on Annex D-4 attached hereto, including all valves, pipes and other equipment and facilities necessary therefor or related thereto;

(3) The pipe bridges and supports therefor, as shown on Annex D-5 attached hereto, together with an easement to interface and tie into the pipes of EDNC to the extent necessary to operate the systems for which such pipes were designed;

(4) The electric power cable which connects the transformer to the electric substation, as shown on Annex D-5 attached hereto; and

(5) All other systems, wires, conduits, pipes, valves, supports and other equipment and facilities necessary therefor or related thereto which, in the reasonable judgment of Bayer, are or may be necessary in order for Bayer to (i) perform its obligations under this Ground Lease, the Services Agreement or any of the other Project Agreements and/or (ii) utilize any utility or system which, at any time hereafter, serves not only the Leased Premises, but also any other area of the Bayer Baytown Plant as well.

#### 5.15 Bayer's Right to Reserve Other Easements

Bayer retains and reserves the right, from time to time, to reserve additional easements for the benefit of the Bayer Baytown Plant on, over, under and through the Leased Premises.

#### 5.16 No Material Interference

Bayer agrees that, in the exercise of its rights under Sections 5.10 through and including 5.15 hereof, it shall not act in a manner which would materially interfere with the operations of EDNC and its permitted successors and assigns at the Leased Premises.

#### 5.17 Recordation of New or Alternative Easements

Any new or alternative easement that is created pursuant to the provisions of Section 5.8, 5.10 or 5.15 hereof shall expressly terminate any easement that it replaces, shall be in recordable form and shall be recorded by Bayer with the County Clerk of Chambers County, Texas.

### SECTION 6: COVENANTS

#### 6.1 Quiet Enjoyment

Subject to Permitted Exceptions and to the performance by EDNC of its obligations under this Ground Lease, EDNC shall peaceably and quietly hold and enjoy the Leased Premises for the Term, without hindrance from Bayer, or persons or entities claiming by, through or under Bayer.

#### 6.2 Estoppel Certificates

Upon not less than fifteen (15) days prior written request by a party hereto, the other party shall execute, acknowledge and deliver to the requesting party a statement in writing certifying that this Ground Lease is unmodified and in full force and effect and that the responding party has no defenses, offsets or counterclaims against its obligations to perform its covenants under this Ground Lease (or, if there have been any modifications, that this Ground Lease is in full force and effect as modified and stating the modifications and, if there are any defenses, offsets or counterclaims, setting them forth in reasonable detail). Any such statement delivered pursuant to this Section 6.2 may be relied upon by any prospective purchaser or mortgagee of Bayer's fee interest in the Leased Premises or any prospective assignee of such mortgage.

#### 6.3 Compliance with Environmental, Health and Safety Laws

Bayer covenants and warrants that:

(1) other than may be indicated in the Existing

Environmental Assessment, it has not filed and has not been required to file any notice under any Environmental, Health and Safety Law indicating past or present treatment, storage or disposal of any Waste or reporting a Spill or release of any Waste into the environment on or from the Leased Premises;

(2) other than may be indicated in the Existing Environmental Assessment, there is no soil contamination in, on or under the Leased Premises and no Waste has been generated, treated, stored or disposed of or placed in violation of any Environmental, Health and Safety Law on any part of the Leased Premises;

(3) there are no underground tanks located on or under the Leased Premises;

(4) other than may be indicated in the Existing Environmental Assessment, there is no contaminated groundwater on or under the Leased Premises; and

(5) in addition to the other indemnifications contained herein or in the other Project Agreements, Bayer agrees to indemnify and hold harmless EDNC from and against any and all losses, damages, claims, costs, liabilities and expenses (including reasonable attorney's fees) arising from the soil or ground water contamination identified in the Existing Environmental Assessment or that may be identified in the Current Environmental Assessment. Without prior written consent of EDNC, which consent shall not be unreasonably withheld, Bayer shall not voluntarily undertake any remediation plans or other corrective action on the Leased Premises that would unreasonably interfere with the operations of EDNC on the Leased Premises as contemplated by the Project Agreements.

#### 6.4 Waiver of Landlord's Lien

During the term of the Leveraged Lease, Bayer hereby waives any Landlord's Lien that Bayer has or hereafter acquires to the lien and security interests that will be granted by EDNC or the Sublessee with respect to the Leasehold Improvements in order to secure EDNC's or the Sublessee's obligations under the Trust Indenture and Security Agreement and the Construction Loan and Security Agreement.

### SECTION 7: LIENS

#### 7.1 No Liens

Except for those liens which are expressly permitted by the Ground Lease Sublease, EDNC shall not suffer or permit to exist any liens (including consensual liens and mechanics' and materialmen's liens) to be filed against Bayer's fee interest or EDNC's leasehold interest in the Leased Premises nor against any Leasehold Improvements on the Leased Premises.

#### 7.2 Removal of Liens

If any liens arising from work performed for, or material provided to, EDNC or any of its contractors or agents, or action or inaction of EDNC or any of its contractors or agents, shall be recorded against the leasehold interest in the Leased Premises or any Leasehold Improvements thereon, then EDNC shall cause the same to be removed promptly or, in the alternative, if EDNC in good faith desires to contest the same, it may do so, but in such case EDNC shall indemnify and hold Bayer harmless from all liability for damages occasioned thereby and shall, in the event of a judgment or foreclosure on said lien, cause the same to be discharged and removed prior to the execution of such judgment.

### SECTION 8: TAXES

#### 8.1 Industrial District Payments and Ad Valorem Taxes and Assessments

(1) During the Term, EDNC shall be responsible for and pay all Industrial District Payments and ad valorem taxes and assessments, both general and special, levied on the Leased Premises or the Leasehold Improvements in accordance with this Section 8.1.

(2) EDNC will either (i) with the assistance of Bayer, execute an agreement with the City of Baytown, Texas (the "City") regarding additional payments to the City as a result of the construction of the Leasehold Improvements or (ii) timely pay to Bayer, upon Bayer's notification to EDNC, any Industrial District Payment, ad valorem tax or assessment levied on the Leased Premises or the Leasehold Improvements.

(3) If EDNC and the City execute an agreement pursuant to Section 8.1(2) hereunder, such execution shall not relieve EDNC of liability for any taxes levied on the Leased Premises as a consequence of the Leasehold Improvements between the Effective Date and the execution of such agreement.

(4) If EDNC in good faith either:

(A) disputes the amount of such Industrial District Payment or ad valorem tax or assessment attributable to the value of the Leased Premises and the Leasehold Improvements; or

(B) desires to contest any Industrial District Payment or ad valorem tax or assessment on the Leased Premises and the Leasehold Improvements, then EDNC shall pay to Bayer in accordance with Section 8.1(1) any amount EDNC does not dispute and shall cause any liability arising from such failure to pay to be discharged and removed before the enforcement of any lien related to such liability.

## 8.2 Other Taxes

In addition to the above taxes, EDNC shall also pay all federal, state or local sales, excise or use taxes levied against the activities on the Leased Premises, or against the Leasehold Improvements. EDNC shall also submit a list of the personal property leased by EDNC and maintained on the Leased Premises to the appropriate official of Chambers County and shall pay all taxes applicable thereto. At the request of Bayer, EDNC shall provide Bayer with evidence of such payments.

## 8.3 Information

EDNC agrees to allow any appropriate taxing authority reasonable access to the Leased Premises and the Leasehold Improvements upon reasonable notice to EDNC and subject to compliance with Bayer and EDNC health, safety and welfare policies. EDNC also agrees to furnish such documentary information as reasonably required by such authority.

## SECTION 9: INDEMNIFICATION

The parties shall have the indemnification rights set forth in Section 18 of the Project and Supply Agreement.

## SECTION 10: TERMINATION

This Ground Lease:

(1) may be terminated in accordance with the provisions of Sections 2, 11 or 13 hereof;

(2) shall be terminated upon the termination of the Project and Supply Agreement in accordance with Sections 17 and 21 of the Project and Supply Agreement.

## SECTION 11: CASUALTY AND CONDEMNATION

### 11.1 Casualty

(1) In the event of damage or destruction to the Leased Premises or the Leasehold Improvements, EDNC agrees to restore the Leasehold Improvements to a condition consistent with the design and production capacity designated in the Project and Supply Agreement for the initial construction. In the event the Delivery Systems or other assets of Bayer reasonably related to the Nitric Acid operations at the Bayer Baytown Plant have also been damaged to an extent that renders such assets unsuitable for their intended use, EDNC shall have no obligation to restore the EDNC Baytown Plant until such Bayer assets are restored by Bayer or EDNC receives adequate assurances from Bayer that such Bayer assets shall be restored in a timely manner.

(2) Upon such damage or destruction to the Leasehold Improvements described in Section 11.1(1) above and during any period of restoration, the obligations of the parties shall abate under the Project Agreements pending restoration.

## 11.2 Condemnation

### (1) Interests of Parties

If the Leased Premises or any part thereof shall be taken for public or quasi-public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the interests of Bayer and EDNC in the award of consideration for such transfer and the effect of the taking or transfer on this Ground Lease shall be as provided by this Section 11.2.

### (2) Total Taking

In the event the entire Leased Premises is taken or so transferred, this Ground Lease and all of the right, title and interest thereunder shall terminate on the date title to such land so taken or transferred vests in the condemning authority. The proceeds of such condemnation shall first be distributed to EDNC (or, during the term of the Operative Agreements, the owner of the Leasehold Improvements) in an amount equal to (i) the Stipulated Loss Value (as such term is defined in the Operative Agreements), if the Operative Agreements are then in effect, or (ii) the EDNC Default Termination Fee, if the Operative Agreements are no longer in effect. All excess, if any, shall be distributed to Bayer.

### (3) Partial Taking - Termination

In the event of the taking or transfer of only a part of the Leased Premises leaving the remainder of the Leased Premises in such location, or in such form, shape or reduced size as to be not effectively and practicably usable in the reasonable opinion of EDNC for the operation of the EDNC Baytown Plant, this Ground Lease and all right, title, and interest thereunder shall terminate on the date title to the land or the portion thereof so taken or transferred vests in the condemning authority; provided, however, that the proceeds from such partial taking shall first be distributed to EDNC (or, during the term of the Operative Agreements, the owner of the Leasehold Improvements) up to an amount equal to (i) the Stipulated Loss Value (as such term is defined in the Operative Agreements), if the Operative Agreements are then in effect, or (ii) the EDNC Default Termination Fee, if the Operative Agreements are no longer in effect. All excess, if any, shall be distributed to Bayer.

### (4) Partial Taking - Continuation

In the event of such taking or transfer of only a part of the Leased Premises leaving the remainder of the Leased Premises in such location and in such form, shape, or size as to be used effectively and practicably in the opinion of EDNC for the operation of the EDNC Baytown Plant, this Ground Lease shall terminate as to the portion of the Leased Premises so taken or transferred as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Leased Premises not so taken or transferred. The proceeds of such partial taking shall first be distributed to EDNC (or, during the term of the Operative Agreements, the owner of the Leasehold Improvements) in an amount sufficient to compensate EDNC for the then-existing market value of the Leasehold Improvements taken and any relocation expenses for Leasehold Improvements not taken. All excess, if any, shall be distributed to Bayer.

### (5) Voluntary Conveyance

A voluntary conveyance by Bayer to a public utility, agency or authority under threat of a taking under the power of eminent domain in lieu of formal proceedings shall be deemed a taking within the meaning of this Section 11.2.

## 12.1 Remedies

If either party fails to comply with any term or condition or fulfill any obligation imposed under this Ground Lease, then the other party may exercise any one of the remedies afforded such party under Section 16 of the Project and Supply Agreement.

## 12.2 Attorneys' Fees

If a suit or action is instituted in connection with any dispute arising out of this Ground Lease, then the prevailing party is entitled to recover reasonable costs and expenses, including reasonable attorneys' fees and other costs incurred in connection with enforcing this Ground Lease.

## SECTION 13: TERMINATION RIGHTS

In addition to those termination rights which are expressly set forth in this Ground Lease, the obligations, rights and interests of the parties under this Ground Lease and the Project Agreements are subject to (i) termination, at the option of either party, or automatic termination, upon the occurrence of certain Events of Default and other events as more specifically described in Section 17 of the Project and Supply Agreement; or (ii) certain rights of Bayer to pay a specified sum to EDNC and to terminate this Ground Lease if EDNC receives an offer to sell any securities of EDNC or any material portion of the EDNC Baytown Plant to a third party, upon the occurrence of a Change of Control Event, as more specifically described in Section 21 of the Project and Supply Agreement. The above-described provisions of the Project and Supply Agreement are incorporated herein by reference as if fully set forth herein.

## SECTION 14: UTILITIES AND SERVICES

Utilities and Services will be provided to the Leased Premises in accordance with the terms and conditions of the Services Agreement. The Services Agreement, a copy of which is attached hereto as Exhibit F, is incorporated herein and made a part hereof. In the event of any inconsistency between the Services Agreement and this Ground Lease, the provisions of this Ground Lease shall control.

## SECTION 15: MISCELLANEOUS

### 15.1 Notices

Any notice, communication or statement required or permitted to be given hereunder shall be in writing and deemed to have been sufficiently given when delivered in person, or on the second Business Day following the date of transmission by U.S. certified or registered mail, return receipt requested, or on the Business Day following the date of transmission by overnight courier, to the address of the respective party below:

Bayer Corporation  
100 Bayer Road  
Pittsburgh, PA 15205-9741  
Attn: Controller, Polymers Division  
Attn: Assistant General Counsel,  
Polymers Division

El Dorado Nitrogen Company  
16 South Pennsylvania Avenue  
Oklahoma City, Oklahoma 73107  
Attn: President

and to:

El Dorado Chemical Company  
655 Craig Road, Suite 322  
St. Louis, Missouri 63141  
Attn: Vice President, Industrial Chemicals

LSB Industries, Inc.  
16 South Pennsylvania Avenue  
Oklahoma City, Oklahoma 73107  
Attn: General Counsel

Either party may, by notice given as aforesaid, change its address or the party that receives its notice for all subsequent

notices.

#### 15.2 Applicable Law; Submission to Jurisdiction; Consent to Service of Process

The place of performance of this Ground Lease is the State of Texas and the internal laws of said State, without reference to its conflicts of laws provisions, shall govern the rights of the parties hereto. The parties hereby irrevocably submit to the jurisdiction of the United States District Court for the Southern District of Texas and consent to service of process as more fully set forth in Section 22 of the Project and Supply Agreement.

#### 15.3 Assignment

EDNC shall not assign or encumber its respective rights and obligations under this Ground Lease and shall not sublease the Leased Premises, in whole or in part, to any other party without first obtaining the express written consent of Bayer, which consent may be granted or withheld by Bayer in its sole discretion, provided, however, that EDNC shall be permitted (i) to sublease the Leased Premises and to encumber the Ground Lease Sublease but, in each case, only to the extent contemplated by the Operative Agreements, and (ii) to collaterally assign its rights under this Ground Lease to the Owner Trustee, the Construction Loan Agent and/or the Indenture Trustee under the Operative Agreements. The Ground Lease Sublease must provide that, except as expressly provided in this Ground Lease, it is subject and subordinate to the terms of this Ground Lease.

#### 15.4 Invalidity of Particular Provision

If any term or provision of this Ground Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Ground Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Ground Lease shall be valid and be enforced to the fullest extent permitted by law.

#### 15.5 Construction

The singular form of any word used herein shall include the plural, and vice versa. The headings or titles used herein are for convenience only. They do not constitute a part of this Ground Lease and shall not affect the meaning, construction or effect of the provisions hereof and do not constitute a part of this Ground Lease. In the event of any conflict between the provisions hereof and the provisions of the Project and Supply Agreement, the provisions of the Project and Supply Agreement shall apply.

#### 15.6 Relationship of Parties

Nothing contained in or done pursuant to this Ground Lease or any of the Project Agreements shall be deemed or construed by the parties hereto, or by any third party, to create the relationship of principal and agent, partnership, joint venture or any association whatsoever between Bayer and EDNC. It is expressly understood and agreed that no provisions contained in this Ground Lease, nor any acts of the parties hereto, shall be deemed to create any relationship between Bayer and EDNC other than the relationship of landlord and tenant.

#### 15.7 Entire Agreement

This Ground Lease and the Project Agreements, together with all of the exhibits and schedules attached hereto and thereto, contain the entire understanding of the parties and supersede any prior understanding and agreements between them respecting the subject matter hereof and thereof. There are no agreements, arrangements or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Ground Lease and the other Project Agreements that are not set forth or expressly referred to herein.

#### 15.8 Modification

This Ground Lease shall not be modified or amended,

except by written instrument executed by the duly authorized officers of the parties hereto.

15.9 Recordation of Ground Lease and Termination

Notices

The parties agree that Bayer shall cause this Ground Lease to be recorded in the office of the County Clerk of Chambers County, Texas. The parties also agree to execute, and Bayer shall record with such office, any documents which either party reasonably requests from the other in order to reflect in the public records the expiration or termination of this Ground Lease and the expiration or termination of any of the Easements.

15.10 Dispute Resolution

If any dispute arises concerning or related to this Ground Lease, the parties shall resolve such dispute in accordance with the dispute resolution provisions set forth in Section 22 of the Project and Supply Agreement.

15.11 Counterparts

This Ground Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together constitute one instrument.

15.12 Waiver

No waiver by Bayer or EDNC of any default or breach of any covenant, condition or stipulation herein shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.

15.13 Amendment of Operative Agreements

EDNC shall comply with each of its obligations under each of the Operative Agreements and shall not amend any of the Operative Agreements if such amendment materially adversely affects Bayer without first obtaining the prior written consent of Bayer, which consent Bayer may not unreasonably withhold.

15.14 No Merger

The rights and estate created by this Ground Lease shall not, under any circumstances, be deemed to have merged into any other estate or interest now owned or hereafter acquired by Bayer (or any successor or assign of Bayer) unless Bayer shall have consented to such merger in writing.

15.15 Binding Effect

This Ground Lease shall be binding upon, and inure to the benefit of, EDNC and Bayer and their respective permitted successors and assigns. Notwithstanding the foregoing, the rights of Bayer under this Ground Lease shall, to the extent that they relate to (or inure to the benefit of) any of the Benefitted Property (except the EDNC Baytown Plant), shall not be deemed to have been assigned to any successor or assignee of Bayer unless, and only to the extent that, Bayer (or its designated "Successor or Assignee") designates such successor or assign as "Bayer's Successor or Assignee" in a document that is executed by Bayer (or any such Bayer's Successor or Assignee) and recorded in the office of the Clerk of Chambers County, Texas.

IN WITNESS WHEREOF, the parties hereto have executed this Ground Lease effective as of the date first above written.

EL DORADO NITROGEN COMPANY

BAYER CORPORATION

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

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

COUNTY of

This instrument was acknowledged before me on \_\_\_\_\_, 1997, by \_\_\_\_\_, the \_\_\_\_\_ of El Dorado Nitrogen Company, an Oklahoma corporation, on behalf of said corporation.

[SEAL OF NOTARY]

\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

STATE of \_\_\_\_\_

COUNTY of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 1997, by \_\_\_\_\_, the \_\_\_\_\_ of Bayer Corporation, an Indiana corporation, on behalf of said corporation.

[SEAL OF NOTARY]

\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary

EXHIBIT LIST

- A Metes and Bounds Description of the Leased Premises
- B Permitted Exceptions
- C Design Criteria
- D Easements
- E Industrial District Agreement
- F Services Agreement

EXHIBIT A

METES AND BOUNDS DESCRIPTION OF THE LEASED PREMISES

See attached copy.

EXHIBIT B

PERMITTED EXCEPTIONS

The lien of real estate taxes and assessments, both general and special, those matters which are set forth in items 2 through and including 13 of Schedule B to the title commitment issued by Chicago Title Insurance Company (No. 44-901-80-201789-B) on August 26, 1996, effective May 24, 1996, and all matters shown on the survey prepared by Busch, Hutchison & Associates, Inc. (Job No. 96-1074), dated June 11, 1996 as revised through August 1, 1996.

#### EXHIBIT C

#### GENERAL BAYTOWN SITE DESIGN DATA

Plants on the Bayer Baytown site are to be designed and constructed according to the then-current guidelines as outlined by Bayer design requirements in the areas of:

##### 1. Battery Limits/Interface

- . Piping -- preventing backflow and cross-contamination of chemicals/utilities, for example.
- . Instrument/electrical
- . Civil, structural, architectural
- . Communications - phones, PA, alarms, radios, hot lines, data links
- . Painting - color coding/identification (see attached Table of Color Codes)
- . Noise level of 80 dBA weighted over 8 hours
- . As a minimum, the following national codes and standards - NEC, NFPA, NEMA, ACI, ASCE, AISC, ASME, ANSI, API

##### 2. Then-Current Long Range Site Development Plan - location of:

- . Railroads
- . Roads
- . Piperacks
- . Firewater piping
- . Sanitary sewers
- . Power cabling

Improvements will be handled consistent with the then-current Long Range Site Development Plan.

##### 3. Overall Site Architectural Aesthetics

- . Buildings, structures, and grounds similar or equal in appearance to surrounding/adjacent Bayer plant.

#### DESIGN/PROCESS SAFETY

Plants on the Bayer Baytown site are to be operated in accordance with principles of OSHA 1910.119 (Process Safety Management), Risk Management Program, and Responsible Care.

Certain Bayer procedures are recommended to be incorporated into the internal operating procedures of companies located on the Bayer sites and certain are required (those marked with an asterisk). At the orientation, Bayer will provide its current procedures (all of which are subject to modification upon reasonable prior notice) including, but not limited to, the following:

- . Control building air intake analyzers
- . Breathing air systems
- . Firewater/sprinkler systems
- . Phosgene badges and breathing air
- . Evacuation
- . Alarms
- . X-rays of welding
- . Respiratory protection
- . Security
- . Emergency

#### ENVIRONMENTAL

- . Concrete pads and sumps shall be designed to prevent impact on ground water and Bayer environmental control systems related to process, storm, or wash waters.
- . Tank car or truck loading/unloading -- all operations to be contained; splash loading of chemicals will not be permitted.
- . Visible emissions, high noise levels, or objectionable odors that detract from overall community impression of Bayer and site companies will not be permitted.

LONG-TERM APPEARANCE

- . Plants on the Bayer Baytown site are to be maintained similar in appearance to surrounding/adjacent Bayer plant.

TABLE OF COLOR CODES

UTILITY PIPING	COLOR	FEDERAL NUMBER
Plant Air	Med. Gray	16314
Breathing	White	17925
Inst. Air	Med. Gray	16314
Nitrogen	Lt. Blue	35250
Oxygen	White	17925
Steam HP	Black	17038
Steam LP	Black	17038
Steam Utl.	Black	17038
Hydrogen	Yellow	13655
Tower Water	Med. Gray	16314
Chill Water	Med. Gray	16314
Plant Water	Med. Gray	16314
Potable Water	Med. Gray	16314
Hot Water	Med. Gray	16314
Fire Water	Red	11350
Brine	Med. Gray	16314
Ammonia	Dr. Blue	15065
Nat. Gas	Yellow	13655
Fuel Oil	Yellow	13655

PROCESS PIPING	COLOR	FEDERAL NUMBER
Phosgene L.	Orange	12473
Phosgene Gas	Orange	12473
Chlorine	Orange	12473
Nitric Acid	Dr. Blue	15065
Sulfuric	Dr. Blue	15065
HCL	Dr. Blue	15065
CO2	Yellow	13655
Freon	Yellow	13655
Safety Shower/	Day Glo	38901
Eyewash	Green	14491
Solvents	Yellow	13655
Aniline	Dr. Blue	15065
Tanks/Vessels	Med. Green	14491
Hand Rails	Black	17038

All hand rails/ladder cages, coupling guards, paint Yellow/Black.

Note: All colors are "Bayer Approved" to match existing color scheme.

EXHIBIT D

I. Construction Access Easements.

(1) Access to and from the Construction Laydown Area for those EDNC Personnel (except EDNC non-managerial

employees) and those construction managers (which, including their administrative personnel, are herein referred to as the "Construction Managers") who are driving Company Cars (as hereinafter defined) shall be accomplished solely by way of the route which includes Highway FM 565, West Bay Road and 12th Avenue, which roads, together with all other roads referred to herein, are shown on Annexes D-1 (the "Construction Easements Drawing") and D-2 (the "Post-Construction Easements Drawing"). The term "Company Car" means a car, van, or truck that is owned or rented by EDNC or any of its construction contractors and has been authorized for entry by Bayer's security director for purposes of this Ground Lease;

(2) Access to and from the Construction Parking Lots (as hereinafter defined) for all construction personnel (other than those Construction Managers who are driving Company Cars) shall be accomplished solely by way of the route which includes Highway FM 1405, 9th Avenue, "A" Street and 10th Avenue;

(3) Access to and from the Construction Parking Lots (as hereinafter defined) to and from the Construction Laydown Area (as hereinafter defined) by all construction personnel (other than those Construction Managers who are driving Company Cars) shall be accomplished solely by means of a bus or van (in either case, to be provided by EDNC, at its sole expense (the "Shuttle Bus"), provided that EDNC may permit its contractor to provide such Shuttle Bus) using the route which includes "C" Street and 11th or 12th Avenue;

(4) Access to and from Parking Lot A (as hereinafter defined) for all non-managerial EDNC employees and all other EDNC Personnel who are not driving Company Cars shall be accomplished solely by means of the Applicable Route. The term "Applicable Route" means the route which Bayer designates from time to time by giving notice to EDNC, which route shall either include (a) West Bay Road, 10th Avenue and "BI" Street, or (b) if "C" Street is constructed, FM 565, "C" Street, 10th Avenue and "BI" Street. Until Bayer notifies EDNC to the contrary, the Applicable Route shall be the one which includes West Bay Road, 10th Avenue and "BI" Street;

(5) Access to and from Parking Lot A and the Construction Laydown Area by EDNC non-managerial employees and all other EDNC Personnel who are not driving Company Cars shall be accomplished solely by means of a bus or van (in either case, to be provided by EDNC at its sole expense), using the route which includes "C" Street and 11th or 12th Avenue; and

(6) Access to and from the Construction Laydown Area for any construction deliveries shall be as follows: any construction deliveries which involve materials or equipment that arrive by way of the Cedar Bayou shall be unloaded at the point designated as the "Beach Area" on the Construction Easements Drawing, and then delivered to the Construction Laydown Area solely by means of the route which includes West Bay Road and 12th Avenue; all other deliveries to and from the Construction Laydown Area shall be accomplished solely by means of the route which includes Highway FM 565, West Bay Road and 12th Avenue; provided, however, that when the absorber column is delivered, the parties will cooperate with each other in order to determine an alternate route for such column, if necessary.

II. Construction Staging Easements. The Construction Laydown Area shall be that portion of Block 11 C which is designated as the "Construction Laydown Area" on the Construction Easements Drawing. This easement includes the right to locate one (1) or more construction trailers in the southwest corner of the Construction Laydown Area.

### III. Construction Parking Easements.

(1) Those EDNC Personnel (except EDNC non-managerial employees) and those Construction Managers who are driving Company Cars shall park in the Construction Laydown Area;

(2) All construction personnel (other than those Construction Managers who are driving Company Cars) and all maintenance support personnel shall park in the areas (the "Construction Parking Lots") shown as Block 9 B1 and Block 9 B, as shown on the Construction Easements Drawing;

(3) All EDNC non-managerial employees and all other EDNC Personnel who are not driving Company Cars shall park in Parking Lot A;

(4) EDNC shall park the Shuttle Bus in the Construction Laydown Area; and

(5) For purposes of subparagraph (2) hereof, such construction personnel may use up to a maximum of one hundred sixty-five (165) non-designated parking spaces in Block 9 B1 and Block 9 B. For purposes of subparagraph (3) hereof, such EDNC Personnel may use up to a maximum of twenty (20) non-designated parking spaces in Parking Lot A.

#### IV. Post-New Route Date Access Easements.

(1) Access to and from the Construction Laydown Area for those EDNC Personnel (except EDNC non-managerial employees) and those Construction Managers who are driving Company Cars shall be accomplished solely by way of the route which includes Highway FM 565, West Bay Road, 10th Avenue, "BI" Street, the ("Construction and Visitor's Gate") as shown on the Post-Construction Easement Drawing) and 13th Avenue;

(2) Access to and from the Construction Parking Lots for all construction personnel (other than the Construction Managers who are driving Company Cars) shall be accomplished solely by way of the route which includes Highway FM 1405, 9th Avenue, "A" Street and 10th Avenue;

(3) Access to and from the Construction Parking Lots to and from the Construction Laydown Area by construction personnel (other than Construction Managers who are driving Company Cars) shall be accomplished solely by means of a bus or van (in either case, to be provided by EDNC, at its sole expense) using the route which includes "BI" Street, the Construction and Visitor's Gate and 13th Avenue;

(4) Access to and from Parking Lot A (as hereinafter defined) for all non-managerial EDNC employees and all other EDNC Personnel who are not driving Company Cars shall be accomplished solely by means of the Applicable Route;

(5) Access to and from Parking Lot A and the Leased Premises by all non-managerial EDNC employees and all other EDNC Personnel who are not driving Company Cars shall be accomplished solely by means of walking, using the route which includes "BI" Street, the Construction and Visitor's Gate and 13th Avenue. All EDNC Personnel parking in Parking Lot A shall log in and out with their Bayer-issued identification badges at the Bayer employee gate;

(6) Access to and from the Construction Laydown Area for any construction deliveries shall be as follows: any construction deliveries which involve materials and equipment that arrive by way of the Cedar Bayou shall be unloaded at the point designated as the "Beach Area" on the Construction Easements Drawing and then delivered to the Construction Laydown Area solely by means of the route which includes West Bay Road and 12th Avenue. All other deliveries to and from the Construction Laydown Area shall be accomplished solely by means of the route which includes West Bay Road, 10th Avenue, "BI" Street, the Construction and Visitor's Gate, 13th Avenue and those Block 12 access Roads which are shown on Annex D-6 attached hereto;

(7) If any deliveries are being made to the Construction Laydown Area from the Beach Area at a time when the Perimeter Fence has been constructed, EDNC shall have the right, at its expense, to dismantle such fence and secure the area (in accordance with Bayer's security procedures, as reasonably established by Bayer's director of security) for such time and to such extent as may reasonably be necessary in order to complete such deliveries; provided, however that (a) EDNC shall, at its expense, promptly restore such fence to its previous condition, and (b) the time during which such circumstances may exist shall never exceed forty-eight (48) hours on any particular occasion;

(8) Access to and from the Leased Premises for transporting all products, raw materials and wastes and making

other deliveries (other than those which relate to any construction activities) to and from the Leased Premises shall be accomplished solely by way of the route which, in the case of inbound traffic, includes Highway FM 1405, Mobay Road, West Bay Road, Bayer's delivery gate at 17th Avenue, "D" Street, 13th Avenue, Block 12 Access Roads, and 12th Avenue, and, in the case of outbound traffic, includes Block 12 Access Roads, 13th Avenue, "D" Street, 17th Avenue, Bayer's delivery gate, West Bay Road, Mobay Road and Highway FM 1405. All deliveries made pursuant to this subsection (8) shall include checking in and out at Bayer's truck delivery gate (the "Delivery Gate") and, if appropriate, weighing in and out at Bayer's truck scale (the "Truck Scale"), in each case, as shown on the Post-Construction Easements Drawing;

(9) Access to and from Parking Lot B (as hereinafter defined) by all maintenance support personnel shall be accomplished solely by way of the Applicable Route which includes Highway FM 565, West Bay Road, 10th Avenue and "BI" Street; and

(10) Access to and from Parking Lot B and the Leased Premises by all maintenance personnel who are entitled to park in such parking lot shall be accomplished solely by walking, using the same routes and procedures which are described in subsection V(3) of this Exhibit D, provided, however, that any maintenance personnel who are driving vehicles which are needed to support the maintenance activity that is to be performed at the Leased Premises, may proceed directly to the Leased Premises (after logging in) solely by means of the route which includes West Bay Road, 10th Avenue, "BI" Street, the Construction and Visitor's Gate and 13th Avenue.

#### V. Post-Construction Access Easements.

(1) Access to and from the Leased Premises for those EDNC Personnel (except EDNC non-managerial employees) who are driving Company Cars shall be accomplished solely by means of the route which includes Highway FM 565, West Bay Road, 10th Avenue, the Construction and Visitor's Gate, "BI" Street and 13th Avenue;

(2) Access to and from Parking Lot A for all EDNC non-managerial employees and all other EDNC Personnel who are not driving Company Cars shall be accomplished solely by way of the route which includes Highway FM 1405, Highway FM 565, West Bay Road, 10th Avenue and "BI" Street;

(3) Access to and from Parking Lot A and the Leased Premises by all EDNC Personnel who are entitled to park in such parking lot shall be accomplished solely by means of walking, using the route which includes "BI" Street, the "Construction and Visitor's Gate" and 13th Avenue. All EDNC Personnel parking in Parking Lot A shall log in and out with their Bayer-issued identification badges at the Bayer employee gate;

(4) Access to and from Parking Lot B (as hereinafter defined) by all construction personnel (including all Construction Managers) and all maintenance support personnel shall be accomplished solely by way of the route which includes Highway FM 565, West Bay Road, 10th Avenue and "BI" Street;

(5) Access to and from Parking Lot B and the Leased Premises by all construction personnel and maintenance support personnel who are entitled to park in such parking lot shall be accomplished solely by walking, using the same routes and procedures which are described in subsection V(3) of this Exhibit D, provided, however, that any construction personnel and maintenance support personnel who are driving vehicles which are needed to support the construction or maintenance activity that is to be performed at the Leased Premises, may proceed directly to the Leased Premises (after logging in) solely by means of the route which includes West Bay Road, 10th Avenue, "BI" Street, the Construction and Visitor's Gate and 13th Avenue;

(6) Access to and from the Leased Premises for transporting all products, raw materials and wastes and for making other deliveries (other than those which relate to any construction activities) to and from the Leased Premises shall be accomplished solely by way of the same routes and procedures

described in subsection IV(8) of this Exhibit D;

(7) Access to and from the Leased Premises for making any deliveries to and from the Leased Premises relating to construction activities shall be accomplished solely by way of the route which includes Highway FM 1405, Highway FM 565, West Bay Road, 10th Avenue and "BI" Street; and

(8) Access to and from any other areas of the Bayer Baytown Plant by EDNC Personnel shall be accomplished over routes which are reasonable under the circumstances, but only to the extent that such access is reasonably necessary for the conduct of their business thereon.

#### VI. Post-Construction Parking Easements.

(1) Those EDNC Personnel (except EDNC non-managerial employees) who are driving Company Cars and those construction personnel and maintenance support personnel who are permitted to drive their vehicles to the Leased Premises pursuant to subsection V(5) of this Exhibit D shall park on the Leased Premises;

(2) All EDNC non-managerial employees and all other EDNC Personnel who are not driving Company Cars shall park in the area ("Parking Lot A") comprised of Block 11 B1 and 12 B1, as shown on the Post-Construction Easements Drawing;

(3) All construction personnel (including the Construction Managers) who are not driving Company Cars and all maintenance support personnel shall park in the area ("Parking Lot B") shown as Block 11 B on the Post-Construction Easements Drawing; and

(4) For purposes of paragraph (2) hereof, such EDNC Personnel may use up to a maximum of twenty (20) non-designated parking spaces in Block 11 B1 and 12 B1. For purposes of paragraph (3) hereof, such construction personnel and maintenance support personnel may use up to a maximum of fifty (50) non-designated parking spaces in Block 11 B.

VII. Disabled Persons. Notwithstanding anything in this Ground Lease to the contrary, all EDNC Personnel and construction personnel who are disabled to any extent shall enjoy the benefits of the easements provided hereby subject, however, to such reasonable limitations as Bayer's safety manager or safety director may approve, which approval must be requested in advance by EDNC.

#### EXHIBIT E

##### INDUSTRIAL DISTRICT AGREEMENT

See attached copy.

#### EXHIBIT F

##### SERVICES AGREEMENT

See attached copy.

## PARTICIPATION AGREEMENT

Dated as of June 27, 1997

among

EL DORADO NITROGEN COMPANY,  
as Lessee and Construction Agent,

BOATMEN'S TRUST COMPANY OF TEXAS,  
not in its individual capacity,  
except as expressly provided herein, but solely  
as Owner Trustee,

SECURITY PACIFIC LEASING CORPORATION,  
as Owner Participant,

WILMINGTON TRUST COMPANY,  
not in its individual capacity,  
except as expressly provided herein, but solely  
as Indenture Trustee,

BAYERISCHE LANDESBANK, NEW YORK BRANCH,  
as a Construction Lender and as Note Purchaser,

SECURITY PACIFIC LEASING CORPORATION,  
as a Construction Lender,

and

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION,  
as Construction Loan Agent

## NITRIC ACID PRODUCTION FACILITY

## TABLE OF CONTENTS

	PAGE	
SECTION 1	DEFINITIONS; INTERPRETATION OF THIS AGREEMENT . . . . .	.2
1.1	Definitions . . . . .	.2
1.2	Directly or Indirectly. . . . .	.3
SECTION 2	PURCHASE OF UNITS; CONSTRUCTION AGENT; CONSTRUCTION ADVANCES; FUNDINGS; PARTICIPATION IN THE EQUIPMENT COST; TRANSACTION COSTS . . . . .	.3
2.1	Construction Agent; Sale and Purchase . . . . .	.3
2.2	Construction Advances . . . . .	.5
2.3	Purchase Dates; Advance Dates; Procedure for Funding. . . . .	.6
2.4	Investments by the Owner Participant. . . . .	.7
2.5	Issue and Sale of Note. . . . .	.8
2.6	Lease Term Commencement Date; Procedure for Participation . . . . .	10
2.7	Owner Participant's Instructions. . . . .	12
2.8	Expenses. . . . .	12
2.9	Calculation of Adjustments to Basic Rent, Stipulated Loss Value, Termination Value and Note Amortization; Confirmation and Verification.....	15
2.10	Postponement of Closing; Termination of Transaction; and Expiration of Commitment. . . . .	18
2.11	Sufficiency of Note and Cash Payment. . . . .	19
SECTION 3	REPRESENTATIONS AND WARRANTIES. . . . .	19
3.1	Representations and Warranties of the Owner Trustee . . . . .	19
3.2	Representations and Warranties of the Lessee. . . . .	21
3.3	Representations and Warranties of the Indenture Bank and the Indenture Trustee . . . . .	29
3.4	Representations and Warranties of the Owner Participant . . . . .	30
3.5	Representations, Warranties and Covenants Regarding Beneficial Interest and Notes . . . . .	32
SECTION 4	CLOSING CONDITIONS. . . . .	35
4.1	Conditions Precedent to the Making of First Construction Advance.....	35

4.2	Conditions Precedent to Each Advance Date . . . . .	37
4.3	Conditions Precedent to Investment by the Participants. . . . .	39
4.4	Additional Conditions Precedent to Investment by the Owner Participant. . . . .	44
4.5	Additional Conditions Precedent to Purchase by the Note Purchaser . . . . .	46
4.6	Conditions Precedent to the Obligation of the Lessee. . . . .	47
4.7	Opinion Acknowledgment. . . . .	49
4.8	Further Condition To Participants' Commitment . . . . .	49
SECTION 5	FINANCIAL AND OTHER REPORTS OF THE LESSEE . . . . .	49
SECTION 6	CERTAIN COVENANTS OF THE PARTICIPANTS, THE OWNER TRUSTEE, THE INDENTURE TRUSTEE AND THE LESSEE . . . . .	50
6.1	Restrictions on Transfer of Beneficial Interest . . . . .	50
6.2	Liens Attributable to the Owner Participant . . . . .	52
6.3	Lessor's Liens Attributable to the Owner Trustee. . . . .	52
6.4	Liens Created by the Indenture Trustee. . . . .	53
6.5	Certain Covenants of the Owner Trustee, the Owner Participant and Boatmen's . . . . .	53
6.6	Lessee's Merger Covenant. . . . .	54
6.7	Lessee Not to Own Notes or Beneficial Interest. . . . .	55
6.8	Broker's Fees . . . . .	55
6.9	Boatmen's Covenant to Notify of Relocation or Name Change . . . . .	55
6.10	Lessee's Covenant to Notify of Relocation or Name Change. . . . .	55
6.11	Corporate Existence . . . . .	56
6.12	Compliance with Laws. . . . .	56
6.13	Restriction on Transfer of Notes. . . . .	56
6.14	Amendments to Indenture . . . . .	57
6.15	Environmental Matters . . . . .	57
SECTION 7	LESSEE'S INDEMNITIES. . . . .	58
7.1	General Tax Indemnity . . . . .	58
7.2	General Indemnification and Waiver of Certain Claims. . . . .	69
SECTION 8	LESSEE'S RIGHTS UNDER THE LEASE . . . . .	74
SECTION 9	SPECIAL RIGHTS OF NOTE PURCHASER. . . . .	74
SECTION 10	MISCELLANEOUS . . . . .	75
10.1	Survival. . . . .	75
10.2	Notices . . . . .	75
10.3	No Guaranty . . . . .	76
10.4	Successors and Assigns. . . . .	76
10.5	Business Day. . . . .	76
10.6	GOVERNING LAW . . . . .	76
10.7	Severability. . . . .	76
10.8	Counterparts. . . . .	76
10.9	Headings and Table of Contents. . . . .	77
10.10	Reproduction of Documents . . . . .	77
10.11	Limitations of Liability. . . . .	77
10.12	Amendments and Waivers. . . . .	78
10.13	Disclosure of Information . . . . .	78
10.14	FORUM SELECTION AND CONSENT TO JURISDICTION . . . . .	79
10.15	WAIVER OF JURY TRIAL. . . . .	79
10.16	Confidentiality . . . . .	79

Attachments:

- Exhibit A Form of Amended and Restated Trust Agreement
- Exhibit B Form of Indenture
- Exhibit C Form of Construction Loan Agreement
- Exhibit D-1 Form of Bayer Support Agreement THIS EXHIBIT HAS BEEN OMITTED AS IT IS THE SUBJECT OF A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FREEDOM OF INFORMATION ACT. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.
- Exhibit D-2 Form of Bayer Letter THIS EXHIBIT HAS BEEN OMITTED AS IT IS THE SUBJECT OF A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FREEDOM OF INFORMATION ACT. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.
- Exhibit D-3 Form of Bayer Environmental Letter
- Exhibit E Form of Lease

Exhibit F-1	Form of Ground Lease
Exhibit F-2	Form of Ground Lease Sublease
Exhibit G-1A	Form of Opinion of Lessee's In-House Counsel - Effective Date
Exhibit G-1B	Form of Opinion of Lessee's Special Counsel - Effective Date
Exhibit G-2A	Form of Opinion of Lessee's In-House Counsel - Lease Term Commencement Date
Exhibit G-2B	Form of Opinion of Lessee's Special Counsel - Lease Term Commencement Date
Exhibit H-1	Form of Opinion of Owner Trustee's Special Counsel - Effective Date
Exhibit H-2	Form of Opinion of Owner Trustee's Special Counsel - Lease Term Commencement Date
Exhibit I-1A	Form of Opinion of Owner Participant's In-House Counsel - Effective Date
Exhibit I-1B	Form of Opinion of Owner Participant s Special Counsel - Effective Date
Exhibit I-1C	Form of Opinion of Owner Participant s Special Texas Counsel - Effective Date
Exhibit I-2A	Form of Opinion of Owner Participant's In-House Counsel - Lease Term Commencement Date
Exhibit I-2B	Form of Opinion of Owner Participant's Special Counsel - Lease Term Commencement Date
Exhibit I-2C	Form of Opinion of Owner Participant s Special Texas Counsel - Lease Term Commencement Date
Exhibit J-1	Form of Opinion of Indenture Trustee's Special Counsel - Effective Date
Exhibit J-2	Form of Opinion of Indenture Trustee s Special Counsel - Lease Term Commencement Date
Exhibit K-1A	Form of Opinion of Bayer's In-House Counsel - Effective Date
Exhibit K-1B	Form of Opinion of Bayer s Special Counsel - Effective Date
Exhibit K-2A	Form of Opinion of Bayer's In-House Counsel - Lease Term Commencement Date
Exhibit K-2B	Form of Opinion of Bayer s Special Counsel - Lease Term Commencement Date
Exhibit L	Form of Private Placement Certificate
Exhibit M	[Intentionally Omitted]
Exhibit N	Form of Assignment and Assumption Agreement
Exhibit O	Form of Bill of Sale
Exhibit P	Form of Purchase Notice
Exhibit Q	Form of Advance Date Notice
Exhibit R	Form of Amended and Restated Construction Agency Agreement
Exhibit S-1	Form of Project and Supply Agreement CERTAIN INFORMATION WITHIN THIS EXHIBIT HAS BEEN OMITTED AS IT IS THE SUBJECT OF A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FREEDOM OF INFORMATION ACT. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.
Exhibit S-2	Form of Services Agreement CERTAIN INFORMATION WITHIN THIS EXHIBIT HAS BEEN OMITTED AS IT IS THE SUBJECT OF A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FREEDOM OF INFORMATION ACT. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.
Exhibit S-3	Form of Ground Lease Related Document
Exhibit T-1	Form of Leasehold Deed of Trust (Construction)
Exhibit T-2	Form of Leasehold Deed of Trust (Indenture)
Exhibit U	Form of Eligible OP Assignee Guaranty
Exhibit V	Form of Security Agreement
SCHEDULE 1	Parties' Addresses and Payment Instructions
SCHEDULE 2	Rental Factors
SCHEDULE 3	Stipulated Loss Value/Termination Value
SCHEDULE 4	[Intentionally Omitted]
SCHEDULE 5	Amortization Schedule
SCHEDULE 6	Fixed Price Purchase Option Amount THIS SCHEDULE HAS BEEN OMITTED AS IT IS THE SUBJECT OF A REQUEST BY THE COMPANY FOR CONFIDENTIAL TREATMENT BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE FREEDOM OF INFORMATION ACT. THE OMITTED INFORMATION HAS BEEN FILED SEPARATELY WITH THE SECRETARY OF THE SECURITIES AND EXCHANGE COMMISSION FOR PURPOSES OF SUCH REQUEST.
SCHEDULE 7	Leased Property
SCHEDULE 8	Pricing Assumptions
SCHEDULE 9	Construction Commitment Amounts
SCHEDULE 10	Note Purchaser s Percentage and Commitment
SCHEDULE 11	Lessee Disclosures
Appendix A	Definitions

This PARTICIPATION AGREEMENT, dated as of June 27, 1997 (as amended, supplemented or otherwise modified from time to time, this Agreement or this "Participation Agreement"), is among: (i) EL DORADO NITROGEN COMPANY, an Oklahoma corporation (together with its successors and permitted assigns, the Lessee ; and sometimes also referred to herein as the Construction Agent , as applicable) (ii) BOATMEN'S TRUST COMPANY OF TEXAS, a Texas state chartered trust company ("Boatmen's"), not in its individual capacity, except as expressly provided herein, but solely as trustee under the Trust Agreement (in such capacity, together with its successors and permitted assigns, the Owner Trustee or "Lessor"); (iii) SECURITY PACIFIC LEASING CORPORATION, a Delaware corporation (together with its successors and assigns, the "Owner Participant"); (iv) WILMINGTON TRUST COMPANY, a Delaware banking corporation (in its individual capacity, "Indenture Bank"), not in its individual capacity, except as expressly provided herein, but solely as trustee under the Indenture (in such capacity, together with its successors and assigns, the "Indenture Trustee"); (v) BAYERISCHE LANDESBANK, NEW YORK BRANCH ("Bayerische"), as a construction lender and as note purchaser; (vi) SECURITY PACIFIC LEASING CORPORATION, a Delaware corporation ("Security Pacific") , as a construction lender (Bayerische and Security Pacific, together with their respective successors and permitted assigns, in their respective capacities as construction lenders, the Construction Lenders , and Bayerische, in its capacity as note purchaser, the "Note Purchaser"); and (vii) BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association, as agent for the Construction Lenders (in such capacity, together with its successors and assigns, the "Construction Loan Agent").

W I T N E S S E T H:

WHEREAS, concurrently with the execution and delivery of this Agreement, the Owner Participant is entering into an Amended and Restated Trust Agreement (EDNC Trust 1997) (the form of which is attached as Exhibit A) with Boatmen's, pursuant to which Boatmen's, acting as the Owner Trustee, agrees, among other things, to hold the Trust Estate for the benefit of the Owner Participant thereunder on the terms specified in the Trust Agreement, subject, however, to the Lien created under the Indenture and under the Construction Loan Agreement and, subject to the terms and conditions hereof, to purchase on one or more Purchase Dates the Units; and

WHEREAS, concurrently with the execution and delivery of this Agreement, the Owner Trustee is entering into an Amended and Restated Construction Agency Agreement (the Construction Agency Agreement ) with the Construction Agent, the form of which Amended and Restated Construction Agency Agreement is attached as Exhibit R; and

WHEREAS, concurrently with the execution and delivery of this Agreement, the Owner Trustee is entering into the Construction Loan Agreement (the form of which is attached as Exhibit C) with the Construction Lenders and the Construction Loan Agent pursuant to which the Owner Trustee may borrow Construction Advances to finance the Equipment Cost for the Units, pay Transaction Costs, make progress payments in connection with the Units, and pay interest on outstanding Construction Advances; and

WHEREAS, concurrently with the execution and delivery of this Agreement, the Lessee is leasing from Bayer Corporation, an Indiana corporation ("Bayer"), the Premises pursuant to a Ground Lease substantially in the form of Exhibit F-1 and, in connection therewith, the Lessee is subleasing the Premises to the Owner Trustee pursuant to a Ground Lease Sublease substantially in the form of Exhibit F-2, and the Owner Trustee is further subleasing to the Lessee the Premises pursuant to a Lease substantially in the form of Exhibit E; and

WHEREAS, the Lessee agrees to lease from the Owner Trustee, and the Owner Trustee agrees to lease to the Lessee, on the Lease Term Commencement Date, all of the Units pursuant to the Lease; and

WHEREAS, concurrently with the execution and delivery of this Agreement, the Lessee and the Owner Participant will enter

into a Tax Indemnity Agreement relating to the Units; and

WHEREAS, on or prior to the Lease Term Commencement Date, the Owner Trustee will enter into the Indenture (the form of which is attached as Exhibit B) with the Indenture Trustee pursuant to which the Owner Trustee will agree, among other things, to issue on the Lease Term Commencement Date the Note to the Note Purchaser as evidence of the loans made by the Note Purchaser in the financing of the Equipment Cost for the Units;

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is acknowledged, the parties hereto agree as follows:

## SECTION 1 DEFINITIONS; INTERPRETATION OF THIS AGREEMENT

1.1 Definitions. For all purposes of this Agreement, except as otherwise defined herein or unless the context otherwise requires:

(a) capitalized terms used herein (including the foregoing recitals) shall have the meanings assigned to them in Appendix A hereto;

(b) the words herein, hereof and hereunder and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; and

(c) all references in this Agreement to Articles, Section, Exhibits and Schedules refer to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise indicated.

1.2 Directly or Indirectly. Where any provision in this Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

## SECTION 2 PURCHASE OF UNITS; CONSTRUCTION AGENT; CONSTRUCTION ADVANCES; FUNDINGS; PARTICIPATION IN THE EQUIPMENT COST; TRANSACTION COSTS

### 2.1 Construction Agent; Sale and Purchase.

(a) Pursuant to the Construction Agency Agreement, the Owner Trustee is appointing the Construction Agent as its construction agent with respect to the Units, and the Construction Agent accepts such appointment pursuant to the Construction Agency Agreement and hereto. In its capacity as such, the Construction Agent shall select, order, install (or arrange for the installment of) and test the Units to be leased by the Lessee, and shall take all necessary action to provide that the Units will be In Service and subject to the Lease on or prior to the Construction Termination Date. If all of the Units are not subject to the Lease for any reason (including, without limitation, the failure of the Lessee to execute and deliver a Lease Supplement with respect thereto, or if the conditions precedent to the investment by the Participants pursuant to Sections 4.3, 4.4, 4.5 and 4.8 have not been met) on or before such Construction Termination Date, then the Construction Agent shall pay, as damages, to the Owner Trustee on the day following the Construction Termination Date, an amount equal to the sum of (i) the outstanding principal amount of all Construction Advances, plus (ii) the accrued and unpaid (and not previously capitalized) interest on such Construction Advances as of the day following the Construction Termination Date, plus (iii) the accrued and unpaid Commitment Fee as of the day following the Construction Termination Date, plus (iv) all other amounts due to the Owner Trustee, the Owner Participant, the Construction Lenders, the Indenture Trustee or any Indemnified Person pursuant to this Agreement or any other Operative Agreement. Upon receipt of such payment, the Owner Trustee shall transfer all of the Units to the Lessee (or as the Lessee may direct) and terminate the Lease, without any representation or warranty, except as to the absence of Lessor Liens.

(b) Subject to the terms and conditions hereof and on the

basis of the representations and warranties set forth herein, the Owner Trustee agrees, on each Purchase Date, to purchase from the vendor or manufacturer, or to make, or reimburse the Construction Agent for, progress payments to the vendor or manufacturer of, the Units described in the Purchase Notice given pursuant to Section 2.3(a) with respect to such Purchase Date, and in connection therewith, the Owner Trustee agrees to pay to the vendor or manufacturer, or, in the case of a reimbursement, the Construction Agent, the Purchase Cost or a progress payment for each such Unit, or portion thereof, as specified in the Purchase Notice relating to such Unit; provided, however, that the Owner Trustee shall not be obligated to purchase on any Purchase Date any Unit that is destroyed, damaged, defective, in unsuitable condition or otherwise unacceptable to the Lessee for lease pursuant to the Lease; and provided further, however, that the principal amount of all advances made under the Interim Financing Documents, and all accrued and unpaid interest and fees thereunder, outstanding as of the Effective Date shall be rolled over and deemed to have been advanced to the Owner Trustee as Construction Advances (made pro rata by the Construction Lenders in proportion to the respective Construction Commitment Amounts of such Construction Lenders) on the Effective Date, such Effective Date to be deemed to be a Purchase Date for all purposes hereunder.

(c) During the period from the first Purchase Date to the Lease Term Commencement Date (the "Construction Term"), the Construction Agent shall (i) at its expense, carry and maintain insurance with respect to such Units as set forth in Section 12 of the Lease and (ii) keep such Unit at the site identified in the Purchase Notice. In the event that an Event of Loss shall occur during the Construction Term, the Construction Agent shall, on or before the earlier of the date that is 180 days after the date of such Event of Loss and the Construction Termination Date, either (i) replace such Unit with a replacement Unit meeting the standards of Section 11.2(i) of the Lease or (ii) pay to the Owner Trustee an amount equal to the outstanding Construction Advances, together with all accrued and unpaid (and not previously capitalized) interest thereon and all other amounts due with respect thereto (including but not limited to the accrued and unpaid Commitment Fee); provided that the Construction Agent shall, not later than 60 days after the date of such Event of Loss, notify the Owner Trustee and the Construction Loan Agent of the action which it proposes to take with respect to such Event of Loss. The Construction Agent agrees that the Owner Trustee and the Construction Lenders shall have all of the rights of inspection with respect to the Units during the Construction Term therefor as set forth in Section 13 of the Lease.

(d) It is the intent of the Construction Agent, the Owner Trustee and the Owner Participant that during the Construction Term, each Unit purchased on a Purchase Date from a vendor or manufacturer shall be owned by the Owner Trustee. If any court shall determine that any Unit is owned by the Construction Agent during the Construction Term, the Construction Agent shall be deemed to have granted and assigned, and hereby grants and assigns, to the Owner Trustee during the Construction Term a continuing, first priority security interest in and to such Unit and the proceeds thereof, whether now owned or hereafter acquired, and wherever located, as security for the Construction Agent's obligations with respect to such Unit under the Operative Agreements, including, without limitation, the Construction Agent's obligations pursuant to Section 2.1(a). The Construction Agent hereby acknowledges that the Owner Trustee has pledged during the Construction Term all of its right, title and interest in the Units to the Construction Loan Agent, for the benefit of the Construction Lenders, pursuant to the Construction Loan Agreement. The Construction Agent hereby agrees to take all such action, at its expense, as the Owner Trustee, the Owner Participant or the Construction Loan Agent may reasonably request, including, without limitation, the execution, delivery and filing of financing statements, in order to perfect the Owner Trustee's or the Construction Loan Agent's interest in the Units during the Construction Term or to otherwise carry out the intent of this Agreement.

## 2.2 Construction Advances.

(a) In order to finance the cost (including progress payments) of the Units related to a Purchase Date, to pay

Transaction Costs described in Section 2.8(a)(i) through and including (xiii) incurred prior to the Closing and to make required interest payments, Section 2.1 of the Trust Agreement authorizes the Owner Trustee, subject to the terms and conditions hereof, to borrow funds from the Construction Lenders pursuant to the Construction Loan Agreement and hereto (each such borrowing, a "Construction Advance"). In no event shall the aggregate principal amount of all Construction Advances outstanding exceed the Construction Commitment Amount. The Construction Advances are to be made under, and secured by, the Construction Loan Agreement. The Construction Advances shall be LIBOR Advances; interest shall be payable on the Construction Advances at the rates and times set forth in the Construction Loan Agreement. The Construction Advances shall be repaid in full on the earlier to occur of the Lease Term Commencement Date and the day immediately following the Construction Termination Date.

(b) Subject to the terms and conditions hereof (including, without limitation, the second proviso to Section 2.1(b)) and on the basis of the representations and warranties set forth herein, on each Purchase Date, on each date that Transaction Costs are payable and on each date that interest on a Construction Advance is due (each of the foregoing, an "Advance Date"), in each case that occurs on or prior to the Construction Termination Date, the Construction Lenders will make a Construction Advance to the Owner Trustee in an amount equal to (v) the Purchase Cost, or a portion thereof, of the Units to be purchased by the Owner Trustee on such Purchase Date, (w) progress payments upon any Unit then due and owing, (x) the Transaction Costs described in Section 2.8(a)(i) through and including (xiii) then due and owing, (y) the accrued interest on the Construction Advances due on such date, or (z) the sum of any combination of the foregoing clauses (v), (w), (x) or (y); provided, however, that the commitment of the Construction Lenders to make Construction Advances shall not exceed the excess of the Construction Commitment Amount over the aggregate principal amount of all Construction Advances then outstanding.

(c) If on any Advance Date the conditions to the obligations of the Construction Lenders specified in Sections 4.1 and 4.2 have not been fulfilled or waived in writing by the Construction Lenders, the Construction Lenders may thereupon elect to be relieved of all further obligations under this Agreement with respect to the transactions contemplated to occur on such Advance Date. Nothing in this paragraph shall operate to relieve the Owner Trustee, the Owner Participant, the Construction Agent or the Lessee from any of their respective obligations hereunder or to waive the Construction Loan Agent's or the Construction Lenders' rights against the Owner Trustee, the Owner Participant or the Lessee.

### 2.3 Purchase Dates; Advance Dates; Procedure for Funding.

(a) Notice of Purchase Date. The purchase of Units pursuant to Section 2.3 (b), the making of progress payments and the making of the related Construction Advance shall take place on any Business Day occurring on or before the Construction Termination Date (each a "Purchase Date"), provided that (i) there shall be no more than two Purchase Dates in any calendar month, (ii) the aggregate Purchase Cost of the Units to be purchased on each Purchase Date and progress payments to be made on each Purchase Date shall not be less than \$100,000 and (iii) the Construction Agent shall have delivered written notice of such Purchase Date (each such notice, a "Purchase Notice") to the Owner Trustee, the Owner Participant and the Construction Loan Agent at least two Business Days prior to such proposed Purchase Date. Each Purchase Notice shall be in the form attached hereto as Exhibit P, appropriately completed. Prior to 12:00 noon, New York City time, on such Purchase Date, subject to the fulfillment of the applicable conditions precedent set forth herein, each Construction Lender shall make its Construction Percentage of the amount of the Construction Advance required to be paid on such Purchase Date available to the Owner Trustee, by transferring or delivering such amount, in funds immediately available on such Purchase Date, to the Owner Trustee, either directly to, or for deposit in, the Owner Trustee's account number 55-05-300-4673100 at Boatmen's First National Bank of Amarillo (ABA No. 111-300-945), account name: Credit Trust Account, with a reference to EDNC Trust-1997. The making available by the Construction Lenders of the Construction Advance to be paid on such Purchase Date shall be deemed a waiver by the Construction Lenders of the

timely delivery of the Purchase Notice (if not theretofore delivered on a timely basis).

(b) Purchase. With respect to each Purchase Date, upon receipt by the Owner Trustee on such Purchase Date of the Construction Advance required to be paid on such Purchase Date, the Owner Trustee shall, subject to the conditions set forth in Sections 4.1 and 4.2 having been fulfilled to the satisfaction of the Owner Participant and the Construction Loan Agent or waived by the Owner Participant and the Construction Loan Agent, pay to the applicable sellers of the Units or make progress payments in respect of Units (or reimburse the Construction Agent for payments made to the applicable sellers) from the proceeds of Construction Advances, in immediately available funds, an amount equal to the Purchase Cost, or a portion thereof, for the Units to be settled for on such Purchase Date or with respect to which progress payments are being made, as set forth in the related Purchase Notice.

(c) Advance Date Notice. Two Business Days prior to each Advance Date, the Construction Agent shall deliver to the Owner Trustee, the Owner Participant and the Construction Loan Agent a notice substantially in the form of Exhibit Q (each, an "Advance Date Notice"), appropriately completed.

(d) Construction Advances. Prior to 12:00 noon, New York City time, on such Purchase Date, subject to the fulfillment of the applicable conditions precedent set forth herein, each Construction Lender shall make its Construction Percentage of the amount of the Construction Advance required to be paid on such Purchase Date available to the Owner Trustee, by transferring or delivering such amount, in funds immediately available on such Purchase Date, to the Owner Trustee, either directly to, or for deposit in, the Owner Trustee's account number 55-05-300-4673100 at Boatmen's First National Bank of Amarillo (ABA No. 111-300-945), account name: Credit Trust Account, with a reference to EDNC Trust-1997. The making available by the Construction Lenders of the Construction Advance to be paid on such Purchase Date shall be deemed a waiver by the Construction Lenders of the timely delivery of the Purchase Notice (if not theretofore delivered on a timely basis).

(e) Interest Periods. On each Advance Date, the Lessee shall specify the Interest Period applicable to the related Construction Advance as set forth in the Advance Date Notice related thereto. On the last day of each Interest Period for a LIBOR Advance, the Lessee shall continue such Construction Advance, in whole, as a LIBOR Advance for a subsequent Interest Period with a duration as set forth in the applicable Advance Date Notice. Any such Construction Advances pursuant to Section 2.3(d) shall be subject to the following:

(i) each LIBOR Advance shall be in a principal amount equal to at least \$100,000;

(ii) there shall not be more than three (3) different Interest Periods outstanding at any one time; and

(iii) no Interest Period shall extend beyond the Scheduled Lease Commencement Date.

Each Purchase Notice and Advance Date Notice shall be irrevocable. If no notice is given with respect to the continuation of a LIBOR Advance on or prior to the second Business Day before the last day of the Interest Period with respect thereto, such Construction Advance shall have an Interest Period of one month.

#### 2.4 Investments by the Owner Participant.

(a) Subject to the terms and conditions hereof and on the basis of the representations and warranties set forth herein, on the Lease Term Commencement Date, the Owner Participant agrees to participate in the payment of the Total Equipment Cost for all of the Units, taken together as a whole, by making an equity investment in the beneficial ownership of such Units in the amount (the Owner Participant's "Commitment") equal to the Owner Participant's Percentage of the Total Equipment Cost for all of the Units. The Owner Participant's Commitment shall be paid to the Owner Trustee to be held and applied by the Owner Trustee toward the repayment of the Construction Advances then

outstanding made by Security Pacific and as provided in Section 2.6. In no event shall the aggregate amount of (x) the Owner Participant's Percentage of the Total Equipment Cost and (y) the Transaction Costs (which the Owner Participant shall pay pursuant to Section 2.8(a)) exceed \$15,000,000.

(b) If on the Lease Term Commencement Date the conditions to the obligations of the Owner Participant specified in Sections 4.3, 4.4 and 4.8 have not been fulfilled or waived by it, the Owner Participant may thereupon elect to be relieved of all further obligations under this Agreement with respect to the transactions contemplated to occur on the Lease Term Commencement Date. In case any Note Purchaser shall default in its obligation to make the amount of its commitment available pursuant to Section 2.5 on the Lease Term Commencement Date, the Owner Participant shall use its reasonable efforts to promptly find a replacement Note Purchaser (but shall not be required to find, nor to fund itself as, a replacement Note Purchaser). Nothing in this paragraph shall operate to relieve the Lessee, the Owner Trustee, the Indenture Trustee or the Note Purchaser from any of their respective obligations hereunder or to waive any of the Owner Participant's rights against the Lessee, the Owner Trustee, the Indenture Trustee or the Note Purchaser.

## 2.5 Issue and Sale of Note.

(a) In order to finance a portion of the Total Equipment Cost of all of the Units, Section 2.1 of the Trust Agreement authorizes the Owner Trustee, subject to the terms and conditions hereof, to issue and sell secured notes of one series. In no event shall the aggregate principal amount of the Note exceed the lesser of (i) 85% of the Total Equipment Cost and (ii) \$65,000,000. The Note is to be issued under, and secured by, the Indenture. The Note is to be dated the date of original issue, to bear interest prior to maturity at the rate designated in such Note, payable monthly on each Rent Payment Date for the related Lease Supplement thereafter until and including maturity, and to be otherwise in the form of Note attached to the Indenture as Exhibit A. The term Note or Notes, as used herein and in the other Operative Agreements, shall mean and include the Note issued under the Indenture and any Notes issued in exchange therefor or replacement thereof pursuant to the Indenture.

(b) Subject to the terms and conditions hereof and on the basis of the representations and warranties set forth herein, on the Lease Term Commencement Date, the Note Purchaser will participate in the payment of the Total Equipment Cost for all of the Units by purchasing the Note at a price in United States dollars equal to 100% of the principal amount thereof and in an aggregate principal amount equal to the product of (i) the Total Equipment Cost for all of the Units and (ii) the percentage set forth therein in the Owner Participant's Certificate described in Section 2.6(a); provided that the commitment of the Note Purchaser to purchase its Note pursuant to this Section 2.5(b) shall not exceed the amount set forth on Schedule 10 hereto; and provided, further, that the aggregate principal amount of the Note to be issued on the Lease Term Commencement Date to the Note Purchaser shall be equal to the product of (x) the percentage set forth for such Note Purchaser on Schedule 10 hereto and (y) the aggregate principal amount of the Note to be issued on the Lease Term Commencement Date. Notwithstanding the foregoing, the Note Purchaser shall be deemed to have purchased its Note and to have repaid the Construction Advances (except any portion thereof attributable to Transaction Costs, but excluding (i) accrued and unpaid interest on such Transaction Costs and (ii) previously capitalized interest on such Transaction Costs (such portion attributable to Transaction Costs, after giving effect to the exclusions in the immediately preceding clauses (i) and (ii), being Excluded Transaction Costs)) then outstanding made by such Note Purchaser in its capacity as a Construction Lender, together with all accrued but unpaid interest on such Construction Advances, on the Lease Term Commencement Date without any further action required by such Note Purchaser; provided, however, that if the amount set forth in clause (A) of the fourth sentence of Section 2.6(a) (the Clause (A) Amount) is other than the outstanding principal amount of, and accrued and unpaid (and not previously capitalized) interest payable to Security Pacific upon, Construction Advances of Security Pacific, other than that portion of Excluded Transaction Costs which are a part thereof (the "Security Pacific Amount"), then (x) if such Clause A Amount is greater than the Security Pacific Amount, the

Owner Trustee, following receipt of the Clause A Amount from the Owner Participant upon the consummation of the Closing, shall apply the sum which shall be equal to the difference between the Clause A Amount and the Security Pacific Amount to the outstanding principal amount of, and accrued and unpaid (and not previously capitalized) interest payable to the Construction Lenders other than Security Pacific upon, Construction Advances of Construction Lenders other than Security Pacific, other than that portion of Excluded Transaction Costs which are a part thereof, and (y) if the Clause A Amount is less than the Security Pacific Amount, the participation of the Note Purchaser determined pursuant to the provisions of this Section 2.5(b), except for this sentence, shall be paid to Security Pacific as a Construction Lender upon the consummation of the Closing, so that in the case of each of the foregoing clauses (x) and (y) Security Pacific and each other Construction Lender shall be paid its outstanding principal amount of, and accrued and unpaid (and not previously capitalized) interest upon, its Construction Advances, other than that portion of Excluded Transaction Costs which are a part thereof, in full. The Note delivered to the Note Purchaser will be typewritten and will be in the form of a single Note registered in the name of such Note Purchaser. Contemporaneously therewith, Excluded Transaction Costs will be paid by the Owner Participant to the Owner Trustee pursuant to Section 2.8(a) and will be applied by the Owner Trustee to the Construction Advances so that upon the payment thereof and consummation of the Closing the aggregate outstanding principal amount of, and accrued and unpaid (and not previously capitalized), interest payable to the Construction Lenders upon, the Construction Advances shall be paid in full.

(c) If on the Lease Term Commencement Date the conditions to the obligations of the Note Purchaser specified in Sections 4.3, 4.5 and 4.8 have not been fulfilled or waived by the Note Purchaser, the Note Purchaser may thereupon elect to be relieved of all further obligations under this Agreement with respect to the transactions contemplated to occur on the Lease Term Commencement Date. In such an event, the Owner Trustee shall immediately pay to the Construction Lenders an amount equal to the sum of (i) the outstanding principal amount of all Construction Advances, plus (ii) the accrued and unpaid interest on such Construction Advances as of the Construction Termination Date, plus (iii) the accrued and unpaid Commitment Fee, plus (iv) all other amounts due to the Construction Lenders pursuant to this Agreement or any other Operative Agreement. In case the Owner Participant shall default in its obligation to make the amount of its Commitment available pursuant to Section 2.4, or to make the amount of the Excluded Transaction Costs available pursuant to Section 2.8(a), the Note Purchaser shall have no obligation to make any amounts available under any Operative Agreement. Nothing in this paragraph shall operate to relieve the Owner Trustee, the Owner Participant, the Lessee or the Indenture Trustee from any of their respective obligations hereunder or to waive any Note Purchaser's rights against the Owner Trustee, the Owner Participant, the Lessee or the Indenture Trustee.

## 2.6 Lease Term Commencement Date; Procedure for Participation

(a) Notice of Closing. The refinancing and lease of all of the Units, taken together as a whole, and purchase by the Note Purchaser of the Note shall take place, and all documentation relating thereto shall be delivered, at the offices of Mayer, Brown & Platt, 1675 Broadway, New York, New York 10019-5820 commencing at 10:00 a.m., New York City time, on the Lease Term Commencement Date designated by not less than five Business Days' (or such lesser notice agreed upon by the Lessee, the Owner Participant and the Note Purchaser) prior written notice by the Lessee to the Owner Participant, the Owner Trustee, the Indenture Trustee and the Note Purchaser (such notice being referred to as a "Notice of Lease Commencement"); provided, however that (i) there shall not be more than one Lease Term Commencement Date, (ii) the Lessee shall use its reasonable efforts to effect the Lease Term Commencement Date on the first day of a calendar month and (iii) the Lease Term Commencement Date shall occur on or before June 30, 1999. The aforesaid closing is referred to as the Closing. The Notice of Lease Commencement shall be by facsimile transmission promptly confirmed by telephone and shall specify in reasonable detail (i) the number, type and description of all of the Units, (ii) the Total Equipment Cost of such Units,

(iii) the Equipment Cost of each Unit, (iv) the proposed Lease Term Commencement Date and (v) the location of such Units (if other than at the Premises). Not less than two Business Days prior to the Lease Term Commencement Date, the Owner Participant shall deliver to the Lessee, the Owner Trustee, the Indenture Trustee and the Note Purchaser a certificate (the Owner Participant's Certificate) setting forth (A) the amount of the Owner Participant's Commitment (to be paid on the Lease Term Commencement Date), (B) the Owner Participant's Percentage of the Total Equipment Cost (to be funded on the Lease Term Commencement Date), (C) the aggregate principal amount of the Note to be sold on such Lease Term Commencement Date and purchased by the Note Purchaser, and (D) the percentage of the Total Equipment Cost for all of the Units to be funded by the Note Purchaser on the Lease Term Commencement Date through the purchase of the Note, and having attached thereto revised Schedules 2, 3, 4 and 5 to this Participation Agreement (as the same relate to the Lease Term Commencement Date) reflecting any adjustments to Basic Rent, Stipulated Loss Value, Termination Value and debt amortization pursuant to Section 2.9(a)(i). Nothing in this Section 2.6(a) shall limit or affect the Owner Participant's right to make post-closing adjustments pursuant to Section 2.9(a). Prior to 12:00 noon, New York City time, on the Lease Term Commencement Date, the Owner Participant shall make the amount of the Owner Participant's Commitment, and, subject to the second sentence of Section 2.5(b), the Note Purchaser shall make the principal amount of the Note to be purchased on the Lease Term Commencement Date, available to the Owner Trustee, by transferring or delivering such amounts, in funds immediately available on the Lease Term Commencement Date, to the Owner Trustee, either directly to, or for deposit in, the Owner Trustee's account number 55-05-300-4673100 at Boatmen's First National Bank of Amarillo (ABA No. 111-300-945), account name: Credit Trust Account, with a reference to EDNC Trust-1997. The making available by the Owner Participant of its Commitment on the Lease Term Commencement Date (which may include the tendering by the Owner Participant of its interest in the Construction Note) shall be deemed a waiver by the Owner Participant and the Owner Trustee, and the making available by the Note Purchaser of the funds to be paid by such Note Purchaser on the Lease Term Commencement Date (which may include the tendering by the Note Purchaser of its interest in the Construction Note) shall be deemed a waiver by such Note Purchaser and the Indenture Trustee, of the timely delivery of the Notice of Lease Commencement (if not theretofore delivered on a timely basis).

(b) Closing. With respect to the Lease Term Commencement Date, upon receipt (or deemed receipt) by the Owner Trustee on the Lease Term Commencement Date of the Owner Participant's Commitment (required to be paid on the Lease Term Commencement Date), the proceeds (or deemed proceeds) of the Note to be sold on the Lease Term Commencement Date, and the Excluded Transaction Costs, the Owner Trustee shall, subject to the conditions set forth in Sections 4.3, 4.4 and 4.8 having been fulfilled to the satisfaction of the Owner Participant or waived by the Owner Participant and subject to the conditions set forth in Sections 4.3, 4.5 and 4.8 having been fulfilled to the satisfaction of the Note Purchaser or waived by the Note Purchaser, pay (and to the extent of deemed proceeds be deemed to have paid) to the Construction Loan Agent, for the benefit of the Construction Lenders, from the funds then held by it, in immediately available funds, an amount equal to the outstanding Construction Advances, plus all accrued and unpaid (and not previously capitalized) interest thereon.

(c) Failure to Close. If on the Lease Term Commencement Date the Owner Participant fails to make any payment required of it under this Section 2.6, a Note Purchaser fails to purchase its Note or the Owner Participant, a Note Purchaser or the Construction Agent otherwise is in breach of any of its material obligations under any Operative Agreement, then any party hereto (other than the party so failing to make the payment (other than by reason of a failure of the closing conditions contained herein to be satisfied) or otherwise in breach) may cancel its obligations under this Agreement with respect to the Closing and the transactions contemplated hereby with respect to the Closing by notice to the other parties; provided that this Section 2.6(c) shall neither limit the obligations, if any, of the Construction Agent under Section 2.8(c), and such obligations shall survive any exercise of rights by the Construction Agent, nor affect any rights any non-breaching party hereto may have against either the

Owner Participant or a Note Purchaser for any failure described in this Section 2.6(c); and provided further, with respect to any funds actually deposited by a Participant with the Owner Trustee as payment under Sections 2.4 and 2.5 and this Section 2.6, interest shall be paid in the same manner, and to the same extent, as provided for in Section 2.10(b) mutatis mutandis if such Participant is not the party in breach.

(d) Transfer of Rights. For and in consideration of the payment of the Construction Advances and other amounts payable hereunder, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Construction Agent shall convey, assign, bargain, grant, transfer and sell to the Owner Trustee, and its successors and assigns, if not theretofore conveyed, assigned, bargained, granted, transferred and sold to the Owner Trustee, all of the Construction Agent's right, title and interest, if any, in each Unit on and as of the Lease Term Commencement Date, free and clear of all Liens, other than Permitted Liens. The Construction Agent covenants and agrees that it will defend the Owner Trustee's title to each Unit against the claims and demands of all persons whomsoever.

## 2.7 Owner Participant's Instructions.

(a) Authorization and Direction on the Lease Term Commencement Date. The Owner Participant agrees that its making available to the Owner Trustee the amount of its Commitment for the Units and an amount equal to the Excluded Transaction Costs in accordance with the terms of this Section 2 shall constitute, without further act, authorization or direction by the Owner Participant to the Owner Trustee, subject, on the Lease Term Commencement Date, to the conditions set forth in Sections 4.3, 4.4 and 4.8 having been fulfilled to the satisfaction of the Owner Participant or waived by the Owner Participant, to take the actions specified in Section 2.1 of the Trust Agreement with respect to all of the Units, taken together as a whole, on the Lease Term Commencement Date. The Owner Participant further agrees that the authorization by the Owner Participant to the Owner Trustee to release to the Construction Loan Agent, for the benefit of the Construction Lenders, the Owner Participant's Commitment and Excluded Transaction Costs shall constitute, without further act, notice and confirmation that all conditions to such closing set forth in Sections 4.3, 4.4 and 4.8 were either met to the satisfaction of the Owner Participant or, if not so met, were waived as a condition precedent to such closing by it.

(b) Authorization and Direction Regarding Replacement Units. The Owner Participant agrees, in the case of any Replacement Unit substituted pursuant to Section 11.4 of the Lease, that the Owner Trustee is authorized and directed to take the actions specified in such Section 11.4 of the Lease with respect to such Replacement Unit upon due compliance by the Lessee with the terms and conditions set forth in such Section of the Lease with respect to such Replacement Unit.

## 2.8 Expenses.

(a) Transaction Costs. If the Owner Participant shall have made its equity investment provided for in Section 2.4 and the transactions contemplated by this Agreement are consummated, the Owner Participant will pay from time to time (including, with respect to Excluded Transaction Costs (which, for the avoidance of doubt, shall include the accrued and unpaid Commitment Fee), on the Lease Term Commencement Date) the following (the Transaction Costs), if evidenced by an invoice or invoices (which the Lessee shall have the right to review and approve, but which approval shall not be unreasonably withheld), such payment to be made (with respect to Transaction Costs other than Excluded Transaction Costs) within 30 days of the delivery of such invoice or invoices:

(i) (A) the cost of reproducing and printing the Operative Agreements, and (B) all costs and fees in connection with the filing and recording of each document required to be filed or recorded pursuant to the provisions hereof or of any other Operative Agreement;

(ii) (A) the fees and expenses of Mayer, Brown & Platt, special counsel for the Owner Participant and (B) the

allocated internal costs of internal counsel to the Owner Participant and BA Leasing & Capital Corporation, for their services rendered in connection with the negotiation, preparation, execution and delivery of the Operative Agreements and other documentation prepared in connection with the contemplated transactions;

(iii) (A) the fees and expenses of White & Case, special counsel for the Note Purchaser and Bayerische, in its capacity as a Construction Lender, and (B) the fees and expenses of two Texas counsel for the Construction Loan Agent, the Construction Lenders and the Note Purchaser, for their services rendered in connection with the negotiation, execution and delivery of the Operative Agreements and other documentation prepared in connection with the contemplated transactions;

(iv) the fees and expenses of Baker & Botts, L.L.P., special counsel for the Owner Trustee, for their services rendered in connection with the negotiation, execution and delivery of the Operative Agreements and other documentation prepared in connection with the contemplated transactions;

(v) the fees and expenses of Richards, Layton & Finger, special counsel for the Indenture Trustee, for their services rendered in connection with the negotiation, execution and delivery of the Operative Agreements and other documentation prepared in connection with the contemplated transactions;

(vi) with respect to the Lease Term Commencement Date, the initial fees and expenses of each of the Owner Trustee and the Indenture Trustee;

(vii) the fees and expenses of Accuval Associates, Incorporated, for their services rendered in connection with delivering the Appraisals required by Sections 4.4(a) and 4.5(f);

(viii) the fees and expenses of any environmental consultants retained by the Owner Participant with respect to the Units or the Premises or matters related thereto;

(ix) the fees and expenses of an independent engineering consulting firm retained by the Owner Participant in connection with the written Engineering Report to be provided to the Owner Participant pursuant to Section 4.4(e);

(x) the expenses of Bank of America in connection with arranging the debt in the transactions contemplated by the Operative Agreements; and the reasonable out-of-pocket expenses of the Owner Participant, the Construction Loan Agent, the Construction Lenders and Bank of America;

(xi) the Commitment Fee;

(xii) the debt placement fees of Bank of America; and

(xiii) any and all fees and costs associated with the arrangement of the Swap Agreement.

The foregoing agreement to pay Transaction Costs is in addition to the Owner Participant's Commitment, but subject to the last sentence of Section 2.4(a). Notwithstanding the foregoing, the Owner Participant shall not be obligated to pay any Transaction Cost if the invoice therefor is not delivered within 120 days after the Lease Term Commencement Date.

(b) Other Expenses After the consummation of the transactions contemplated by this Agreement on the Lease Term Commencement Date, the Lessee agrees to pay when due: (i) the fees and expenses of the Owner Trustee, the Indenture Trustee, the Note Purchaser, the Construction Loan Agent, the Construction Lenders and the Owner Participant (including reasonable legal fees and expenses) incurred in connection with any supplements, amendments, modifications or alterations of any of the Operative Agreements, and all recording and filing fees, stamp taxes and other recording or filing taxes incurred in connection therewith; (ii) the ongoing fees and expenses (including reasonable legal fees and expenses) of the Owner Trustee under the Operative

Agreements (including, without limitation, Section 6.2 of the Trust Agreement); (iii) the ongoing fees and expenses of the Indenture Trustee under the Operative Agreements (including, without limitation, Section 9.5 of the Indenture); (iv) all recording and filing fees, stamp taxes and other recording or filing taxes in connection with any continuation statements or other documents filed to maintain and protect the rights of the parties under the Operative Agreements; (v) all other fees and expenses (including reasonable legal fees and expenses) incurred by the Owner Trustee, the Indenture Trustee, the Owner Participant and the Note Purchaser in connection with endeavoring to administer or enforce the Operative Agreements; and (vi) all Transaction Costs not required to be paid by the Owner Participant.

(c) Failure to Consummate Transaction.

Except as set forth in the following sentence, if the transactions contemplated hereby on the Effective Date, any Purchase Date or the Lease Term Commencement Date are not consummated for any reason, the Construction Agent shall pay all Transaction Costs. Notwithstanding anything contained herein to the contrary, if the transactions contemplated hereby are not consummated as a result of (i) the Owner Participant's failure to make its equity investment as required by Section 2.4(a) after the conditions specified in Sections 4.3, 4.4 and 4.8 have been satisfied or waived by it in writing, the Owner Participant shall pay (or reimburse the Owner Trustee to the extent such Transaction Costs were paid as part of any Construction Advances) its own fees and expenses and the fees and expenses of its special counsel, Mayer, Brown & Platt; or (ii) the Note Purchaser's failure to purchase the Note as required by Section 2.5 after the conditions specified in Sections 4.3, 4.5 and 4.8 have been satisfied or waived by it in writing, no debt placement fee with respect to the Note Purchaser shall be payable, and the Note Purchaser shall pay its own fees and expenses and the fees and expenses of its special counsel.

(d) Invoices. All invoices in respect of Transaction Costs shall be directed to the Owner Participant and the Lessee at their respective addresses set forth in Section 10.2.

2.9 Calculation of Adjustments to Basic Rent, Stipulated Loss Value, Termination Value and Note Amortization; Confirmation and Verification.

(a) Calculation of Adjustments.

(i) In the event that, with respect to the Units: (A) there is any variation from the Pricing Assumptions set forth on Schedule 8 (other than the application of Section 168(d)(3) of the Code), (B) a Change in Tax Law occurs, or (C) a Proposed Change in Tax Law is finalized or enacted, as applicable; then, subject to Section 2.9(c), in each such case, the Owner Participant shall recalculate (and adjust upward or downward, as appropriate) the payments or amounts, as the case may be, of Basic Rent, Stipulated Loss Values and Termination Values and, solely upon written direction from the Lessee, and subject to the satisfaction of the conditions contained in Section 2.9(d) and in accordance with the procedures set forth in Section 2.14 of the Indenture, the amortization of the Notes, in each case for or with respect to such Units (x) first to preserve the Net Economic Return that the Owner Participant would have realized had the events described in the foregoing clauses (A) through (C) not occurred, and (y) then to minimize to the greatest extent possible, consistent with the requirements set forth in this Section 2.9(a)(i), the present value (discounted quarterly at an interest rate per annum equal to the applicable Debt Rate) of the payments of Basic Rent for such Units, taken together as a whole. In the case of the events described in clause (A) of the immediately preceding sentence actually known to the Lessor at least five (5) Business Days prior to the Lease Term Commencement Date, Lessor shall prepare adjustments (upward or downward) no later than three (3) Business Days prior to the Lease Term Commencement Date. In the case of the events described in clauses (A) or (B) of the immediately preceding sentence, such adjustments shall be made on or prior to, and shall be effective as of the Lease Term Commencement Date;

in the case of the events described in clause (C) of such sentence, such adjustments shall be effective as of the next Rent Payment Date which is at least 30 days after the event giving rise to such adjustment. In performing any such recalculation and in determining the preservation of the Owner Participant's Net Economic Return, the Owner Participant shall utilize the same methods and assumptions as are set forth in the definition of Net Economic Return (other than those assumptions which changed as a result of any of the events described in clauses (A) through (C) of the first sentence of this paragraph (i) necessitating such recalculation). Such adjustments shall comply with: (1) Section 467 of the Code (including regulations, rulings and decisions if any, issued under, or with respect to, Section 467 of the Code prior to such adjustment and applicable thereto) such that no such adjustment shall cause the Lease to be a disqualified leaseback within the meaning of such Code section, (2) Revenue Procedures 75-21 and 75-28 Sections 4.02(5), 4.07(1) and 4.08(1) (except as applicable to uneven payments of rent), and (3) to the extent possible, while still preserving the Owner Participant's Net Economic Return and meeting the other requirements of this Section 2.9(a), the requirements of FASB Statement No. 13 in order that the Lease will qualify as an operating lease thereunder. Each adjustment shall be reflected in an appropriate adjustment of the appropriate portions of Schedules 2, 3, 4 and/or 5 and/or 7 to this Agreement (and the related adjustments to the assumptions contained in clauses (A) through (C) above).

(ii) The adjustments to the Schedules referred to in paragraph (i) above shall be made, subject always to Sections 2.9(b) and 2.9(c), by the Owner Participant without the consent of the other parties hereto.

(b) Confirmation and Verification. Upon completion of any recalculation with respect to the Units described above in Section 2.9(a), a duly authorized officer of the Owner Participant shall provide a certificate to the Lessee, the Indenture Trustee and each holder of a Note either (x) stating that for such Units the payments of Basic Rent, Stipulated Loss Values, Termination Values and amortization of the Notes with respect to the Lease Term as are then set forth in the appropriate portions of Schedules 2, 3, 4 and 5 of this Agreement do not require change, or (y) setting forth such adjustments to such payments of Basic Rent, Stipulated Loss Values, Termination Values or amortization of the Notes with respect to the Lease Term as have been calculated by the Owner Participant in accordance with Section 2.9(a) above. Such certificate shall describe in reasonable detail the basis for any such adjustments. If the Lessee shall so request within 30 days of receiving the certificate described in the first sentence of this Section 2.9(b), the recalculation of any such adjustments described in this Section 2.9 shall be verified by a nationally recognized firm of certified public accountants (other than the firm which then prepares the Lessee's audited statements unless the Owner Participant otherwise consents, which consent may be withheld in the Owner Participant's sole and absolute discretion) selected by the Lessee and reasonably acceptable to the Owner Participant, and any such recalculation of such adjustment as so verified shall be binding on the Lessee and the Owner Participant. Such accountants shall be requested to make their determination within 30 days of its appointment by the Lessee. The Owner Participant shall provide to a representative of such accountants, on a confidential basis (and such accountants shall be obligated to execute a confidentiality agreement in form and substance reasonably acceptable to the Owner Participant), the original assumptions used by the Owner Participant and the methods used by the Owner Participant in the original calculation of, and any recalculation of, Basic Rent, Stipulated Loss Values, Termination Values and amortization of the Notes and such other information as is necessary to determine whether the computation is accurate and in conformity with the provisions of this Agreement. In no event shall the Owner Participant be required to provide any tax return in connection with any verification. All materials provided by the Owner Participant shall remain the property of the Owner Participant and shall be returned to the Owner Participant contemporaneously with the completion of the verification process. The costs of such verification shall be borne by the Lessee, except that if such accounting firm's verification shall result in a decrease in the net present value

of Basic Rent, as compared to the net present value of Basic Rent proposed by the Owner Participant, each discounted at the applicable Debt Rate, by more than 15 basis points, then the Owner Participant shall pay the costs of such verification.

(c) Sufficiency of Rent, etc.; Compliance of Adjustments.

Anything contained in this Section 2.9 to the contrary notwithstanding, any adjustment made to the payments of Basic Rent, Stipulated Loss Values or Termination Values with respect to the Lease Term, pursuant to the foregoing, shall comply with the following requirements: (i) each installment of Basic Rent, on the Lease Term Commencement Date and as adjusted pursuant to this Section 2.9, under any circumstances and in any event, will be in a scheduled amount at least sufficient for the Owner Trustee to pay in full as of the due date of such installment any scheduled payment of principal of and interest on the Notes required to be paid on such due date of such installment of Basic Rent, and (ii) Stipulated Loss Values and Termination Values, on the Lease Term Commencement Date and as adjusted pursuant to this Section 2.9, under any circumstances and in any event (assuming there has been performance in full of the Lease), will be in a scheduled amount at least sufficient to pay in full as of the date of scheduled payment thereof, together with any installment of Basic Rent, payable in arrears, scheduled to be payable as of the date of scheduled payment thereof, the aggregate unpaid principal of and all unpaid interest on the Notes accrued to the date on which Stipulated Loss Value or Termination Value, as the case may be, is to be paid in accordance with the terms of the Lease.

(d) Adjustment Due to Change in Transaction Costs or Change in Tax Rate. If the Transaction Costs are other than 4.0% of Total Equipment Cost, the principal amortization schedule for the Notes may be modified by the Owner Participant, in accordance with the procedure set forth in Section 2.14 of the Indenture; provided, however, that (A) no such modification shall (1) change the unpaid principal amount of any Outstanding Note or (2) extend the Maturity Date of any Note, (B) after taking such modification into account, the average life to maturity of such Notes shall not be different by more than 180 days from the average life to maturity of the Notes set out in Schedule 5 at the date hereof and (C) any such adjustment resulting from a change in the assumed Transaction Costs shall occur no later than six months from the Lease Term Commencement Date. In addition, Basic Rent, Stipulated Loss Values and Termination Values with respect to the Units may be adjusted due to such Change in Tax Rate so long as Owner Participant holds Lessee harmless, on a net after-tax basis, from any out-of-pocket expenses attributable to such adjustment and any adverse tax effect of such adjustment, or Owner Participant's payment of such expenses and such adjustment (i) shall comply with Section 2.9(c), (ii) shall not (x) increase the present value (discounted monthly at an interest rate per annum equal to the applicable Debt Rate) of the payments of Basic Rent and (y) as of any date, increase the sum of the present value (discounted monthly at an interest rate per annum equal to the applicable Debt Rate) of the payments of Basic Rent through such date plus the present value (discounted monthly at an interest rate per annum equal to the applicable Debt Rate) of the Stipulated Loss Value or Termination Value as of such date, and (iii) if the Lease qualified as an operating lease under FASB Statement No. 13 prior to such adjustment, shall be made in such a way so as to continue to comply with the requirements of FASB Statement No. 13.

2.10 Postponement of Closing; Termination of Transaction; and Expiration of Commitment.

(a) Postponement. The scheduled Closing may be postponed from time to time for any reason (but to no later than the Scheduled Lease Commencement Date subject to Section 2.6(a)) if the Lessee gives the Participants and the Trustees facsimile notice (promptly confirmed by telephone) of the postponement and notice of the date to which such Closing has been postponed, the notice of postponement to be received by each party no later than 11:00 a.m., New York City time, on the Scheduled Lease Commencement Date, and the term Scheduled Lease Commencement Date as used in this Agreement thereupon shall mean such postponed Scheduled Lease Commencement Date .

(b) Interest on Participant Funds. In the event of any postponement of the Scheduled Original Lease Commencement Date pursuant to Section 2.10(a) or if the Lease Term Commencement Date fails to occur: (i) the Lessee will reimburse each Participant for the loss of the use of its funds (other than funds which are Construction Advances plus accrued and unpaid (and not previously capitalized) interest thereon) occasioned by such postponement by paying to such Participant on demand interest at a rate per annum equal to the Debt Rate, for the period from and including the Scheduled Original Lease Commencement Date, if such Participant has made its funds available, to but excluding the earlier of the date upon which such funds are returned (unless such funds are returned after 1:00 p.m. (New York City time) in which case such date of return shall be included) or the Lease Term Commencement Date; provided that the Lessee shall in any event pay to each Participant at least one day's interest on the amount of such funds, unless such Participant shall have received, prior to 1:00 p.m. (New York City time) on the Business Day preceding the Scheduled Original Lease Commencement Date, a notice of postponement of the Scheduled Original Lease Commencement Date pursuant to Section 2.10(a); and (ii) the Owner Trustee will return not later than 1:00 p.m. (New York City time), on the first Business Day following the Scheduled Original Lease Commencement Date, any such funds which it shall have received from such Participant and originally expected to have been used in the Closing on the Scheduled Original Lease Commencement Date. Any Excluded Transaction Costs which the Owner Participant has made available shall be treated as a part of the funds subject to this Section 2.10(b).

(c) Expiration of Commitment. Notwithstanding the provisions of Section 2.10(a) or any other provision hereof, neither the Owner Participant nor any Note Purchaser shall be under any obligation to make its funds available beyond 1:00 p.m., New York City time, on June 30, 1999.

(d) Several Commitments. The obligations hereunder of the Participants shall be several and not joint and no Participant shall be liable or responsible for the acts or defaults of any other Participant.

2.11 Sufficiency of Note and Cash Payment. Notwithstanding anything to the contrary contained in this Agreement, the aggregate of (i) the principal amount of the Note which Bayerische shall receive on the Lease Term Commencement Date and (ii) any cash payment which Bayerische shall receive from the Owner Trustee on the Lease Term Commencement Date (such aggregate of (i) and (ii), the Aggregate Lease Term Commencement Date Payment ) shall be not less than the aggregate of (x) the portion of the accrued and unpaid Commitment Fee payable to Bayerische in its capacity as a Construction Lender, and (y) the aggregate outstanding principal amount of, and accrued and unpaid (and not previously capitalized) interest payable upon, the Construction Advances made by Bayerische in its capacity as a Construction Lender. The Construction Loan Agent's calculation with respect to whether the Aggregate Lease Term Commencement Date Payment is sufficient in terms of the foregoing sentence shall control absent demonstrable error.

### SECTION 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Owner Trustee. Boatmen's, both in its individual capacity and as Owner Trustee (except that (x) the representations and warranties in Sections 3.1(a), 3.1(b), 3.1(d)(i), 3.1(d)(ii), 3.1(e)(i), 3.1(e)(ii), 3.1(f), 3.1(h)(i) and 3.1(j)(i) are made by Boatmen's solely in its individual capacity and (y) the representations and warranties in Sections 3.1(c), 3.1(d)(iii), 3.1(e)(iii), 3.1(h)(ii) and 3.1(j)(ii) are made by the Owner Trustee solely in its capacity as such), represents and warrants to the other parties hereto, notwithstanding the provisions of Section 10.12 or any similar provision in any other Operative Agreement, that:

(a) Organization and Power. Boatmen's (i) is a national banking association, duly organized, validly existing and in good standing under the laws of the United States of America, (ii) has full corporate power, authority and legal right to carry on its business as now conducted and to enter into and perform its obligations hereunder and under the Trust Agreement, and (iii) (assuming due

authorization, execution and delivery of the Trust Agreement by the Owner Participant) has full power and authority, as Owner Trustee, and, to the extent expressly provided herein or therein, in its individual capacity, to enter into and perform its obligations under each of the Owner Trustee Agreements.

(b) Authorization, Execution and Validity. (i) Boatmen's has duly authorized, executed and delivered the Trust Agreement; (ii) assuming the due authorization, execution and delivery of the Trust Agreement by the Owner Participant, the Owner Trustee, in its trust capacity, and, to the extent expressly provided herein or therein, in its individual capacity, has duly authorized, executed and delivered each of the other Owner Trustee Agreements; and (iii) the Trust Agreement and this Agreement constitute legal, valid and binding obligations of Boatmen's, enforceable against it in its individual capacity (but, with respect to this Participation Agreement, only to the extent of representations, warranties, covenants and agreements expressly made by Boatmen's in its individual capacity) in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors', mortgagees' or lessors' rights in general and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) Further Validity Warranty. Assuming the due authorization, execution and delivery of the Trust Agreement by the Owner Participant, each of the Owner Trustee Agreements (other than the Trust Agreement) constitutes, or when entered into will constitute, a legal, valid and binding obligation of the Owner Trustee enforceable against the Owner Trustee in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors', mortgagees' or lessors' rights in general and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(d) No Conflict. (i) The execution, delivery and performance by Boatmen's, in its individual capacity and as Owner Trustee, of each Owner Trustee Agreement and compliance by Boatmen's, in its individual capacity and as Owner Trustee, with all of the provisions hereof and thereof do not and will not contravene any law or regulation of the United States of America or the State of Texas governing the banking or trust powers of Boatmen's, in its individual capacity and as Owner Trustee; (ii) the execution, delivery and performance by Boatmen's of each Owner Trustee Agreement and compliance by Boatmen's with all of the provisions hereof and thereof do not and will not contravene any order of any court or Governmental Authority applicable to or binding on Boatmen's or contravene the provisions of, or constitute a default by Boatmen's under, or result in the creation of any Lien upon the Trust Estate under Boatmen's charter documents or by-laws or any indenture, mortgage, contract or other agreement or instrument to which Boatmen's is a party or by which Boatmen's or any of its property is bound or affected; and (iii) the execution, delivery and performance by the Owner Trustee of each Owner Trustee Agreement and compliance by the Owner Trustee with all the provisions hereof and thereof do not and will not contravene any order of any Governmental Authority or contravene the provisions of, or constitute a default by the Owner Trustee under, or result in the creation of any Lien upon the Trust Estate under any indenture, mortgage, contract or other agreement or instrument to which the Owner Trustee is a party or by which the Owner Trustee or any of its property is bound or affected.

(e) Litigation. (i) There are no proceedings pending or, to the knowledge of Boatmen's, threatened against Boatmen's, in its individual capacity or as Owner Trustee, before any Governmental Authority which individually or in the aggregate would impair the ability of Boatmen's, in its individual capacity or as Owner Trustee, to perform its obligations under the Owner Trustee

Agreements or which question the validity of any Owner Trustee Agreement or any action taken or to be taken pursuant thereto; (ii) Boatmen's is not in default with respect to any order of any Governmental Authority, the default under which would materially adversely affect the ability of Boatmen's, in its individual capacity or as Owner Trustee, to perform its obligations under the Owner Trustee Agreements; and (iii) the Owner Trustee is not in default with respect to any order of any Governmental Authority, the default under which would materially adversely affect the ability of the Owner Trustee to perform its obligations under the Owner Trustee Agreements.

(f) Consents. No consent, approval or authorization of, or filing, registration or qualification with, or giving of notice or taking of any other action with respect to, any state or local Governmental Authority or any United States federal Governmental Authority regulating the banking or trust powers of Boatmen's, in its individual capacity or as Owner Trustee, is required in connection with the execution, delivery and performance by Boatmen's, in its individual capacity and as Owner Trustee, of any of the transactions contemplated hereby or of the Trust Agreement or of any of the transactions contemplated by any of the other Owner Trustee Agreements, other than any such consent, approval, authorization, filing, registration, qualification, notice or action as has been duly obtained, given or taken and is in full force and effect.

(g) Title. On each Purchase Date (other than a Purchase Date on which only progress payments are being made), the Owner Trustee shall receive from each seller of a Unit such title to such Unit as was conveyed to it by such seller.

(h) Default. (i) Boatmen's is not in default under any of the Owner Trustee Agreements; and (ii) the Owner Trustee is not in default under any of the Owner Trustee Agreements.

(i) Chief Executive Office. Both the principal place of business and the chief executive office (as such term is used in the Uniform Commercial Code) of the Owner Trustee are located at 701 South Taylor Street, Amarillo, Texas 79101, Attention: Corporate Trust Department. The place where its records concerning the Units and all its interest in, to and under all documents relating to the Trust Estate is located at Boatmen's Trust Company of Texas, 701 South Taylor Street, Amarillo, Texas 79101, Attention: Corporate Trust Department.

(j) No Liens. (i) The Owner Trustee's right, title and interest in and to the Units and the Lease are free of any Lessor's Liens attributable to Boatmen's, in its individual capacity; and (ii) the Owner Trustee has not conveyed an interest in the Trust Estate to any Person, or subjected the Trust Estate to any Lien except pursuant to the Lease, the Indenture and the Construction Loan Agreement (which conveyance under the Construction Loan Agreement with respect to a Unit subject to the Indenture will be terminated as of the Lease Term Commencement Date).

3.2 Representations and Warranties of the Lessee. The Lessee represents and warrants to the other parties hereto that:

(a) Due Organization. The Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of its incorporation, and has the corporate power and authority to conduct its business as now conducted, to own or hold under lease its properties and to execute, deliver and perform its obligations under the Operative Agreements to which it is or is to become a party. The Lessee is duly qualified to do business and is in good standing in: (i) each jurisdiction in which Units to be leased by the Lessee are located; and (ii) each other jurisdiction in which its business is conducted, except where failure so to qualify or to be in good standing could not reasonably be expected to have a Material Adverse Effect.

(b) Due Authorization; No Conflict. Each of the

Operative Agreements to which the Lessee is or is to become a party has been duly authorized by all necessary corporate action on the part of the Lessee and has been or on each Purchase Date or Lease Term Commencement Date, as the case may be, will have been, duly executed and delivered by the Lessee, and the execution, delivery and performance thereof and compliance by the Lessee with all of the provisions hereof and thereof do not, and on each Purchase Date and the Lease Term Commencement Date will not (i) require any approval of the shareholders of the Lessee or any approval or consent of any trustee or holder of any indebtedness or obligation of the Lessee, other than such consents and approvals as have been, or, on or prior to such Purchase Date and the Lease Term Commencement Date, as the case may be, will have been, obtained (and are in full force and effect), (ii) contravene any law or regulation, or any order of any Governmental Authority binding on the Lessee or any of its properties, the Units or the Operative Agreements, (iii) breach or contravene the Lessee's certificate of incorporation or by-laws; or (iv) contravene or result in any breach of or creation of any Lien (other than pursuant to the Operative Agreements) upon any property of the Lessee under any indenture, mortgage, loan agreement, lease or other agreement or instrument to which the Lessee is a party or by which the Lessee or any of its properties is bound. The Lessee is in compliance with all applicable laws, including Environmental Laws and Governmental Actions, the failure to comply with which could reasonably be expected to have a Material Adverse Effect.

(c) Governmental Action. All Governmental Action, required in connection with the execution, delivery and performance by the Lessee of the Operative Agreements to which it is or is to become a party, has been or will have been on each Advance Date and the Lease Term Commencement Date obtained, given or made (and are or will be in full force and effect), but for those Governmental Actions, all of which are either (x) not required on the date hereof or on the related Advance Date or the Lease Term Commencement Date, as the case may be, and cannot be obtained prior to such date(s), as the case may be, or (y) for which the failure to obtain, give or make could not reasonably be expected to have a Material Adverse Effect.

(d) Enforceability. Each of the Operative Agreements to which the Lessee is or is to become a party constitutes, or, when executed and delivered by the Lessee, will constitute, the legal, valid and binding obligation of the Lessee, enforceable against the Lessee in accordance with the terms thereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors', mortgagees' or lessors' rights in general and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) Litigation. Except as disclosed on Schedule 11 hereto, there is no action, suit or proceeding pending or, to the Lessee's knowledge, threatened and, to the Lessee's knowledge, there are no facts, circumstances, conditions or occurrences that would reasonably be expected to form the basis of a Claim against the Lessee or any Unit before or by any Governmental Authority that (i) questions the validity or enforceability of the Operative Agreements to which the Lessee is or is to become a party or (ii) if adversely determined, could (whether individually or when aggregated with other actions, suits or proceedings) be reasonably expected to have a Material Adverse Effect. The Lessee is not in default with respect to any order of any Governmental Authority except as disclosed on Schedule 11, which default could reasonably be expected to have a Material Adverse Effect.

(f) No Defaults; Etc. No Lease Default or Lease Event of Default has occurred or is continuing. The Lessee is not a party to any agreement or instrument or subject to any charter or other corporate restriction affecting its business, properties, financial condition, prospects or results of operations that could have a Material Adverse Effect. The Lessee is not in default in, nor has any non-

permanent waiver been granted to the Lessee with respect to the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any agreement to which it is a party, which default could be reasonably expected to have a Material Adverse Effect or (ii) any other agreement or instrument evidencing or governing an outstanding principal amount of indebtedness equal to or in excess of Ten Million Dollars (\$10,000,000).

(g) Financial Advisors; Broker's Fee. The Lessee has not retained any broker, finder, agent (excluding Bank of America in its capacity as debt placement agent) or financial advisor in connection with the transactions contemplated hereby. Neither the Lessee nor any Person authorized or employed by the Lessee as agent or otherwise has taken any action the effect of which would be to cause the Owner Participant, the Trust Estate, the Owner Trustee, the Note Purchaser, the Construction Lenders, the Construction Loan Agent or the Indenture Trustee to be liable for any brokers', finders', agents' or advisors' fees or commissions or costs of any nature or kind claimed by or on behalf of brokers, finders, agents or advisors in respect of the transactions contemplated by the Operative Agreements, except for the fees of Bank of America as debt placement agent.

(h) Status of the Lessee. The Lessee is not an investment company or an affiliated person of an investment company within the meaning of the Investment Company Act of 1940, as amended. The Lessee is not subject to regulation as a Holding Company, an affiliate of a Holding Company, or a Subsidiary Company of a Holding Company, within the meaning of the Public Utility Holding Company Act of 1935, as amended.

(i) Title to the Units; Security Interest. On each Purchase Date (other than a Purchase Date on which only progress payments are being made), (A) good, marketable and insurable title to the Units to be settled for on such Purchase Date will be validly and effectively conveyed to, and vested in, the Owner Trustee, free and clear of all Liens, except the Lien of the Construction Loan Agreement and other Permitted Liens and (B) no filings or recordings are necessary to validly and effectively convey to the Owner Trustee good, marketable and insurable title to interest in such Units, in all cases free and clear of all Liens, except the Lien of the Construction Loan Agreement and other Permitted Liens, or to grant to the Construction Loan Agent, for the benefit of the Construction Lenders, and to perfect, the Lien provided for in the Construction Loan Agreement, except for the filings and recordings required by Section 4.2(c). On or prior to each Purchase Date, the Lessee shall have delivered to special counsel to the Construction Loan Agent for filing in the appropriate filing offices all filings and recordings required by Section 4.2(c). Notwithstanding the foregoing terms of this Section 3.2(i), or any other term of this Agreement to the contrary, the parties hereto acknowledge and agree that title to the Units may pass to the Owner Trustee only on the Lease Term Commencement Date or on a limited number of dates prior thereto, the timing of such transfer or transfers of title to be subject to the terms of (x) the Turnkey Engineering, Procurement and Construction Agreement, dated as of July 1, 1997, to be entered into between the Construction Agent and ICF Kaiser Engineers, Inc. (the "Turnkey Construction Contract"), and (y) prior to the execution and delivery of the Turnkey Construction Contract, that certain letter of intent, dated as of February 14, 1997, between the Construction Agent and ICF Kaiser Engineers, Inc. (the "Construction Letter of Intent"). On the Lease Term Commencement Date, (a) good, marketable and insurable title to all Units will be vested in the Owner Trustee, free and clear of all Liens, except the Lien of the Lease and the Indenture and other Permitted Liens, (B) no filings or recordings are necessary to validly and effectively vest in the Owner Trustee good, marketable and insurable title to such Units, in all cases free and clear of all Liens except the Lien of the Lease and the Indenture and other Permitted Liens, and (C) upon the filing and recording of all filings and recordings required by Sections 4.3(c) and 4.5(b), the Indenture will create a valid and perfected first priority

Lien and security interest in the Indenture Estate, effective as against creditors of, and purchasers from, the Owner Trustee and the Lessee, subject only to Permitted Liens and to the accuracy of the representations and warranties in Sections 3.1(j) and 3.4(f). On or prior to the Lease Term Commencement Date, the Lessee has caused to be filed in the appropriate filing offices all filings and recordings required by Sections 4.3(c) and 4.5(b).

(j) Applicable Law. The use of the Units (whether taken individually, as a whole, or otherwise) in a manner consistent with the Operative Agreements does not violate any applicable law, including Environmental Laws, or Governmental Action, the violation of which could reasonably be expected to have a Material Adverse Effect.

(k) Event of Loss; Eminent Domain. No Event of Loss has occurred; no event or condition has occurred which would, with the passage of time or the giving of notice, or both, constitute an Event of Loss; and no damage, loss, condemnation, confiscation, theft or seizure has occurred with respect to any Unit which would result in the potential for any other party to the Operative Agreements to fail to consummate the transactions contemplated hereby. There is no action pending or, to the knowledge of the Lessee, threatened by any Governmental Authority or other Person to initiate a taking or use of the Units (whether taken individually, as a whole, or otherwise) or any part or portion thereof through condemnation, seizure, requisition of title, power of eminent domain or otherwise.

(l) Certificates, Permits. The Lessee has obtained and is in compliance with all Governmental Actions and all certificates, licenses, and permits, required from all Governmental Authorities or from private parties, for the normal use and operation of the Units (whether taken individually, as a whole, or otherwise) that the failure to obtain or comply with could reasonably be expected to have a Material Adverse Effect and all such certificates, licenses, permits and the like will be final, in full force and effect and all applicable appeal periods shall have expired on the Lease Term Commencement Date.

(m) Chief Executive Office. The principal place of business and chief executive office (as such term is used in Article 9 of the Uniform Commercial Code) of the Lessee and the office where it keeps its records concerning its accounts relating to the transactions contemplated hereby is accurately set forth opposite the Lessee's name on Schedule 1.

(n) Use of Proceeds. None of the transactions contemplated by the Operative Agreements (including, without limitation, the use of the proceeds indirectly received by the Lessee from the Construction Advances or sale of the Note) will result in a violation of Section 7 of the Securities Exchange Act or any regulations issued pursuant thereto, including, without limitation, Regulations G, T, U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R., Chapter II.

(o) Taxes. All Federal and state income tax returns and all other material Federal and state tax returns, or allowable extensions thereof, required to be filed by the Lessee or any of its Subsidiaries have, in fact, been filed, and all taxes which are shown to be due and payable in such returns or extensions have been paid. Except as described on Schedule 11 hereto, no controversy in respect of additional income or other material taxes due is pending or, to the knowledge of the Lessee threatened, other than any such controversy which, if prosecuted, would result solely in a Permitted Lien.

(p) Disclosure. The information disclosed in writing by or on behalf of the Lessee to the Owner Participant, the Note Purchaser or the Construction Lenders (including, without limitation, in any memorandum prepared in connection with the placement of the Note and financial statements) in connection with the negotiation of the Operative Agreements and the transactions contemplated hereby and thereby, when taken as a whole with all other

written disclosures to such parties by the Lessee, do not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading. There is no fact known to the Lessee that has not been disclosed to the Owner Participant and the Note Purchaser in writing that could reasonably be expected to have a Material Adverse Effect.

(q) Subjection to Government Regulation. Except as disclosed on Schedule 11 hereto, none of the Owner Participant, any Construction Lender, the Construction Loan Agent, the Indenture Trustee or any Note Purchaser will become (i) solely by reason of entering into the Operative Agreements or the consummation of the transactions contemplated thereby, subject to ongoing regulation of its operations by any Governmental Authority; or (ii) upon the exercise of remedies under the Indenture or the Lease or upon the expiration thereof, other than with respect to environmental permits needed for the operation of the Units (taken together as a whole) and which Lessee has obtained and which remain in full force and effect, subject to ongoing regulation of its operations by any Governmental Authority.

(r) Unsatisfied Judgments. There are no material outstanding unsatisfied judgments, tax liens or bankruptcy proceedings against the Lessee.

(s) Foreign Person. The Lessee is not a foreign person as defined in Section 1445 of the Code.

(t) ERISA.

(i) Prohibited Transactions. Neither the execution of the Operative Agreements nor the consummation of any transaction contemplated thereby, including the making by the Owner Participant of its investment or the holding by it of the Beneficial Interest, the making or holding by the Construction Lenders of the Construction Advances or the purchase or holding by the Note Purchaser of the Note, will constitute a "prohibited transaction" (as defined in section 406 of ERISA or section 4975 of the Code). It is understood that, in making the representation set out in this Section 3.2(t)(i), the Lessee is relying, to the extent applicable, upon the representation of the Owner Participant set forth at Section 3.4(i), upon the representation of the Construction Lenders set forth at Section 3.5(f) and upon the representation of the Note Purchaser set forth at Section 3.5(e).

(ii) Pension Plans.

(A) Compliance with ERISA. The Lessee and the ERISA Affiliates are in compliance with ERISA and the Code, except for such failures to comply that, in the aggregate for all such failures, could not reasonably be expected to have a Material Adverse Effect. To the best of the Lessee's knowledge, there have been no "reportable events" (as defined in section 4043 of ERISA) with respect to any Pension Plan that could result in the termination of such Pension Plan and give rise to a liability of the Lessee or any ERISA Affiliate in respect thereof that could reasonably be expected to have a Material Adverse Effect.

(B) Funding Status. No "accumulated funding deficiency" (as defined in section 302 of ERISA and section 412 of the Code) exists with respect to Pension Plans of the Lessee, and no ERISA Affiliate has an accumulated funding deficiency. Neither the Lessee nor any ERISA Affiliate has failed to make any contribution or payment to any Pension Plan which has resulted, or could reasonably be expected to result, in the imposition of a Lien under section 302(f) of ERISA or section 412(n) of the Code.

(C) PBGC. No liability to the Pension Benefit Guaranty Corporation (the "PBGC") has been or is expected to be incurred by the Lessee or any ERISA Affiliate with respect to any Pension Plan that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. No circumstance exists that constitutes or reasonably could be expected to constitute grounds under section 4042 of ERISA entitling the PBGC to institute proceedings to terminate, or appoint a trustee to administer, any Pension Plan or trust created thereunder, nor has the PBGC instituted any such proceeding.

(D) Multiemployer Plans. Neither the Lessee nor any ERISA Affiliate has incurred or presently expects to incur any withdrawal liability under Title IV of ERISA with respect to any Multiemployer Plan that could reasonably be expected to have a Material Adverse Effect.

(u) Sales Tax. On each Purchase Date (other than one on which only progress payments are being made) and on the Lease Term Commencement Date, all sales or use taxes relating to the sale to the Owner Trustee of the Units to be settled for on such Purchase Date or on the Lease Term Commencement Date (if any), as the case may be, which are then due will have been paid in full or adequate provision for the payment of which will have been made.

(v) Description of Units. The description of the Units with respect to a Purchase Date set forth in the Purchase Notice delivered in connection with such Purchase Date is, or will be, a true and correct description of the Units being sold on such date in all material respects.

(w) Condition of Units. No event or condition currently exists that (i) presently adversely affects the operation or maintenance of any of the Units (whether taken together as a functional whole or individually) or (ii) causes the Lessee to believe that the functional ability of the Units (whether taken together as a functional whole or individually) is less than the functional ability for which the Units were designed.

(x) Lease of Real Property. Except as set forth on Schedule 7, the Lessee holds a valid leasehold interest under the Ground Lease to each parcel of real property upon which any Unit leased or to be leased by the Lessee will be located; and no Unit leased or to be leased by the Lessee will be or become subject to any Liens, rights of distraint, charges, encumbrances or Claims created by or through Lessee as a result of such Unit being located upon such owned or leased real property, except for Permitted Liens.

(y) Intellectual Property. All third party licenses, patents, trademarks, tradenames and similar rights, if any, necessary for the operation of the Units (whether taken together as a functional whole or individually) by the Lessee or a third party are in full force and effect and have been, or on the Lease Term Commencement will be, duly assigned or licensed to the Owner Trustee; it being understood that such licenses, patents, trademarks, tradenames and similar rights do not include licenses, patents, trademarks, tradenames and similar rights related to the products produced by the Lessee with the Units.

(z) Environmental Matters.

(i) Lessee is in compliance, in all material respects, with all Environmental Laws and the requirements of any permits issued under such Laws.

(ii) Lessee has not generated, used, treated, recycled, stored, released or disposed of, or permitted the generation, use, treatment, recycling, storage, release or disposal of Hazardous Substances at, on or under all or a portion of the Premises or transported or permitted the transportation of Hazardous Substances

to or from the Premises, the Units and Easements, except as necessary for the construction and operation of Lessee's business and in compliance in all material respects with all applicable Environmental Laws.

(iii) There are no pending or, to the best knowledge of Lessee, threatened Environmental Claims against Lessee or the Premises, the Units and Easements.

The parties acknowledge that the Easements are used in connection with many operations (in addition to the operations of Lessee) and that the representations and covenants made in this Agreement with respect to Easements apply only to activities involving the Premises or the Units.

3.3 Representations and Warranties of the Indenture Bank and the Indenture Trustee. Indenture Bank, in its individual capacity and in its capacity as Indenture Trustee as set forth below, represents and warrants to the other parties hereto that:

(a) Organization and Power. Indenture Bank is a banking corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power, authority and legal right to carry on its business as now conducted and to enter into and perform its obligations hereunder and under each of the other Indenture Trustee Agreements.

(b) Authorization, Execution and Validity. Indenture Bank has duly authorized, executed and delivered each of the Indenture Trustee Agreements other than those to be executed and delivered on the Lease Term Commitment Date, and, as of the Lease Term Commitment Date, the Indenture Trustee Agreements to be delivered on the Lease Term Commencement Date also will have been duly authorized, executed and delivered (and in the case of the Note, duly authenticated) by it. Assuming that each of the Indenture Trustee Agreements constitutes, or when entered into will constitute, a legal, valid and binding obligation of all other parties thereto, enforceable against such parties in accordance with their respective terms, this Agreement constitutes, and each of the other Indenture Trustee Agreements when entered into by the Indenture Bank will constitute, the legal, valid and binding obligation of Indenture Bank, enforceable against it in its individual capacity (to the extent expressly provided therein) in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors', mortgagees' or lessors' rights in general and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) Further Validity Warranty. Assuming that each of the Indenture Trustee Agreements constitutes, or when entered into will constitute, a legal, valid and binding obligation of all other parties thereto, enforceable against such parties in accordance with their respective terms, each of the Indenture Trustee Agreements constitutes, or when entered into by the Indenture Trustee will constitute, a legal, valid and binding obligation of Indenture Trustee enforceable against it in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors', mortgagees' or lessors' rights in general and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(d) No Conflict. The execution, delivery and performance by Indenture Bank and Indenture Trustee of each Indenture Trustee Agreement and compliance by Indenture Bank and Indenture Trustee with all of the provisions thereof binding upon it do not and will not contravene any order of any Governmental Authority or any law or regulation of the United States of America or the State of Delaware, in each case governing the banking or trust powers of Indenture Bank, or contravene the provisions of, or constitute a

default by Indenture Bank under, or result in the creation of any Lien (except for Permitted Liens upon the Units) upon the Indenture Estate under its corporate charter or by-laws or any indenture, mortgage, contract or other agreement or instrument to which Indenture Bank is a party or by which Indenture Bank or any of its property is bound or affected.

(e) Litigation. There are no proceedings pending or, to the knowledge of Indenture Bank, threatened against Indenture Bank, in its individual capacity or as Indenture Trustee, before any Governmental Authority governing the banking or trust powers of the Indenture Bank or the Indenture Trustee which individually or in the aggregate would impair the ability of the Indenture Bank or the Indenture Trustee to perform its respective obligations under this Agreement or any other Indenture Trustee Agreement or which question the validity of this Agreement or any other Indenture Trustee Agreement or any action taken or to be taken pursuant hereto or thereto. Indenture Bank is not in default with respect to any order of any Governmental Authority governing the banking or trust powers of the Indenture Bank, the default under which would affect adversely the ability of the Indenture Bank or the Indenture Trustee to perform its obligations under this Agreement or any other Indenture Trustee Agreement.

(f) Consents. No consent, approval or authorization of, or filing, registration or qualification with, or giving of notice or taking of any other action with respect to, any state or local Governmental Authority or any United States federal Governmental Authority regulating the banking or trust powers of Indenture Bank is required in connection with the execution, delivery and performance by Indenture Bank, in its individual capacity or as Indenture Trustee, of any of the transactions contemplated hereby or of any of the transactions contemplated by any of the other Indenture Trustee Agreements, other than any such consent, approval, authorization, filing, registration, qualification, notice or action as has been duly obtained, given or taken and is in full force and effect.

(g) Default. The Indenture Trustee is not in default under any of the Indenture Trustee Agreements.

3.4 Representations and Warranties of the Owner Participant. The Owner Participant represents and warrants to the other parties hereto that:

(a) Organization and Power. The Owner Participant is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has the power, authority and legal right to carry on its business as now conducted, and has the power, authority and legal right to execute, deliver and perform its obligations under the Owner Participant Agreements.

(b) Authorization, Execution and Validity. The Owner Participant Agreements have been duly authorized by all necessary action, executed and delivered (or, in the case of each other Owner Participant Agreement executed and delivered in relation to a Purchase Date or the Lease Term Commencement Date, on such Purchase Date or the Lease Term Comment Date, as the case may be, will have been duly executed and delivered) by the Owner Participant; and (assuming the due authorization, execution and delivery by each other party thereto) constitute (or, in the case of each other Owner Participant Agreement executed and delivered in relation to a Purchase Date or the Lease Term Commencement Date, on such Purchase Date or the Lease Term Commencement Date, as the case may be, will constitute) legal, valid and binding obligations of the Owner Participant, enforceable against it in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors', mortgagees' or lessors' rights in general and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) No Conflict. The execution, delivery and performance by the Owner Participant of each Owner

Participant Agreement and compliance by the Owner Participant with all of the provisions thereof do not and will not contravene any law or regulation, or any order of any Governmental Authority applicable to or binding on the Owner Participant (it being understood that the Owner Participant makes no representation or warranty relating to the nature of the Units or the Premises or the laws, regulations or orders pertaining thereto or pertaining to the use thereof), or contravene the provisions of, or constitute a default by the Owner Participant under, or result in the creation of any Lien (except for Permitted Liens upon the Units) upon the Units under its certificate of incorporation or any indenture, mortgage, contract or other agreement or instrument to which the Owner Participant is a party or by which the Owner Participant or any of its property is bound or affected. The representation and warranty contained in this Section 3.4(c) does not constitute any representation or warranty as to ERISA or regulations thereunder.

(d) Litigation. There is no action, suit or proceeding pending or, to the knowledge of the Owner Participant, threatened against the Owner Participant before or by any Governmental Authority that (i) questions the validity or enforceability of any Owner Participant Agreement or (ii) if adversely determined (whether individually or when aggregated with other actions, suits or proceedings) would materially and adversely affect its ability to perform its obligations under the Owner Participant Agreements. The Owner Participant is not in default with respect to any order of any Governmental Authority, the default under which would materially affect adversely the ability of the Owner Participant to perform its obligations under the Owner Participant Agreements.

(e) Governmental Actions. No Governmental Action on the part of the Owner Participant is required in connection with the execution, delivery and performance by the Owner Participant of the Owner Participant Agreements (it being understood that the Owner Participant makes no representation or warranty relating to the nature of the Units or the Premises or the laws, regulations or orders pertaining thereto).

(f) No Liens. The Trust Estate is free of any Lessor's Liens attributable to the Owner Participant.

(g) Default. The Owner Participant is not in default under any of the Owner Participant Agreements. No Indenture Default or Indenture Event of Default with respect to the Owner Participant has occurred and is continuing.

(h) Investment Company. The Owner Participant is not an investment company or an affiliated person of an investment company within the meaning of the Investment Company Act of 1940, as amended.

(i) ERISA. The Owner Participant is not an employee benefit plan within the meaning of Section 3(3) of ERISA which is subject to Title I of ERISA, or a plan within the meaning of Section 4975 of the Code or an entity that is deemed to hold plan assets within the meaning of 29 C.F.R. Section 2510.3-101 of any such employee benefit plan or plan (collectively, an "ERISA Plan"), and no part of the funds to be advanced by the Owner Participant pursuant to Section 2.4 will constitute assets of an ERISA Plan.

(j) Broker's Fees. Neither the Owner Participant nor any Person authorized or employed by the Owner Participant as agent or otherwise has taken any action the effect of which would be to cause the Trust Estate, the Owner Trustee, the Lessee, the Note Purchaser, the Construction Lenders, the Construction Loan Agent or the Indenture Trustee to be liable for any brokers', finders', agents' or advisors' fees or commissions or costs of any nature or kind claimed by or on behalf of brokers, finders, agents or advisors in respect of the transactions contemplated by the Operative Agreements.

(a) Offers by the Owner Trustee. Boatmen's represents and warrants to the other parties hereto that, as of the date hereof, as of each Advance Date and as of the Lease Term Commencement Date, neither the Owner Trustee (whether acting in its individual capacity or as Owner Trustee) nor any Person authorized or employed by the Owner Trustee as agent or otherwise in connection with the placement of any interest in the Construction Notes, the Note, the Beneficial Interest, the Trust Estate, the Indenture Trust Estate, the Lease, the Bayer Letter or the Bayer Support Agreement or any similar interest has directly or indirectly offered any interest in any of the Construction Notes, the Note, the Beneficial Interest, the Trust Estate, the Indenture Trust Estate, the Lease, the Bayer Letter or the Bayer Support Agreement, or any similar interest for sale to, or directly or indirectly solicited any offers to buy any thereof from, or otherwise approached or negotiated with respect thereto with, any Person.

(b) Offers by the Lessee. The Lessee represents and warrants to the other parties hereto that, as of the date hereof, as of each Advance Date and as of the Lease Term Commencement Date, it has not, nor has any Person authorized or employed by it as agent or otherwise in connection with the placement of the Construction Notes, the Note, the Beneficial Interest, the Trust Estate, the Indenture Estate, the Lease, the Bayer Letter or the Bayer Support Agreement, directly or indirectly offered any interest in the Units (whether individually or taken together as a whole), the Construction Notes, the Note, the Beneficial Interest, the Trust Estate, the Indenture Estate, the Lease, the Bayer Letter or the Bayer Support Agreement, or any similar securities of the Lessee or the Owner Trustee, for sale to, or directly or indirectly solicited any offers to buy any thereof from, or otherwise approached or negotiated with respect thereto with, any Person in violation of the Securities Act or any state securities laws, and neither it nor any Person authorized or employed by it as agent or otherwise in connection with the placement of the Construction Notes or the Note, the Beneficial Interest, the Trust Estate, the Indenture Estate, the Lease, the Bayer Letter or the Bayer Support Agreement has taken any action which would subject any interest in the Construction Notes, the Units, the Note, the Beneficial Interest, the Trust Estate, the Indenture Estate, the Lease, the Bayer Letter or the Bayer Support Agreement to the registration requirements of Section 5 of the Securities Act or any state securities laws.

(c) Securities Covenant. Each of the Owner Trustee and the Lessee covenants and agrees as to itself that neither it nor anyone acting on the behalf of it will:

(i) offer the Beneficial Interest, the Trust Estate or any part thereof or any similar security for issue or sale to, or solicit any offer to acquire any thereof from, or otherwise approach or negotiate with, anyone so as to violate the provisions of Section 5 of the Securities Act, or any state securities laws, or

(ii) offer the Construction Notes, the Notes or any part thereof or any similar security for issue or sale to, or solicit any offer to acquire any thereof from, or otherwise approach or negotiate with, anyone so as to violate the provisions of Section 5 of the Securities Act or any state securities laws.

(d) Purchase for Investment. Each Participant represents and warrants to each other Participant, the Lessee, and the Trustees that, as of the Lease Term Commencement Date, such Participant is purchasing the Interest (as hereinafter defined) to be acquired by it for its account with no present intention of distributing such Interest or any part thereof in any manner which would violate the Securities Act or state securities laws, but without prejudice, however, to the right of such Participant at all times to sell or otherwise dispose of all or any part of such Interest in compliance with the Securities Act and any state securities laws and, in the case of the Owner Participant, Section 6.1 hereof or, in the case of the Note

Purchaser, Section 6.13 hereof. The Beneficial Interest and the Notes are sometimes referred to in the Operative Agreements collectively as the Interests and individually as an "Interest".

(e) ERISA Representation, Warranty and Covenant of Note Purchaser. The Note Purchaser represents, warrants and covenants that either (i) no part of the funds used by it to acquire and hold any Note constitutes assets of an ERISA Plan; or (ii) the source of funds used to acquire and hold any Note is an "insurance company general account" within the meaning of Department of Labor Prohibited Transaction Exemption ( PTE ) 95-60 (issued July 12, 1995), and there is no employee benefit plan (treating as a single plan all plans maintained by the same employer or employee organization) with respect to which the aggregate amount of the general account reserves and liabilities for all contracts held by or on behalf of such plan exceed 10% of the total reserves and liabilities of such general account (exclusive of separate account liabilities) plus surplus, as set forth in such Note Purchaser's most recent annual statement in the form required by the National Association of Insurance Commissioners as filed with such Note Purchaser's state of domicile. Any transferee of a Note shall by its acceptance of such Note be deemed to make one of the above representations and covenants to Lessee, Owner Participant, Owner Trustee and Indenture Trustee regarding the source of funds used to purchase and hold such Note.

(f) ERISA Representation, Warranty and Covenant of each Construction Lender. Each Construction Lender represents, warrants and covenants to each of the other parties that (i) it is not an ERISA Plan, and (ii) no part of the funds used by it to fund and hold any Construction Advance constitutes assets of an ERISA Plan.

(g) Reaffirmation on the Lease Term Commencement Date. The purchase of the Note by the Note Purchaser on the Lease Term Commencement Date shall constitute a reaffirmation by such Note Purchaser of its representations and warranties set forth in this Section 3.5 as of the Lease Term Commencement Date.

(h) Tax Status of Bayerische. Bayerische is acquiring its interest in the Note and any Construction Advance through its New York branch and all principal, interest and Premium, if any, generated by the Note and any Construction Advance is expected to be effectively connected (within the meaning of Section 1441(c) of the Code and the regulations thereunder) with the conduct of Bayerische's trade or business in the United States. The Internal Revenue Service Forms 4224 delivered by Bayerische to the Owner Participant, the Indenture Trustee, the Lessor and the Lessee on the date hereof are true and correct and Bayerische has obtained all approvals needed to execute and deliver such Forms.

#### SECTION 4 CLOSING CONDITIONS

4.1 Conditions Precedent to the Making of First Construction Advance. The obligation of the Owner Trustee to proceed with the transactions contemplated for it by the Operative Agreements on the date of the first Construction Advance, and the obligation of the Construction Lenders to make a Construction Advance on such date, shall be subject to the fulfillment to the satisfaction of (including, with respect to writings, such writings being in form and substance reasonably satisfactory to the addressee or beneficiary thereof), or the waiver in writing by, the Owner Participant, the Owner Trustee, the Construction Agent or the Construction Lenders, as appropriate, of the following conditions hereunder on such date:

(a) Execution of Certain Operative Agreements. This Agreement, the Trust Agreement, the Construction Notes, the Construction Agency Agreement, the Facility Documents, the Support Documents, the Ground Lease Sublease, the Lease, the Tax Indemnity Agreement, the Security Agreement, the Construction Loan Agreement, the Leasehold Deed of Trust (Construction), the Leasehold Deed of Trust (Indenture) and the Construction Agency Agreement Assignment shall have been duly executed and delivered by the parties thereto (except

that the execution and delivery of this Agreement and the other documents referred to above by a party hereto or thereto shall not be a condition precedent to such party's obligations hereunder), shall each be in full force and effect and executed counterparts of each shall have been delivered to the Owner Participant, the Owner Trustee and the Construction Lenders or their respective counsel on or before such first date (except that (A) there shall only be one executed counterpart of each Construction Note payable to a Construction Lender, and each Construction Note shall be delivered to the payee thereof and (B) the Tax Indemnity Agreement shall only be delivered to the Owner Participant).

(b) Opinions of Counsel. The Owner Trustee, the Construction Lenders and the Owner Participant shall have received the favorable written opinion of each of:

(i) David M. Shear, General Counsel of the Lessee, substantially in the form of Exhibit G-1A;

(ii) Sidley & Austin, special counsel to the Lessee, substantially in the form of Exhibit G-1B;

(iii) Baker & Botts, L.L.P., special counsel to the Owner Trustee, substantially in the form of Exhibit H-1;

(iv) Joseph B. Schubert, Senior Counsel of the Owner Participant, substantially in the form of Exhibit I-1A;

(v) Mayer, Brown & Platt, special counsel to the Owner Participant, substantially in the form of Exhibit I-1B;

(vi) Fulbright & Jaworski LLP, special Texas counsel to the Owner Participant, substantially in the form of Exhibit I-1C;

(vii) Richards, Layton & Finger, special counsel to the Indenture Trustee, substantially in the form of Exhibit J-1;

(viii) Paul Berry, Assistant General Counsel of Bayer, substantially in the form of Exhibit K-1A;

(ix) Jones, Day, Reavis & Pogue, special counsel to Bayer, substantially in the form of Exhibit K-1B; and

(x) special local counsel as to real property and other matters, in form and substance reasonably satisfactory to the Construction Loan Agent and the Owner Participant;

provided that receipt by a party hereto of a favorable written opinion from counsel to such party shall not be a condition precedent to such party's obligations hereunder.

(c) Corporate Documents. The Owner Trustee, the Construction Lenders and the Owner Participant shall have received such documents and evidence with respect to the Lessee, the Owner Trustee, Bayer and the Owner Participant as the recipient may reasonably request in order to establish the consummation of the transactions contemplated by this Agreement and the other Operative Agreements, including corporate charters and by-laws, certificates of incumbency and evidence of the taking of all corporate and other proceedings in connection herewith and therewith and compliance with the conditions herein or therein set forth; provided that receipt by a party hereto of such documents and evidence with respect to such party shall not be a condition precedent to such party's obligations hereunder.

(d) Recordation and Filing of Lease, Etc. (i) the Ground Lease, the Ground Lease Sublease and the Lease (including any Lease Supplement) (and/or a financing statement or similar notice thereof if and to the extent permitted or required by applicable law) shall have been recorded or filed for record in such public offices as may be deemed necessary or appropriate by special counsel for

such Participant in order to (A) protect the rights of the Owner Trustee in the Units and in the balance of the Trust Estate and (B) perfect the right, title and interest of the Construction Loan Agent under the Construction Loan Agreement, and (ii) the Lessee shall provide evidence satisfactory to the Participants and their respective counsel that no Liens or other claims exist in respect of any portion of the Trust Estate in favor of any Person (other than Permitted Liens). By such recording or filing of a memorandum of the Ground Lease, the Ground Lease Sublease or the Lease (including any Lease Supplement) (and/or a financing statement or similar notice thereof), neither the Owner Trustee, the Owner Participant nor the Lessee are acknowledging or implying that the Ground Lease, the Ground Lease Sublease or Lease (including any Lease Supplement) constitutes a security agreement or creates a security interest within the meaning of the Uniform Commercial Code.

(e) Consents. All approvals and consents of any trustees or holders of any indebtedness or obligations of the Lessee which are required in connection with the transactions contemplated by this Agreement shall have been duly obtained and shall be in full force and effect.

(f) Governmental Actions. All actions, if any, required to have been taken on or prior to such first date in connection with the transactions contemplated by this Agreement shall have been taken by any Governmental Authority and all orders, permits, waivers, exemptions, authorizations and approvals of such entities required to be in effect on such first date in connection with the transactions contemplated by this Agreement shall have been issued, and all such orders, permits, waivers, exemptions, authorizations and approvals shall be in full force and effect.

(g) Satisfactory Proceedings. All proceedings taken in connection with the transactions contemplated by this Agreement, and all documents necessary to the consummation thereof or which are addressed to the Owner Participant, the Owner Trustee, the Construction Agent or the Construction Lenders, shall be satisfactory in form and substance to such Person and its respective counsel, and each such Person shall have received a copy (executed or certified as may be appropriate) of all legal documents or proceedings taken in connection with the consummation of such transactions; and all legal matters in connection with the transactions contemplated hereby shall be satisfactory to each such Person and its respective counsel.

(h) Construction Documents. The Construction Letter of Intent shall be in full force and effect and executed counterparts thereof shall have been delivered to the Owner Participant, the Owner Trustee and the Construction Lenders, or their respective counsel, on or before such date.

4.2 Conditions Precedent to Each Advance Date. The obligation of the Owner Trustee to proceed with the transactions contemplated for it on each Advance Date and of the Construction Lenders to make any Construction Advance on such date (including the first such date) shall be subject to the fulfillment to the satisfaction of, or the waiver in writing by, the Owner Participant, the Owner Trustee and the Construction Lenders, as appropriate, of the following conditions hereunder on such date:

(a) No Default. No event shall have occurred and be continuing that constitutes a Construction Agreement Default or a Construction Agreement Event of Default.

(b) Representations and Warranties. The representations and warranties of each of the Lessee, the Owner Trustee and the Owner Participant shall be true and correct in all material respects on such Advance Date with the same effect as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties were true and correct in all material respects on and as of such earlier date); and the Lessee shall have performed and complied with all agreements and conditions herein contained or contained in

any other Operative Agreement which are required to be performed or complied with by the Lessee on or before such date; and the acceptance of the proceeds of the Construction Advance on such date shall constitute a representation and warranty of the Lessee to the foregoing effect.

(c) Bill of Sale; UCC Filings. The Owner Trustee shall have received a bill of sale in substantially the form attached hereto as Exhibit O from the sellers of the Units, if any, to be settled for on such date, dated such date (which bill of sale, if not available from the vendor or manufacturer of the Units being settled for on such date, may be prepared by the Construction Agent) transferring to the Owner Trustee all right, title and interest to such Units, including, without limitation, legal and beneficial title to such Units, free and clear of all Liens; and a Uniform Commercial Code financing statement (or similar notice thereof if and to the extent permitted or required by applicable law) shall have been recorded or filed for record in such public offices as may be deemed necessary or appropriate by special counsel for the Owner Participant and the Construction Lenders (or, if not filed, shall have been delivered to special counsel for the Construction Lenders for filing in the appropriate filing offices), in order to (A) perfect the rights, titles and interests of the Owner Trustee and (B) perfect the right, title and interest of the Construction Loan Agent under the Construction Loan Agreement.

(d) No Threatened Proceedings. No action or proceeding shall have been instituted, nor shall Governmental Action be threatened before any Governmental Authority, nor shall any order, judgment or decree have been issued or proposed to be issued by any Governmental Authority at the time of such Advance Date to set aside, restrain, enjoin or prevent the completion and consummation of this Agreement or the transactions contemplated hereby.

(e) Notice. The Owner Trustee, the Construction Loan Agent and the Owner Participant shall have received the Purchase Notice or the Advance Date Notice, as the case may be, required pursuant to Section 2.3.

(f) No Illegality. No change shall have occurred after the date of the execution and delivery of this Agreement in applicable law or regulations thereunder or interpretations thereof by regulatory authorities that would make it illegal for the Owner Participant, the Owner Trustee, the Construction Agent or any Construction Lender to enter into any transaction contemplated by the Operative Agreements.

(g) Tax Law Change. No adverse change or proposed change of tax law (including any Change in Tax Law or Change in Tax Rate) shall have occurred that would not result under the Operative Agreements in a fully compensating rental adjustment.

4.3 Conditions Precedent to Investment by the Participants. The obligation of each Participant to make the investment specified with respect to such Participant in Sections 2.4, 2.5 and 2.6 (which investment may be made in whole or in part by the tendering of the Construction Note), and for the Indenture Trustee and the Owner Trustee to proceed with the transactions contemplated for it by the Operative Agreements, on the Lease Term Commencement Date shall be subject to the fulfillment to the satisfaction of (including, with respect to writings, such writings being in form and substance reasonably satisfactory to the addressee or beneficiary thereof), or the waiver in writing by, such Participant, the Owner Trustee or the Indenture Trustee, as appropriate, of the following conditions hereunder on the Lease Term Commencement Date:

(a) Execution of Certain Operative Agreements. This Agreement, the Trust Agreement, the Facility Documents, the Support Documents, the Ground Lease Sublease, the Lease, the Lease Supplements in respect of all of the Units, the Security Agreement, the Leasehold Deed of Trust (Construction), the Leasehold Deed of Trust (Indenture), the Indenture, the Construction Agency Agreement Assignment and the Note (which, in addition to the provisions of this

Section 4.3, shall comply with the provisions of Section 2.11) shall have been duly executed and delivered by the parties thereto (except that the execution and delivery of this Agreement and the other documents referred to above by a party hereto or thereto shall not be a condition precedent to such party's obligations hereunder), shall each be in full force and effect and executed counterparts of each shall have been delivered to each Participant, the Owner Trustee and the Indenture Trustee or their respective counsel on or before the Lease Term Commencement Date (except that there shall only be one executed counterpart of each Note, and each such Note shall be delivered to the payee thereof).

(b) No Default. No event shall have occurred and be continuing that constitutes a Lease Default, a Lease Event of Default, an Indenture Default or an Indenture Event of Default.

(c) Recordation and Filing of Lease, Etc. (i) the Ground Lease, the Ground Lease Sublease, the Lease, the Lease Supplement (and/or a financing statement or similar notice thereof if and to the extent permitted or required by applicable law) shall have been recorded or filed for record in such public offices as may be deemed necessary or appropriate by special counsel for such Participant in order to (A) protect the rights of the Owner Trustee in the Units and in the balance of the Trust Estate and (B) perfect the right, title and interest of the Indenture Trustee under the Indenture, and (ii) the Lessee shall provide evidence satisfactory to the Participants and their respective counsel that no Liens or other claims exist in respect of any Unit or any other portion of the Trust Estate or on the Indenture Estate, in each case, in favor of any Person (other than Permitted Liens) or exist as a result of any right, claim or interest in favor of any Person owning or holding any interest in the Premises or that appropriate waivers and/or terminations of such Liens or other claims have been obtained and recorded or filed for record in all necessary public offices; provided, however, that, in the case of Permitted Liens described in clause (iv) of the definition of Permitted Liens, on the Lease Term Commencement Date there shall be no Liens in favor of ICF Kaiser Engineers, Inc. or any of its subcontractors which shall not have been waived or duly paid or otherwise provided for. By such recording or filing of a memorandum of the Ground Lease, the Ground Lease Sublease, the Lease or Lease Supplement (and/or a financing statement or similar notice thereof), neither the Owner Trustee, the Owner Participant nor the Lessee are acknowledging or implying that the Ground Lease, Ground Lease Sublease or Lease constitutes a "security agreement" or creates a "security interest" within the meaning of the Uniform Commercial Code.

(d) Closing Certificate of the Lessee. The Owner Trustee, the Indenture Trustee and each Participant shall have received an Officer's Certificate of the Lessee dated such date, to the effect that the representations and warranties of the Lessee contained in Sections 3.2 and 3.5(b) are true and correct in all material respects on the Lease Term Commencement Date with the same effect as though made on and as of said date, except to the extent that the representations and warranties relate solely to an earlier date (in which case such representations and warranties were true and correct in all material respects on and as of such earlier date), and that the Lessee has performed and complied with all agreements and conditions contained in any Operative Agreement which are required to be performed or complied with by the Lessee on or before said date.

(e) Closing Certificate of the Owner Trustee. The Indenture Trustee and each Participant shall have received an Officer's Certificate of the Owner Trustee, in its individual capacity and as Owner Trustee, dated such date, to the effect that the representations and warranties of the Owner Trustee, in its individual capacity and as Owner Trustee, contained in Sections 3.1 and 3.5(a) are true and correct in all material respects on the Lease Term Commencement Date with the same effect as though made on and as of said date, except to the extent that such representations and warranties relate solely to an earlier

date (in which case such representations and warranties were true and correct in all material respects on and as of such earlier date), and that the Owner Trustee, in its individual capacity and as Owner Trustee, has performed and complied with all agreements and conditions contained in any Operative Agreement which are required to be performed or complied with by the Owner Trustee, in its individual capacity and as Owner Trustee, on or before said date. The delivery of the foregoing certificate shall not be a condition precedent to the Owner Trustee's obligations hereunder.

(f) Closing Certificate of the Owner Participant. The Owner Trustee, the Indenture Trustee and the Note Purchaser shall have received an Officer's Certificate of the Owner Participant dated such date, to the effect that the representations and warranties of the Owner Participant contained in Sections 3.4 and 3.5(d) are true and correct in all material respects on the Lease Term Commencement Date with the same effect as though made on and as of said date, except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties were true and correct in all material respects on and as of such earlier date), and that the Owner Participant has performed and complied with all agreements and conditions contained in any Operative Agreement which are required to be performed or complied with by the Owner Participant on or before said date. The delivery of the foregoing certificate shall not be a condition precedent to the Owner Participant's obligations hereunder.

(g) Closing Certificate of the Indenture Trustee. The Owner Trustee and each Participant shall have received an Officer's Certificate of the Indenture Bank, in its individual capacity and as Indenture Trustee, dated such date, to the effect that the representations and warranties of the Indenture Bank, in its individual capacity and as Indenture Trustee, contained in Section 3.3 are true and correct in all material respects on the Lease Term Commencement Date with the same effect as though made on and as of said date, except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties were true and correct in all material respects on and as of such earlier date), and that the Indenture Bank, in its individual capacity and as Indenture Trustee, has performed and complied with all agreements and conditions contained in any Operative Agreement which are required to be performed or complied with by the Indenture Bank, in its individual capacity and as Indenture Trustee on or before said date. The delivery of the foregoing certificate shall not be a condition precedent to the Indenture Trustee's obligations hereunder.

(h) Opinions of Counsel. The Owner Trustee, the Indenture Trustee and each Participant shall have received the favorable written opinion of each of:

(i) David M. Shear, General Counsel of the Lessee, substantially in the form of Exhibit G-2A;

(ii) Sidley & Austin, special counsel to the Lessee, substantially in the form of Exhibit G-2B;

(iii) Baker & Botts, L.L.P., special counsel to the Owner Trustee, substantially in the form of Exhibit H-2;

(iv) Joseph B. Schubert, Senior Counsel of the Owner Participant, substantially in the form of Exhibit I-2A;

(v) Mayer, Brown & Platt, special counsel to the Owner Participant, substantially in the form of Exhibit I-2B;

(vi) Fulbright & Jaworski LLP, special Texas counsel to the Owner Participant, substantially in the form of Exhibit I-2C;

(vii) Richards, Layton & Finger, special counsel to the Indentured Trustee, substantially in the form of Exhibit J-2;

(viii) Paul Berry, Assistant General Counsel of Bayer, substantially in the form of Exhibit K-2A;

(ix) Jones, Day, Reavis & Pogue, special counsel to Bayer, substantially in the form of Exhibit K-2B; and

(x) special local counsel as to real property and other matters, in form and substance reasonably satisfactory to the Participants;

provided that receipt by a party hereto of a favorable written opinion from counsel to such party shall not be a condition precedent to such party's obligations hereunder.

(i) Title. After giving effect to the transactions contemplated hereby on the Lease Term Commencement Date, the Owner Trustee shall have legal title to and the ownership of each and every Unit, free and clear of all Liens, except for Permitted Liens.

(j) Insurance. (i) the insurance coverages required pursuant to Section 12 of the Lease (including the self-insurance provisions thereof) shall be in full force and effect and (ii) the Owner Trustee, the Indenture Trustee and each Participant shall have received the report of the Lessee's independent insurance broker required pursuant to Section 12 of the Lease together with certificates of insurance evidencing the insurance then carried and maintained on the Units.

(k) Corporate Documents. The Owner Trustee, the Indenture Trustee and each Participant shall have received such documents and evidence with respect to the Lessee, Bayer, the Owner Trustee, the Indenture Trustee and the Owner Participant as the recipient may reasonably request in order to establish the consummation of the transactions contemplated by this Agreement and the other Operative Agreements, including corporate charters and by-laws, good standing certificates, certificates of incumbency and evidence of the taking of all corporate and other proceedings in connection herewith and therewith and compliance with the conditions herein and therein set forth; provided that receipt by a party hereto of such documents and evidence with respect to such party shall not be a condition precedent to such party's obligations hereunder.

(l) No Threatened Proceedings. No action or proceeding shall have been instituted, nor shall Governmental Action be threatened before any Governmental Authority, nor shall any order, judgment or decree have been issued or proposed to be issued by any Governmental Authority at the time of the Lease Term Commencement Date to set aside, restrain, enjoin or prevent the completion and consummation of this Agreement or the transactions contemplated hereby.

(m) Lease Term Commencement Notice. The Owner Trustee, the Indenture Trustee and each Participant shall have received the Notice of Lease Commencement required pursuant to Section 2.6(a).

(n) No Illegality. No change shall have occurred after the date of the execution and delivery of this Agreement in applicable law or regulations thereunder or interpretations thereof by regulatory authorities that would make it illegal for any Participant or any Trustee to enter into any transaction contemplated by the Operative Agreements.

(o) Related Transactions. The Note Purchaser shall have purchased its Note in the amount specified in, and otherwise in accordance with, Sections 2.5 and 2.6, the Owner Participant shall have advanced funds in the amount specified in, and otherwise in accordance with Sections 2.4, 2.6, and, with respect to Excluded Transaction Costs, 2.8(a); and the Owner Trustee shall have received the

proceeds thereof; provided that the purchase or advance by a Participant shall not be a condition precedent to such Participant's obligations hereunder.

(p) Consents. All approvals and consents of any trustees or holders of any indebtedness or obligations of the Lessee which are required in connection with the transactions contemplated by this Agreement shall have been duly obtained and shall be in full force and effect.

(q) Governmental Actions. All actions, if any, required to have been taken on or prior to the Lease Term Commencement Date in connection with the transactions contemplated by this Agreement on the Lease Term Commencement Date shall have been taken by any Governmental Authority and all orders, permits, waivers, exemptions, authorizations and approvals of such entities required to be in effect on the Lease Term Commencement Date in connection with the transactions contemplated by this Agreement on the Lease Term Commencement Date shall have been issued, and all such orders, permits, waivers, exemptions, authorizations and approvals shall be in full force and effect.

(r) Equipment Cost Certificate. The Owner Trustee, the Indenture Trustee and each Participant shall have received an Officer's Certificate of the Lessee certifying that the Equipment Cost of each Unit is the amount shown on the appropriate Lease Supplement.

(s) Private Placement Certificate. Each Participant, the Owner Trustee and the Indenture Trustee shall have received a certificate (the Private Placement Certificate), substantially in the form of Exhibit L hereto, from Bank of America, dated the Lease Term Commencement Date, with respect to offerees of the Beneficial Interest and the Note.

(t) Satisfactory Proceedings. All proceedings taken in connection with the transactions contemplated by this Agreement and the other Operative Agreements, and all documents necessary to the consummation thereof or which are addressed to the Participants or the Trustees shall be satisfactory in form and substance to the Participants and the Trustees and their respective counsel, and each such Person shall have received a copy (executed or certified as may be appropriate) of all legal documents or proceedings taken in connection with the consummation of such transactions; and all legal matters in connection with the transactions contemplated hereby and thereby shall be satisfactory to each such Person and its respective counsel.

(u) Environmental Report. On or before the Lease Term Commencement Date, the Owner Participant and the Note Purchaser shall have received a written environmental assessment of the soil conditions at the Premises from an independent environmental consultant selected by the Lessee and approved by the Owner Participant, in form and substance satisfactory to the Owner Participant and the Note Purchaser, which assessment is expected to be provided on or about August 31, 1997.

(v) Completion. Completion shall have occurred.

(w) Lien Waivers. On the Lease Term Commencement Date, the Owner Participant and the Note Purchaser shall have received copies of each subcontractor's lien waiver (required pursuant to the Turnkey Construction Contract) delivered to the Construction Agent on or prior to the Lease Term Commencement Date.

4.4 Additional Conditions Precedent to Investment by the Owner Participant. The obligation of the Owner Participant to make its investment specified in Section 2.4 and to pay Excluded Transaction Costs on the Lease Term Commencement Date shall be subject to the fulfillment to the satisfaction of (including, with respect to writings, such writings being in form and substance reasonably satisfactory to the Owner Participant), or the waiver in writing by, the Owner Participant of the following additional conditions:

(a) Appraisal. On or before the Lease Term

Commencement Date, the Owner Participant shall have received an opinion (the "Appraisal") of Accuval concluding that: (i) the fair market value in place and in use of each Unit on the Lease Term Commencement Date is equal to the Equipment Cost of such Unit; (ii) the anticipated remaining economic useful life of the Units does not exceed 125% of the base Lease Term (excluding any period prior to the Lease Term Commencement Date) and does not exceed the term of the Ground Lease or the Ground Lease Sublease; (iii) without taking into account inflation or deflation from and after the Lease Term Commencement Date, it is reasonable to expect that at the end of the Lease Term, (A) each Unit will have a fair market value of at least 20% of Equipment Cost therefor and (B) all of the Units will have a fair market value of at least 20% of Total Equipment Cost; (iv) the estimated fair market value of the Units at the end of the base Lease Term, taking into account a prudent and supportable rate of inflation or deflation, is no greater than the Fixed Price Purchase Option Amount for the Units; (v) the use of the Units at the end of the base Lease Term by Lessor or by a Person, other than Lessee or any person related to Lessee within the meaning of Section 318 of the Code (a Lessee Related Person), who could lease or purchase the Units from Lessor, will be commercially feasible to Lessor or such other Person; (vi) (A) not less than 95% of the Units constitute tangible personal property for U.S. federal income tax purposes and as described in Asset Class 28.0 Manufacture of Chemicals and Allied Products under U.S. Rev. Proc. 87-56 or otherwise constitute 5-year recovery property, and (B) not more than 5% of the Units constitute nonresidential real property; (vii) assuming the enforceability thereof, the Operative Agreements grant Lessor all rights necessary to operate the Units in commercial operation at design capacity and do not restrict the Lessor's right to sell the output thereof to parties other than a Lessee Related Person for the remaining economic life of the Units at their installed location; and (viii) on the Lease Term Commencement Date, the Units will be in service and ready and available to perform their assigned function at design capacity and none of the Units requires any improvement or modification to perform its specifically assigned function.

(b) Opinion with Respect to Certain Tax Aspects. On the Lease Term Commencement Date, the Owner Participant shall have received the opinion of Mayer, Brown & Platt, its special tax counsel, addressed, and in form and substance satisfactory, to the Owner Participant containing such counsel's favorable opinion with respect to such federal tax matters as the Owner Participant may request.

(c) Tax Indemnity Agreement. On or before the first Advance Date, the Tax Indemnity Agreement shall have been duly executed and delivered by the Lessee and, assuming due authorization, execution and delivery by the Owner Participant, the Tax Indemnity Agreement shall be in full force and effect.

(d) Tax Law Change. On or before the Lease Term Commencement Date, no Change in Tax Law shall have occurred or shall have been proposed which in the Owner Participant's reasonable judgment would adversely affect the Owner Participant's investment in the Units or the Lease and for which an adjustment is not permitted pursuant to Section 2.9(a).

(e) Engineering Report. On or before the Lease Term Commencement Date, the Owner Participant shall have received a written Engineering Report (the "Engineering Report") regarding all of the Units as installed on the Premises from an independent engineering consulting firm selected by the Owner Participant and the Construction Agent, which Engineering Report shall be in form and substance satisfactory to the Owner Participant.

4.5 Additional Conditions Precedent to Purchase by the Note Purchaser. The obligation of the Note Purchaser to purchase and pay for its Note to be delivered pursuant hereto on the Lease Term Commencement Date shall be subject to the fulfillment to the satisfaction of (including, with respect to writings, such writings being in form and substance reasonably satisfactory to

such Note Purchaser), or the waiver in writing by, such Note Purchaser of the following additional conditions:

(a) Note. The Note Purchaser shall have received its Note.

(b) Recording of Indenture. On or before the Lease Term Commencement Date, the Indenture (and/or a financing statement or similar notice thereof, if and to the extent permitted or required by applicable law) shall have been recorded or filed in such public offices as may be deemed necessary or appropriate by special counsel to the Note Purchaser in order to perfect the first priority Lien and security interest provided by the Indenture as against creditors of and purchasers from the Owner Trustee and the Lessee.

(c) Legal Investment. The Note to be issued on the Lease Term Commencement Date shall on the Lease Term Commencement Date qualify as a legal investment for the Note Purchaser under any laws regulating investments to which it may be subject (without recourse to provisions in any such law permitting limited investments without restriction as to the character of the particular investment), and such Note Purchaser shall have received such evidence as it may reasonably request to establish compliance with this condition.

(d) Opinion of Counsel. On the Lease Term Commencement Date, the Note Purchaser shall have received the favorable written opinion, dated the Lease Term Commencement Date, of (i) White & Case, its special counsel, and (ii) Fulbright & Jaworski LLP, its special Texas counsel, in each case with respect to such matters as the Note Purchaser shall reasonably request.

(e) Revised Schedules. The Owner Participant shall have delivered to the Note Purchaser revised Schedules 2, 3, 4, 5 and 6 hereto pursuant to Section 2.6(a) and the Note Purchaser shall be satisfied that such Schedules comply with Sections 2.9(c) and (d).

(f) Appraisal. On or before the Lease Term Commencement Date, the Note Purchaser shall have received a letter from Accuval describing: (i) the fair market value of all of the Units taken together as a whole as of the Lease Term Commencement Date, (ii) the economic useful life of all of the Units and (iii) the estimated fair market value of all of the Units, as of the expiration of the Lease Term, taking into account inflation and deflation.

(g) Completion. Completion shall have occurred.

(h) Swap Agreement. Without cost to it, the Note Purchaser shall have the benefit of an interest rate swap agreement with counterparties reasonably acceptable to the Note Purchaser containing the following terms: (i) the term of the swap agreement shall be ten years; (ii) the notional principal amount of the swap agreement shall be approximately \$60,000,000; and (iii) the monthly payments to be made available to the Note Purchaser under the swap agreement shall be calculated by reference to a floating rate equal to the sum of the LIBO Rate, plus 29 basis points (such swap agreement, the "Swap Agreement"). Bank of America agrees to arrange for such Swap Agreement on such terms on or before the Lease Term Commencement Date.

#### 4.6 Conditions Precedent to the Obligation of the Lessee.

The obligation of the Lessee with respect to the consummation of the transactions to occur on and after the Lease Term Commencement Date shall be subject to the fulfillment to the satisfaction of (including, with respect to writings, such writings being in form and substance reasonably satisfactory to the Lessee), or the waiver in writing by, the Lessee of the following conditions; provided, however, that the following shall not limit the obligations of Bayer under the Bayer Letter or the Bayer Support Agreement:

(a) Operative Agreements. On or before the Lease Term Commencement Date, the Operative Agreements shall have been duly authorized, executed and delivered by the parties

thereto (other than the Lessee), shall each be in full force and effect and executed counterparts of each (except for the Note) shall have been delivered to the Lessee or its special counsel on or before the Lease Term Commencement Date.

(b) Representations and Warranties True. On the Lease Term Commencement Date, the representations and warranties of the Owner Trustee, the Owner Participant, the Indenture Trustee and the Note Purchaser contained in Section 3 hereof shall be true and correct in all material respects as of the Lease Term Commencement Date as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties were true and correct in all material respects on and as of such earlier date), and the Lessee shall have received an Officer's Certificate dated such date from each of the Owner Trustee as described in Section 4.3(e), the Owner Participant as described in Section 4.3(f) and the Indenture Trustee as described in Section 4.3(g), addressed to the Lessee and certifying as to the foregoing matters insofar as they relate to the Owner Trustee, the Owner Participant and the Indenture Trustee, as the case may be.

(c) Opinions of Counsel. On the Lease Term Commencement Date, the Lessee shall have received the opinions of counsel referred to in Section 4.3(h) (other than those set forth in clauses (i), (vi), (vii) and (viii) therein), addressed to the Lessee.

(d) Corporate Documents. On the Lease Term Commencement Date, the Lessee shall have received such documents and evidence with respect to the Owner Trustee, the Indenture Trustee and the Owner Participant as the Lessee may reasonably request in order to establish the consummation of the transactions contemplated by this Agreement and the other Operative Agreements, including corporate charters and by-laws, certificates of incumbency and evidence of the taking of all corporate and other proceedings in connection herewith and therewith and compliance with the conditions herein and therein set forth.

(e) No Threatened Proceedings. No action or proceeding shall have been instituted, nor shall any Governmental Action be threatened before any Governmental Authority, nor shall any order, judgment or decree have been issued or proposed to be issued by any Governmental Authority at the time of the Lease Term Commencement Date to set aside, restrain, enjoin or prevent the completion and consummation of this Agreement or the transactions contemplated hereby; provided that any such action or proceeding instituted or threatened by the Lessee or any of its Affiliates shall not be a condition precedent to the Lessee's obligations hereunder.

(f) Owner Participant's Investment; Issuance of Note. (i) The Owner Participant shall have made available on the Lease Term Commencement Date the portion of its Commitment and Excluded Transaction Costs in the amounts specified in, and otherwise in accordance with, Sections 2.4, 2.6 and 2.8(a), and (ii) the Note Purchaser shall have purchased its Note in the amount specified in, and otherwise in accordance with, Sections 2.5 and 2.6.

(g) Revised Schedules. The Owner Participant shall have delivered to the Lessee, the Owner Trustee and the Indenture Trustee revised Schedules 2, 3, 4, 5 and 6 hereto pursuant to Section 2.6(a).

(h) Private Placement Certificate. The Lessee shall have received an executed counterpart of the Private Placement Certificate.

(i) No Change in Law or Material Rent Adjustment. No change of law shall have occurred that, in the opinion of Lessee, renders the transactions contemplated herein illegal; and no rent adjustment shall be proposed which, in the opinion of Lessee, renders the transactions uneconomic to Lessee, provided that if all adjustments to Base Rent result in an increase of the present value of Base Rent (other than adjustments relating to the interest rate upon

the Debt) by less than 200 basis points, such adjustments shall not be deemed to be uneconomic.

(j) Completion. Completion shall have occurred, provided, however, that any failure of completion to occur which is a result of the actions or inactions of the Lessee shall not be deemed a failure of Completion for purposes of this Section 4.6.

4.7 Opinion Acknowledgment. Each of the parties hereto, with respect to such party, expressly consents to the rendering by its counsel of the opinion referred to in Sections 4.1(b), 4.3(h), 4.5(d) and 4.6(c) and acknowledges that such opinion shall be deemed to be rendered at the request and upon the instructions of such party, each of whom has consulted with and has been advised by its counsel as to the consequences of such request, instructions and consent.

4.8 Further Condition To Participants' Commitment. The obligation of each Construction Lender to make any Construction Advance, and the obligation of each Participant to make its investment specified in Section 2 on the Lease Term Commencement Date, shall be further subject to the condition that no material adverse change shall have occurred in (x) the condition, financial or otherwise, of the Lessee or Bayer from its condition as of December 31, 1996, and (y) Bayer's ability to perform its obligations under the Support Documents.

## SECTION 5 FINANCIAL AND OTHER REPORTS OF THE LESSEE

(a) Financial Statements. The Lessee covenants and agrees that it will furnish directly to the Owner Participant, the Owner Trustee, each Construction Lender, the Construction Loan Agent, each holder of a Note and the Indenture Trustee the following:

(i) Interim Financials. As soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year of LSB, an unaudited consolidated balance sheet of LSB and its Subsidiaries (including the Lessee) as at the end of such period, together with the related unaudited consolidated statements of income and expense of LSB and its Subsidiaries (including the Lessee) for the period beginning on the first day of such fiscal year and ending on the last day of such quarterly period, all in reasonable detail and prepared in accordance with GAAP, and certified as true, correct and complete, subject to changes resulting from year-end adjustments, by a Senior Financial Officer; and

(ii) Audited Report. As soon as available and in any event within 120 days after the last day of each fiscal year of LSB, audited consolidated balance sheet, statement of income and expense, retained earnings, and statements of cash flows and stockholders' equity for LSB and its Subsidiaries (including the Lessee) for such fiscal year, and the accompanying notes thereto, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP; such financial statements shall be certified by a firm of independent certified public accountants of recognized international standing selected by LSB, without qualification relating to scope of audit.

(b) Reports to the Securities and Exchange Commission. As soon as available, the Lessee shall furnish to the Owner Participant, the Owner Trustee, each Construction Lender, the Note Purchaser and the Indenture Trustee one copy of each publicly filed proxy statement, financial statement or report (including, without limitation, each Annual Report on Form 10-K (or any successor form), each Quarterly Report on Form 10-Q (or any successor form) and each Report on Form 8-K), or proxy statement filed under the Securities Exchange Act of 1934, as amended, sent by LSB or the Lessee, as the case may be, or any Subsidiary of either to stockholders generally, in respect thereof filed by LSB or the Lessee or any such

Subsidiary with, the National Association of Securities Dealers, any securities exchange or the Securities and Exchange Commission or any successor agency.

(c) Compliance Certificate. Within the time periods prescribed in Sections 5(a)(i) and 5(a)(ii), the Lessee shall send to the Owner Participant, the Owner Trustee, each Construction Lender, the Note Purchaser and the Indenture Trustee a certificate, signed by a Responsible Officer of the Lessee, to the effect that the signer is familiar with the relevant terms of the Operative Agreements and has reviewed, or caused to be made under signer's supervision a review of, the activities of the Lessee and that, to the best of his or her knowledge, no Lease Default or Lease Event of Default exists, or if a Lease Default or Lease Event of Default exists or did exist, specifying such Lease Default or Lease Event of Default and the nature, period of existence and status thereof and what action the Lessee has taken or proposes to take with respect thereto.

(d) Defaults. The Lessee shall promptly notify the Owner Participant, the Owner Trustee, each Construction Lender, the Note Purchaser and the Indenture Trustee in writing of the occurrence of any Lease Default or Lease Event of Default, and what action the Lessee has taken or proposes to take with respect thereto.

(e) Other Information. The Lessee shall send to the Owner Participant, the Owner Trustee, each Construction Lender, the Construction Loan Agent, the Note Purchaser and the Indenture Trustee from time to time, such additional information as the Owner Participant, the Owner Trustee, any Construction Lender, the Construction Loan Agent, any holder of a Note or the Indenture Trustee may reasonably request.

#### SECTION 6 CERTAIN COVENANTS OF THE PARTICIPANTS, THE OWNER TRUSTEE, THE INDENTURE TRUSTEE AND THE LESSEE

6.1 Restrictions on Transfer of Beneficial Interest. The Owner Participant covenants and agrees with and for the benefit of the other parties to this Agreement that without the consent of the Lessee and a Majority In Interest, the Owner Participant will not sell, convey, assign or otherwise transfer all or a portion of its Beneficial Interest or its right and interest in and to this Agreement, the Tax Indemnity Agreement, the Trust Agreement and the other Operative Agreements prior to the expiration or earlier termination of the Lease Term (except by merger or consolidation) unless:

(a) Transferee Qualifications. The Person to whom such transfer is to be made (a "Transferee") is an Eligible OP Assignee.

(b) Notice. The Owner Trustee, Indenture Trustee and the Lessee shall have received 15 days' prior written notice of such transfer specifying the name and address of any proposed Transferee and such additional information as shall be necessary to determine whether the proposed transfer satisfies the requirements of this Section 6.1.

(c) Transfer Agreement and Opinion of Counsel. Such Transferee enters into an agreement substantially in the form of Exhibit N hereto and provides the Indenture Trustee, the Note Purchaser, the Owner Trustee and the Lessee with an opinion of counsel (whose fees and expenses shall not be the obligation of the Lessee) covering the matter referred to in clause (d) below and stating that such agreement has been duly authorized, executed and delivered by such Transferee and constitutes the legal, valid and binding contract of such Transferee, enforceable against such Transferee in accordance with its terms (subject to customary qualifications).

(d) No Violation of Law. Such transfer complies in all respects with and does not violate any applicable law.

(e) Expenses. All fees, expenses and charges of the parties hereto (including, without limitation, reasonable legal fees and expenses of special counsel) incurred in connection with each transfer of such Beneficial Interest is paid by an Owner Participant, as specified in the agreement

entered into pursuant to Section 6.1(c).

(f) ERISA. Such Transferee makes the representation set forth in Section 3.4(i) to the parties hereto.

(g) Default. As a result of such transfer, no Indenture Default attributable to the Owner Participant or the Owner Trustee shall have occurred and be continuing.

(h) Non-Competitor. Such Transferee is not a Competitor, unless the Lessee and Bayer shall have otherwise consented in writing.

(i) Number of Owner Participants. After giving effect to such transfer, there are no more than three (3) Owner Participants.

In connection with any such transfer, the Lessee shall represent to the Transferee that no Lease Default, Lease Event of Default or, except as disclosed pursuant to the Lease, Event of Loss then exists. Upon any such transfer (x) except as the context otherwise requires, such Transferee shall be deemed an Owner Participant for all purposes, and shall enjoy the rights and privileges and perform the obligations of the transferor Owner Participant to the extent of the interest transferred hereunder and under each other Operative Agreement to which the transferor Owner Participant is a party, and, except as the context otherwise requires, each reference in this Agreement and each other Operative Agreement to the Owner Participant shall thereafter be deemed to include such Transferee for all purposes to the extent of the interest transferred, and (y) the transferor shall be released from all obligations hereunder and under each other Operative Agreement to which such transferor is a party or by which such transferor is bound to the extent such obligations are expressly assumed by a Transferee. In no event shall any such transfer or assignment waive or release the transferor from any liability on account of any breach existing immediately prior to such transfer of any of its representations, warranties, covenants or obligations set forth in the Operative Agreements or for any fraudulent or willful misconduct. Any transfer, conveyance or assignment of the Owner Participant's Beneficial Interest hereunder in violation of this Section 6.1 shall be void and of no effect, unless such transfer, conveyance or assignment, on its face, at the time of occurrence appears to comply with the requirements of this Section 6.1; and the effectiveness of a transfer, conveyance or assignment which appears on its face to comply with the requirements of this Section 6.1, however, shall not impair any other right or remedy which any party may have as a result of such transfer, conveyance or assignment actually violating this Section 6.1. In the event that there is more than one Owner Participant, any consent, waiver or amendment with respect to the Operative Agreements may be given by those Owner Participants that hold more than 50% of the aggregate amount invested by the Owner Participants, except that without the consent of each Owner Participant affected thereby, no consent, amendment or waiver may (i) reduce any amount payable as Basic Rent or Supplemental Rent, or change the date on which any such amount is payable, (ii) create or allow any Liens on the Units other than Permitted Liens, (iii) affect any Excepted Property or (iv) reduce the percentage required to approve consents, waivers and amendments set forth in this sentence.

6.2 Liens Attributable to the Owner Participant. The Owner Participant covenants and agrees with and for the benefit of the other parties to this Agreement that the Owner Participant will not directly or indirectly create, incur, assume or suffer to exist: (a) any Lessor's Liens created by it (whether or not through its act or failure to act), or (b) any Lessor's Liens arising as a result of taxes described in clause (iii) of the definition of Lessor's Liens which are imposed against the Owner Trustee (not in its individual capacity but solely as Owner Trustee); and the Owner Participant agrees that it will, at its own cost and expense, take such action as may be necessary to duly discharge and satisfy in full any such Lessor's Lien (by bonding or otherwise); provided that the Owner Participant may contest any such Lessor's Lien in good faith by appropriate proceedings so long as such proceedings do not involve any material danger of the sale, forfeiture or loss of the Trust Estate or any interest therein and do not interfere with the use, operation or possession of the Units by the Lessee under the Lease or the rights, titles and interests of the Construction

Loan Agent under the Construction Loan Agreement or the Indenture Trustee under the Indenture. The Owner Participant agrees to hold harmless the other parties to this Agreement from and against any loss, cost or expense (including reasonable legal fees and disbursements) as the result of the existence of any such Lessor's Lien or the failure of the Owner Participant to discharge and satisfy any such Lessor's Lien.

6.3 Lessor's Liens Attributable to the Owner Trustee. Boatmen's covenants and agrees with and for the benefit of the other parties to this Agreement that Boatmen's will not directly or indirectly create, incur, assume or suffer to exist any Lessor's Liens attributable to it (whether or not through its act or failure to act), and Boatmen's agrees that it will, at its own cost and expense, take such action as may be necessary to duly discharge and satisfy in full any such Lessor's Lien (by bonding or otherwise). Boatmen's agrees to hold harmless the other parties to this Agreement from and against any loss, cost or expense (including reasonable legal fees and disbursements) as the result of the existence of any such Lessor's Lien or the failure of Boatmen's to discharge and satisfy any such Lessor's Lien.

6.4 Liens Created by the Indenture Trustee. The Indenture Trustee, in its individual capacity, covenants and agrees with and for the benefit of the other parties to this Agreement that: (a) it shall not cause or permit to exist any Lien on the Units or all or any other portion of the Trust Estate or the Indenture Estate arising as a result of (i) claims against the Indenture Trustee, in its individual capacity, not related to its interest in the Units or any other portion of the Trust Estate, or the administration of the Indenture Estate pursuant to the Indenture, (ii) acts, or failures to act, of the Indenture Trustee, in its individual capacity, not contemplated, or failure of the Indenture Trustee to take any action it is expressly required to perform, by the Operative Agreements, (iii) claims against the Indenture Trustee in its individual capacity relating to taxes or expenses that are not indemnified against by the Lessee pursuant to Section 7 attributable to the Indenture Trustee, in its individual capacity, or (iv) claims against the Indenture Trustee arising out of the transfer by the Indenture Trustee (without the consent of the Lessee and the Owner Trustee and not pursuant to the direction of the holders of Notes pursuant to the terms of the Indenture) of all or any portion of its interest in the Units, the Indenture Estate or the Operative Agreements, other than a transfer expressly contemplated by the Operative Agreements; and (b) the Indenture Trustee will, at its own cost and expense (and without any right of reimbursement from any other party hereto), promptly take such action as may be necessary to duly discharge and satisfy in full any such Lien (by bonding or otherwise). The Indenture Trustee agrees to hold harmless the other parties to this Agreement from and against any loss, cost or expense (including reasonable legal fees and disbursements) as the result of the existence of any such Lien or the failure of the Indenture Trustee to discharge and satisfy any such Lien.

6.5 Certain Covenants of the Owner Trustee, the Owner Participant and Boatmen's. The Owner Participant and Boatmen's hereby covenant and agree, severally and not jointly, with and for the benefit of the Lessee, the Indenture Trustee, the Construction Loan Agent, the Construction Lenders and the Note Purchaser: (a) not to amend, supplement or otherwise modify any provision of the Trust Agreement in such a manner as to adversely affect the rights of the Lessee, the Indenture Trustee, the Construction Loan Agent, the Construction Lenders or the Note Purchaser, without the prior written consent of the affected party and (b) not to terminate or revoke the Trust Agreement, or the trust created by the Trust Agreement, and such trust shall not be subject to revocation or termination by the Owner Participant, prior to the latest of (i) payment in full and discharge of the Construction Advances and all other indebtedness secured by the Construction Loan Agreement, (ii) payment in full and discharge of the Notes and all other indebtedness secured by the Indenture and the final discharge thereof pursuant to Section 10.1 thereof and (iii) the expiration or early termination of the Lease and (c) so long as the Lien of the Indenture has not been discharged in accordance with the terms thereof, not to declare a Lease Event of Default under the Lease except as expressly permitted by the terms of the Indenture.

6.6 Lessee's Merger Covenant. (a) The Lessee shall not consolidate with or merge into any other Person, or permit any other Person to merge or consolidate with or into it, or convey, transfer or lease substantially all of its assets as an entirety to any Person without the consent of the Owner Participant, the Required Construction Lenders and the Construction Loan Agent (for so long as any Construction Advance is outstanding) and a Majority In Interest unless (i) the Person formed by such consolidation or surviving such merger (if other than the Lessee) or the Person which acquires by conveyance, transfer or lease substantially all of the assets of the Lessee as an entirety (A) is a domestic corporation organized and existing under the laws of the United States of America or a political subdivision thereof, and (B) shall execute and deliver to the Owner Trustee, the Owner Participant, the Indenture Trustee, the Construction Lenders, the Construction Loan Agent and the Note Purchaser an agreement, in form and substance satisfactory to the Owner Trustee, the Owner Participant, the Indenture Trustee, the Required Construction Lenders and the Construction Loan Agent (for so long as any Construction Advance is outstanding) and a Majority In Interest, containing the express assumption by such successor Person of the due and punctual performance and observance of each covenant and condition of this Agreement and each of the other Operative Agreements to be performed or observed by the Lessee, (ii) immediately prior to and immediately after giving effect to such transaction, no Lease Default or Lease Event of Default shall have occurred, whether as a result of such consolidation or merger or such conveyance, transfer or lease or otherwise, (iii) immediately after giving effect to such transaction, such successor Person shall be in compliance with all of the terms and conditions of the Operative Agreements and (iv) such successor Person shall deliver to the Owner Trustee, Owner Participant, the Indenture Trustee, the Construction Lenders and the Construction Loan Agent (for so long as any Construction Advance is outstanding) and the Note Purchaser (x) an opinion of counsel, which counsel shall be reasonably satisfactory to the Owner Trustee, the Owner Participant, the Indenture Trustee, the Required Construction Lenders and the Construction Loan Agent (for so long as any Construction Advance is outstanding) and a Majority In Interest and (y) an Officer's Certificate of a Responsible Officer of the Lessee to the effect that such merger, consolidation, conveyance, transfer or lease and such agreement described in clause (i)(B) above comply with this Section 6.6, that such agreement is a legal, valid and binding obligation of, and is enforceable against, such successor Person, and that all conditions precedent relating to such transaction provided in this Section 6.6 have been complied with. Upon such consolidation or merger, or any conveyance, transfer or lease of substantially all of the assets of the Lessee as an entirety in accordance with this Section 6.6, the successor Person formed by such consolidation or into which the Lessee is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Lessee, as the case may be, under this Agreement and the other Operative Agreements with the same effect as if such successor Person had been named as the Lessee herein and therein. No such consolidation, merger, conveyance, transfer or lease of all or substantially all of the assets of the Lessee as an entirety shall have the effect of releasing the Lessee or any successor Person from its liability under the Operative Agreements. Nothing contained in this Section 6.6 shall permit any lease, sublease, assignment or other arrangement for the use, operation or possession of the Units except in compliance with the applicable provisions of the Lease.

#### 6.7 Lessee Not to Own Notes or Beneficial Interest.

(a) Neither the Lessee nor any of its Affiliates nor any ERISA Plan sponsored by the Lessee or any of its Affiliates, will at any time own any of the Notes.

(b) Neither the Lessee nor any of its Affiliates will at any time own any of the Beneficial Interest unless the Owner Trustee, the Owner Participant, the Indenture Trustee, the Construction Loan Agent (for so long as any Construction Advance is outstanding), the Required Construction Lenders (for so long as any Construction Advance is outstanding) and a Majority In Interest consent thereto; provided that neither the Lessee nor any of its Affiliates shall acquire any of the Beneficial Interest if such acquisition would result in a prohibited transaction (as defined in Section 406 of ERISA or section 4975

of the Code).

#### 6.8 Broker's Fees.

(a) Lessee. The Lessee covenants and agrees that it will hold the Owner Participant, the Owner Trustee, the Indenture Trustee, the Construction Lenders, the Construction Loan Agent and each holder of a Note harmless from and against any claim, demand or liability for any broker's, finder's or placement fees or commission alleged to have been incurred as a result of any action by the Lessee in connection with the transactions contemplated by the Operative Agreements, except for any such fee or commission included in Transaction Costs.

(b) The Owner Participant. The Owner Participant covenants and agrees that it will hold the Lessee, the Owner Trustee, the Indenture Trustee, the Construction Lenders, the Construction Loan Agent and each holder of a Note harmless from and against any claim, demand or liability for any broker's, finder's or placement fees or commission alleged to have been incurred as a result of any action by the Owner Participant in connection with the transactions contemplated by the Operative Agreements.

6.9 Boatmen's Covenant to Notify of Relocation or Name Change. Boatmen's covenants and agrees to give the Owner Participant, the Indenture Trustee, the Construction Loan Agent and the Lessee prompt written notice of any relocation of its chief executive office, principal place of business or the place where its records concerning the Units and all its interest in, to and under all documents relating to the Trust Estate is located or of any change in its corporate name.

6.10 Lessee's Covenant to Notify of Relocation or Name Change. The Lessee covenants and agrees to give the Owner Trustee, the Owner Participant, the Construction Loan Agent and the Indenture Trustee prompt written notice (which notice shall be given at least 15 days prior to the effectiveness of any relocation) of any relocation of its chief executive office, principal place of business or the place where its records concerning the Units is located or of any change in its corporate name.

6.11 Corporate Existence. Except as otherwise provided in Section 6.6, the Lessee covenants and agrees at all times to maintain its corporate existence and all of its rights, privileges and franchises necessary in the normal conduct of its business, except for any corporate right, privilege or franchise (x) that it determines, in its reasonable, good faith business judgment, is no longer necessary or desirable in the conduct of its business, and (y) the loss of which could not have a Material Adverse Effect.

6.12 Compliance with Laws. The Lessee covenants and agrees to comply with all laws, rules, regulations (including ERISA), orders, writs, judgments, injunctions, decrees or awards to which it may be subject, except where the failure so to comply could not reasonably be expected to have a Material Adverse Effect. The Lessee shall promptly file any reports, or furnish to the Owner Trustee and the Owner Participant such information as may be required to enable the Owner Trustee and the Owner Participant timely to file any reports, required to be filed by the Owner Trustee as the Lessor and the Owner Participant under the Lease with any Governmental Authority.

6.13 Restriction on Transfer of Notes. The Note Purchaser agrees, and each holder of a Note upon acceptance or purchase of such Note shall be deemed to have agreed, that it will not transfer or grant a participation in a Note unless:

(a) in the case of a transfer, the transferee is an Eligible Lender Assignee and such transfer complies with Section 2.4 of the Indenture;

(b) in the case of a transfer or participation, the transferee or Note Purchaser is not a Competitor, unless the Lessee shall have otherwise consented;

(c) in the case of a transfer, immediately after such transfer, the transferee shall hold a Note or Notes in an aggregate principal amount equal to the lesser of (i) \$5,000,000 and (ii) the aggregate outstanding principal

amount of all of the transferors' Notes immediately prior to such transfer;

(d) in the case of a transfer, such transfer does not, at the time of transfer, and after giving effect to the transfer, increase the Lessee's costs or obligations (other than non-material administrative costs and obligations), unless the Lessee shall have otherwise consented; and

(e) in the case of a transfer to an Eligible Lender Assignee which is organized under the laws of any jurisdiction other than the United States or any state thereof, the transferor Note Purchaser or Note holder shall have furnished to each of the Owner Participant, the Indenture Trustee, the Lessor and the Lessee (A) two completed and executed copies of Internal Revenue Service Form 4224 or, if the transferee is organized under the laws of France, Germany, The Netherlands or the United Kingdom, Internal Revenue Service Form 1001 (wherein such Eligible Lender Assignee claims entitlement to complete exemption from United States federal withholding tax), (B) either a duly completed and executed Internal Revenue Service Form W-8 or W-9 (to establish an exemption from United States backup withholding tax), and (C) any other governmental forms which are necessary or required under applicable tax law, treaty or otherwise by law to reduce or eliminate any withholding tax.

6.14 Amendments to Indenture. So long as no Lease Default or Lease Event of Default shall have occurred and be continuing, the Owner Participant, the Indenture Trustee and Boatmen's, each severally and not jointly, agree that they will not amend the Indenture in such a manner as to adversely affect the rights of the Lessee without the prior written consent of the Lessee.

6.15 Environmental Matters. Lessee covenants to the Owner Participant, the Owner Trustee, the Indenture Trustee and the holders of the Notes:

(a) During the Lease Term, Lessee shall comply in all material respects with all Environmental Laws and the requirements of any permits issued under such Environmental Laws and shall keep or cause to be kept the Premises, the Units and Easements free and clear of any Liens imposed pursuant to such Environmental Laws.

(b) During the Lease Term, Lessee shall not generate, use, treat, recycle, store, release or dispose of, or permit the generation, use, treatment, recycling, storage, release or disposal of Hazardous Substances at, on or under all or a portion of the Premises, the Units or Easements, or transport or permit the transportation of Hazardous Substances to or from the Premises, the Units or Easements, except as reasonably necessary for the construction and operation of Lessee's business and in compliance with all applicable Environmental Laws.

(c) During the Lease Term, Lessee shall conduct and complete any investigation and undertake any Cleanup, removal, remedial or other action required by a Governmental Authority or Environmental Laws to remove and remediate all Hazardous Substances released during the Lease Term, at, on, in, under or emanating from the Premises, the Units and Easements, including such investigation, Cleanup, removal, remedial or other action on properties adjacent to the Premises to the extent permitted by the Facility Documents or Environmental Laws.

(d) During the Lease Term, Lessee shall provide written notice to the Owner Participant, Owner Trustee, Indenture Trustee and the holders of the Notes of (i) any fact, circumstance, condition, occurrence at, on, or arising from the Premises, the Units and Easements that results or would be reasonably likely to result in a material noncompliance with any Environmental Laws or any release of Hazardous Substances during the Lease Term on or from the Premises that has resulted or would be reasonably likely to result in personal injury or material property damage, such notice to be given promptly after the condition is discovered or release or occurrence takes place; (ii) any fact, circumstance, condition or occurrence at the Premises

and the Units that would cause, or would be reasonably likely to cause, the Premises, the Units and Easements to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law; and (iii) any pending or threatened Environmental Claim against Lessee or any other person or entity arising in connection with their occupying or conducting operations on or at the Premises, the Units and Easements, such notice to be given promptly after such Environmental Claim is commenced or threatened. To the extent possible, all such notices shall describe in reasonable detail the nature of the Environmental Claim, investigation, condition, incident or occurrence and the Lessee's response thereto. In addition, the Lessee shall provide the Owner Participant, the Owner Trustee, the Indenture Trustee and the holders of the Notes with copies of all written communications with any Governmental Authorities relating to any material non-compliance with Environmental Laws or any material Environmental Claim simultaneously with the giving or promptly upon receiving any such written communications. The Lessee shall also provide such detailed reports of any Environmental Claim as may be reasonably requested by the Owner Participant, the Owner Trustee, the Indenture Trustee and the holders of the Notes.

## SECTION 7 LESSEE'S INDEMNITIES

### 7.1 General Tax Indemnity.

(a) Tax Indemnatee Defined. For purposes of this Section 7.1, Tax Indemnatee means the Owner Participant and its Affiliates, the Owner Trustee, both in its individual capacity and as trustee, each Construction Lender and its Affiliates, the Indenture Trustee, both in its individual capacity and as trustee, the Construction Loan Agent, the Note Purchaser and each holder of a Note and each of their respective successors, assigns, servants, agents, officers, directors and employees and the Trust Estate and the Indenture Estate.

(b) Taxes Indemnified. The Lessee agrees to pay promptly when due, and will indemnify and hold harmless each Tax Indemnatee on an After-Tax Basis against, all taxes, fees, withholdings, and governmental charges attributable to the transactions contemplated herein including all license, recording, documentary, registration and other fees and all taxes (including, without limitation, income, adjusted gross income, gross receipts, franchise, net worth, capital, sales, rental, use, value added, property (tangible and intangible), ad valorem, excise and stamp taxes), fees, levies, imposts, recording duties, charges, assessments or withholdings of any nature whatsoever, together with any assessments, penalties, fines, addition to tax or interest thereon (individually, a "Tax" and collectively called "Taxes"), however imposed (whether imposed upon any Tax Indemnatee, the Lessee, or all or any part of the Units or any payment made in connection with the transactions contemplated hereunder), by any federal, state or local government or taxing authority in the United States of America, or by any government or taxing authority of a foreign country, of any political subdivision or taxing authority thereof or by a territory or possession of the United States of America or an international taxing authority, upon or with respect to, based upon or measured by:

(i) the Units or any part thereof;

(ii) the location, replacement, conditioning, refinancing, control, purchase, repossession, improvement, maintenance, redelivery, manufacture, acquisition, purchase, financing, mortgaging, ownership, acceptance, rejection, delivery, non-delivery, leasing, subleasing, transportation, insuring, inspection, registration, assembly, abandonment, preparation, installation, possession, use, operation, return, presence, storage, repair, transfer of title, modification, rebuilding, import, export, alteration, addition, replacement, assignment, overhaul, transfer or registration, imposition of any Lien, sale or other disposition of the Units or any

part thereof or interest therein;

(iii) the rentals, receipts or earnings arising from the Operative Agreements or from the purchase, financing, ownership, delivery, leasing, possession, use, operation, return, storage, transfer of title, sale or other disposition of the Units or any part thereof;

(iv) any or all of the Operative Agreements;

(v) the Units, or the income or other proceeds received with respect to the Units, held by the Owner Trustee under the Trust Agreement or after a Lease Event of Default, by the Construction Loan Agent under the Construction Loan Agreement or by the Indenture Trustee under the Indenture, as the case may be;

(vi) otherwise with respect to or by reason of the transactions described in or contemplated by the Operative Agreements;

(vii) the payment of the principal or interest or other amounts payable with respect to the Construction Advances or the Notes;

(viii) the Notes, the Construction Advances or the issuance, acquisition, transfer, or refinancing thereof or the Beneficial Interest or the creation thereof under the Trust Agreement; or

(ix) any assumptions by the Lessee of the Notes.

(c) Taxes Excluded. The indemnity provided for in paragraph (b) above shall not apply to any of the following:

(i) in the case of any Tax Indemnitee other than a Lender Indemnitee, (A) Taxes imposed by the United States federal government, the State of Texas (or any Governmental Authority within the State of Texas) or the Tax Indemnitee's Home Jurisdiction (as hereinafter defined) imposed on or measured by the net or gross income or excess profits, capital gains, receipts, minimum tax from tax preferences, accumulated earnings, personal holding company income, alternative minimum taxable income, capital, franchise, excess profits, net worth or conduct of business of, or succession and estate taxes of, such Tax Indemnitee (other than any Taxes which are, or are in the nature of, sales (unless included in Equipment Cost), use, value added (other than value added Taxes in the nature of net or gross income Taxes rather than sales or use Taxes), rental, license, ad valorem or property Taxes) (collectively "Income Taxes") and (B) Income Taxes imposed by any taxing authority other than the United States federal government, or the State of Texas (or any Governmental Authority within the State of Texas) or the Tax Indemnitee's Home Jurisdiction; provided, that Income Taxes imposed by a jurisdiction described in clause (B) of this Section 7.1(c)(i) shall be subject to indemnification if (w) the Units or any part thereof are operated, registered, located, present or used within such jurisdiction, (x) a Lessee Person is present or conducts activities within such jurisdiction, (y) a Lessee Person makes, or is deemed to make, payments from or through such jurisdiction, or (z) any security interest, filing or collateral contemplated by the Operative Agreements is present, perfected, exists or occurs within such jurisdiction and, in any case described in clauses (w) through (z), such event or occurrence causes the transactions contemplated by the Operative Agreements to be subject to Income Tax in such jurisdiction (and if so subject to such Income Taxes, the portion of the Tax Indemnitee's Income Taxes payable to such jurisdiction which shall be subject to indemnification pursuant to this Section 7.1 shall be determined as if the sole connection of the Tax Indemnitee with such jurisdiction had been the transactions contemplated by the Operative Agreements). Notwithstanding the foregoing, the

provisions of this Section 7.1(c)(i) and each other exclusion contained in Section 7.1(c) relating to income Taxes shall not be interpreted to exclude any amount necessary to make any payment under the Operative Agreements, otherwise required to be made on an After-Tax Basis, to be made on an After-Tax Basis. For purposes of this Section 7.1(c)(i), the term Tax Indemnitee's Home Jurisdiction shall mean the State of California (or any Governmental Authority within the State of California), provided, that if Security Pacific Leasing Corporation (or any Affiliate) or any transferee or subsequent transferee of Security Pacific Leasing Corporation (or an Affiliate) transfers some or all of its interest in the Units, the Lease, the Trust Estate, or any other interest or obligations arising under the Operative Agreements to another Owner Participant pursuant to the terms of this Agreement, the term "Tax Indemnitee's Home Jurisdiction" shall mean the state in which such transferee (or the applicable subsequent transferee) is treated as maintaining its principal place of business or headquarters (and any Governmental Authority within such state);

(ii) in the case of a Lender Indemnitee, (A) Taxes imposed by the United States federal governmental or the Lender Indemnitee's Home Jurisdiction (as hereinafter defined) on or measured by the net or gross income or excess profits, capital gains, receipts, minimum tax from tax preferences, accumulated earnings, personal holding company income, alternative minimum taxable income, capital, franchise, excess profits, net worth or conduct of business of, or succession and estate taxes of, such Lender Indemnitee, other than any such Taxes which are, or are in the nature of, sales, use, value added, rental, license, ad valorem or property Taxes, (collectively, "Income Taxes") and (B) Income Taxes imposed by any taxing authority other than the United States federal government or the Lender Indemnitee's Home Jurisdiction; provided that Income Taxes imposed by a jurisdiction described in clause (B) of this Section 7.1(c) (ii) shall be subject to indemnification if (w) the Units or any part thereof, are operated, registered, located, present, or used within such jurisdiction, (x) a Lessee Person, or any other Tax Indemnitee, is present or conducts activities within such jurisdiction, (y) a Lessee Person, or the Owner Trustee or Owner Participant, makes, or is deemed to make, payments from or through such jurisdiction, or (z) any security interest, filing or collateral contemplated by the Operative Agreements is present, perfected, exists or occurs within such jurisdiction, and in any case described in clauses (w) through (z), such event or occurrence causes the transactions contemplated by the Operative Agreements to be subject to Income Tax in such jurisdiction (determined without taking into account any other contacts that the Lender Indemnitee may have with such jurisdiction) and if so subject to such Income Taxes, the portion of the Lender Indemnitee's Income Taxes payable to such jurisdiction which shall be subject to indemnification pursuant to this Section 7.1 shall be determined as if the sole connection of the Lender Indemnitee with such jurisdiction had been the transactions contemplated by the Operative Agreements. Notwithstanding the foregoing, the provisions of this clause (ii) relating to Income Taxes shall not exclude from the indemnity described in this Section 7.1 any Taxes for which the Lessee would be required to indemnify a Lender Indemnitee so that any payment under the Operative Agreements, otherwise required to be made on an After-Tax Basis, is made on an After-Tax Basis. (For purposes of this Section 7.1(c)(ii), the term Lender Indemnitee's Home Jurisdiction shall mean the State of New York, New York City or Germany (or any governmental authority within the State of New York, New York City or Germany), provided that if the Lender Indemnitee transfers all or a portion of its interest in the Note or the Construction Advances in accordance with the terms of this Agreement, the term Lender Indemnitee's Home Jurisdiction shall be modified to reflect the

location within the United States in which the Note or Construction Advance is maintained as an asset and the jurisdiction under the laws of which the transferee Lender Indemnitee has been formed.)

(iii) in the case of a Tax Indemnitee other than a Lender Indemnitee, Taxes arising out of or measured by acts, omissions, events or periods of time (or any combination of the foregoing) which occur after (and are not attributable to acts, omissions or events occurring contemporaneously with or prior to) (1) the payment in full of all amounts payable by the Lessee pursuant to and in accordance with the Operative Agreements and (2) the earlier of (x) the expiration of the Lease Term and return of the Units in accordance with the return provisions of the Lease and (y) the termination of the Lease in accordance with the applicable provisions of the Lease and return or disposition of the Units in accordance with the Lease, except that, notwithstanding anything to the contrary, Taxes incurred in connection with the exercise of any remedies following the occurrence and continuance of a Lease Event of Default shall not be included in this Section 7.1(c)(iii);

(iv) in the case of a Lender Indemnitee, Taxes imposed on such Lender Indemnitee with respect to any period commencing after the date of the payment in full of the Construction Advances and the Notes and all amounts due to the Construction Lender, the Note Purchaser and each holder of a Note pursuant to the Operative Agreements, except that Taxes related to events occurring or matters arising prior to or simultaneously with such date shall not be excluded from the indemnity provided for in this Section 7.1 by reason of this Section 7.1(c)(iv);

(v) in the case of a Tax Indemnitee other than a Lender Indemnitee, Taxes imposed that would not have been imposed but for any act or omission of such Tax Indemnitee not contemplated by the Operative Agreements, including, without limitation, the willful misconduct or gross negligence of such Tax Indemnitee (other than any act, omission, gross negligence or willful misconduct not actually committed by but instead imputed to such Indemnitee by reason of such Tax Indemnitee's participation in the transactions contemplated by the Operative Agreements and entering into the Operative Agreements);

(vi) in the case of a Lender Indemnitee, Taxes imposed on such Lender Indemnitee that would not have been imposed but for the gross negligence or willful misconduct of such Lender Indemnitee (other than any gross negligence or willful misconduct not actually committed by such Lender Indemnitee, but imputed to such Lender Indemnitee by reason of (y) the acts or omissions of a Lessee Person or any other Tax Indemnitee, or (z) such Lender Indemnitee's participation in the transactions contemplated by the Operative Agreements and entering into the Operative Agreements);

(vii) in the case of a Tax Indemnitee other than a Lender Indemnitee, Taxes imposed on any Tax Indemnitee or any successor, assign or Affiliate thereof which became payable by reason of (A) any voluntary transfer, assignment, sale or other disposition ("Transfer") by such Tax Indemnitee subsequent to the applicable Purchase Date, of any interest in some or all of the Units, the Lease, its interest in the Trust Estate, or any other interest or obligations arising under the Operative Agreements, other than (y) Taxes that result from Transfers which occur as a result of the exercise of remedies after a Lease Event of Default has occurred and is continuing or (z) Taxes (other than Taxes on net income, Taxes of a similar nature or Taxes imposed in lieu of the foregoing) that result from any Transfer pursuant to the terms of the Lease at the request or option of the Lessee (including the Lessee's exercise of the option

granted pursuant to Section 22 of the Lease); or (B) any involuntary Transfer by such Tax Indemnitee of any interest in the Units, the Lease, or any interests or obligations arising under the Operative Agreements resulting from any bankruptcy or other proceeding for relief of debtors in which such Tax Indemnitee is the debtor or any foreclosure by a creditor of such Tax Indemnitee other than any such Transfer following the occurrence and continuance of a Lease Event of Default;

(viii) in the case of a Lender Indemnitee, Taxes imposed on such Lender Indemnitee which become payable by reason of any voluntary or involuntary transfer or disposition by such Lender Indemnitee of its interest in the Construction Loan Advances or the Notes other than (y) Taxes imposed under Section 4975 of the Code that would not have been imposed if the representation made by the Owner Participant in Section 3.4(i) had been true and correct at the time made, and (z) any such Taxes that result from transfers or dispositions which occur after a Lease Event of Default has occurred and is continuing; provided, however, the provisions of this clause (viii) shall not exclude from the indemnity described in this Section 7.1 any Taxes for which the Lessee would be required to indemnify a Lender Indemnitee so that any payment under the Operative Agreements, otherwise required to be made on an After-Tax Basis, is made on an After-Tax Basis;

(ix) Taxes imposed on or with respect to or payable by the Owner Trustee or the Indenture Trustee based on, measured by or imposed with respect to any fees paid to or accruable by the Owner Trustee or the Indenture Trustee, as the case may be, in its capacity as Owner Trustee or the Indenture Trustee, as the case may be;

(x) in the case of a Tax Indemnitee other than a Lender Indemnitee, Taxes which have been included in Lessor's Cost to the extent actually paid on or before the Lease Commencement Date;

(xi) Taxes imposed upon the Owner Participant for which the Lessee is obligated to indemnify the Owner Participant pursuant to the Tax Indemnity Agreement;

(xii) Taxes imposed against a transferee (or subsequent transferee) of an original Tax Indemnitee to the extent of the excess of such Taxes over the amount of such Taxes which would have been imposed against the original Tax Indemnitee had there not been a transfer by such original Tax Indemnitee of its interest in the Units, the Lease, its interest in the Trust Estate, the Notes, the Construction Advances or any other interest or obligation arising under the Operative Agreements; provided, however, that this subparagraph (xii) shall not apply (A) to any transfer following the occurrence and continuance of a Lease Event of Default (or, in the case of a transferee or subsequent transferee of a Lender Indemnitee, a Transfer which occurs while a payment then due under the Indenture has not been paid), (B) in determining amounts necessary to make payments on an After-Tax Basis or (C) Taxes imposed under Section 4975 of the Code that would not have been imposed if the representation made by the Owner Participant in Section 3.4(i) had been true and correct at the time made;

(xiii) in the case of a Tax Indemnitee other than a Lender Indemnitee, Taxes resulting from any Transfer by a Tax Indemnitee of all or any portion of its interest in the Lease or any Unit to the extent of the excess of such Taxes over the amount of such Taxes that would have been imposed had there been no such disposition; and

(xiv) any interest, penalties or additions to tax of a Tax Indemnitee attributable to a failure by such Tax Indemnitee to file when due any report or return required by any taxing authority or to a failure

by the Lessor to pay or remit any Tax when due in either case unless caused by the Lessee's failure to prepare returns, provide information or otherwise meet its obligations under the Operative Agreements.

(d) Withholding Taxes. Notwithstanding any of the exclusions set forth in paragraph (c) to the contrary, in the case of any withholding Taxes imposed or other deductions on the Lessee's payment of Rent or on the payment by or on behalf of the Lessor of principal, interest or Premium, if any, on the Note or on any amounts paid pursuant to the Indenture or the Construction Loan Agreement, the Lessee shall make such additional payments as will be sufficient such that after the payment of such withholdings and deductions there will be available sufficient amounts to pay all Rent amounts otherwise payable hereunder or under the Lease, and all principal, interest and Premium, if any, on the Note or on any amounts paid pursuant to the Indenture or the Construction Loan Agreement, subject to the Lessee's right to recover from the Owner Participant any of such amounts withheld from Lessee's payment of Rent as a result of the Owner Participant or any Affiliate thereof, being other than a U.S. Person, for which the Owner Participant agrees to pay the Lessee promptly upon demand.

(e) Payments to the Lessee.

(i) If any Tax Indemnitee actually shall realize a net Tax benefit with respect to a Tax not indemnifiable hereunder as a result of any Taxes paid or indemnified against by the Lessee under this Section 7.1 (whether by way of deduction, credit, allocation or apportionment or otherwise), which benefit was not previously taken into account in determining the amount of the Lessee's payment to such Tax Indemnitee, such Tax Indemnitee shall pay to the Lessee an amount, on an After-Tax Basis, equal to the amount of such net Tax benefit attributable to the payment being made to the Lessee hereunder; provided, however, that if, and so long as, a Lease Event of Default shall have occurred and be continuing, and, in the case of a Lender Indemnitee, any payment then due to such Lender Indemnitee under the Operative Agreements has not been paid, the Tax Indemnitee may hold such amount for the benefit of the Lessee and shall pay such amount to the Lessee promptly following the date on which the Lease Event of Default is no longer continuing and, in the case of a Lender Indemnitee, such payment to such Lender Indemnitee has been made; provided further, however, that no Tax Indemnitee shall be required to pay to the Lessee any Tax benefit to the extent such benefit (determined without regard to the reverse gross-up amount) exceeds the indemnity received by such Tax Indemnitee (determined without regard to the gross-up amount), with such excess to be carried over and applied against any future obligation of the Lessee to indemnify such Tax Indemnitee under the Operative Agreements. In the case of a Lender Indemnitee, such Lender Indemnitee may determine in its sole discretion whether to claim a Tax credit as distinguished from a Tax deduction for any Tax and such treatment shall be applied for purposes of determining the amount of such Tax benefit. If such Tax benefit is thereafter lost, the additional Tax payable shall be treated as a Tax indemnifiable hereunder without regard to the exclusions set forth in Section 7.1(c) except if, and to the extent, such loss results solely from such Tax Indemnitee's gross negligence or willful misconduct.

(ii) Upon receipt by a Tax Indemnitee of a refund or credit of all or part of any Taxes paid or indemnified against by the Lessee, which refund or credit was not previously taken into account in determining the amount of the Lessee's payment to Tax Indemnitee, such Tax Indemnitee shall pay to the Lessee, on an After-Tax Basis, an amount equal to the amount of such refund plus any interest received by or credited to such Tax Indemnitee with respect to such refund; provided that if, and so long as, a Lease Event of default shall have occurred and be continuing, and, in the case of a Lender Indemnitee, any payment to such

Lender Indemnitee under the Operative Agreements then due has not been paid, the Tax Indemnitee may hold such amount for the benefit of the Lessee and shall pay such amount to the Lessee promptly following the date on which the Lease Event of Default is no longer continuing and, in the case of a Lender Indemnitee, such payment has been made. If it is later determined that the Tax Indemnitee was not entitled to such refund or credit, the portion of such refund that is repaid, recaptured or disallowed will be treated as a Tax indemnifiable hereunder without regard to the exclusions set forth in Section 7.1(c) except if, and to the extent, such loss, recapture or disallowance results solely from such Tax Indemnitee's gross negligence or willful misconduct.

(iii) The Tax Indemnitee will, at the Lessee's expense, pursue refunds and Tax benefits that would result in any such payments to the Lessee, but only if (x) the Tax Indemnitee has been notified in writing by the Lessee that such refunds or Tax benefits are available, and (y) in the case of a Lender Indemnitee, the pursuit of such refund or Tax benefit shall not, in the sole discretion of such Lender Indemnitee, exercised in good faith, result in any adverse consequence to such Lender Indemnitee.

(f) Procedures. Any amount payable to a Tax Indemnitee pursuant to paragraph (b) shall be paid within 30 days after receipt of a written demand therefor from such Tax Indemnitee accompanied by a written statement describing in reasonable detail the basis for such indemnity and the computation of the amount so payable, provided that such amount need not be paid prior to the later of (i) the date on which such Taxes are due or (ii) in the case of amounts which are being contested pursuant to paragraph (g) hereof and which are not required to be paid under applicable law, the time such contest (including all appeals permitted hereunder) is finally resolved, provided, further, that with respect to Taxes of a recurring nature, the Tax Indemnitee shall only be required to provide one such written notice. Any amount payable to the Lessee pursuant to paragraph (e) shall be paid within 30 days of the day on which a return is filed reflecting such Tax benefit or, in the case of a refund, promptly after the Tax Indemnitee actually receives a refund giving rise to a payment under paragraph (e), and shall be accompanied by a written statement by the Tax Indemnitee setting forth in reasonable detail the basis for computing the amount of such payment. Within 30 days following the Lessee's receipt of any computation from the Tax Indemnitee, the Lessee may request that a nationally recognized accounting firm selected by the Tax Indemnitee, and reasonably acceptable to the Lessee, determine whether such computations (but not any matters of interpretation of law or the Operative Agreements) are correct. Such accounting firm shall be requested to make the determination contemplated by this paragraph (f) within 30 days of its selection. In the event such accounting firm shall determine that such computations are incorrect, then such firm shall determine what it believes to be the correct computations. The Tax Indemnitee shall cooperate with such accounting firm and supply it with all information necessary to permit it to accomplish such determination. The computations of such accounting firm shall be final, binding and conclusive upon the parties and the Lessee shall not have any right to inspect the books, records or tax returns of the Tax Indemnitee to verify such computation or for any other purpose. All fees and expenses of the accounting firm payable under this Section 7.1(f) shall be borne by the Lessee, except that if such accounting firm's computation shall result in a decrease in the amount due from the Lessee or an increase in the amount owing to the Lessee by more than the greater of 5% of the Tax Indemnitee's computation or \$10,000, then the Tax Indemnitee shall bear the cost of such accounting firm.

(g) Contest. If any claim shall be made against any Tax Indemnitee or if any proceeding shall be commenced against any Tax Indemnitee (including a written notice of such proceeding) for any Tax as to which the Lessee may have

an indemnity obligation, or if any Tax Indemnitee shall determine that any Tax as to which the Lessee may have an indemnity obligation may be payable, such Tax Indemnitee shall promptly notify the Lessee in writing and shall not take any action with respect to such claim, proceeding or Tax without the consent of the Lessee for 30 days after receipt of such notice by the Lessee unless the failure to take action could result in the imposition of penalties or fines or material danger of sale, forfeiture or loss of, or the creation of any Lien on, the Units or any portion thereof or interest therein; provided, however, that any failure to provide such notice shall not relieve the Lessee of any obligation to indemnify any Tax Indemnitee hereunder except to the extent such failure materially impairs the defense of such claim and such failure did not result from the Lessee's failure to provide information, file reports or otherwise fulfill the requirements of the Operative Agreements; provided, further, however, that if such Tax Indemnitee shall be required by law or regulation to take action with respect to any such claim, proceeding or Tax prior to the end of such 30 day period such Tax Indemnitee shall, in such notice to the Lessee, so inform the Lessee and such Tax Indemnitee shall not take any action with respect to such claim, proceeding or Tax without the consent of the Lessee before the date on which such Tax Indemnitee shall be required to take action. If, within 30 days after its receipt of such notice (or the shorter period referred to in the preceding sentence), the Lessee shall request in writing that such Tax Indemnitee contest the imposition of such Tax, the Tax Indemnitee shall, at the expense of the Lessee, in good faith contest (including by pursuit of appeals other than appeals to the United States Supreme Court), and shall not settle without the Lessee's written consent (such consent not to be unreasonably withheld, in good faith, based solely on the merits of the claim at issue), or if such contest does not involve a claim for Income Taxes or Taxes imposed by way of withholding, the Tax Indemnitee shall allow the Lessee to contest the validity, applicability or amount of such Tax in the Lessee's own name, or if required by law, in the Tax Indemnitee's name, by, in the sole discretion of the Person conducting such contest:

(i) resisting payment thereof;

(ii) not paying the same except under protest, if protest shall be necessary and proper; or

(iii) if payment shall be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings;

provided, however, that in no event shall such Tax Indemnitee be required to contest (or permit the Lessee to contest) the imposition of any Tax for which the Lessee may be obligated unless: (t) no Lease Default or Lease Event of Default shall have occurred and be continuing, (u) in the case of Income Taxes or withholding Taxes indemnifiable hereunder, (1) the amount of the claim and all future related claims exceeds \$100,000 and (2) the Lessee shall have delivered to the Tax Indemnitee an opinion of tax counsel chosen by the Lessee and reasonably acceptable to the Tax Indemnitee to the effect that there is a Reasonable Basis to contest such claim and, in the case of an appeal of an adverse judicial decision, a reasonable basis to appeal such decision, (v) in the case of any contest conducted by the Lessee, the Lessee shall have acknowledged in writing its liability hereunder if the contest is unsuccessful, (w) the Lessee shall have agreed to pay such Tax Indemnitee all costs and expenses that such Tax Indemnitee shall incur in connection with the contest of such claim (including all reasonable legal and accounting fees and disbursements), (x) the action to be taken will not result in any material danger of sale, forfeiture or loss of, or the creation of any Lien on, the Units or any portion thereof or interest therein, (y) if such contest shall involve payment of the claim, the Lessee shall advance the amount thereof, plus interest, penalties and additions to Tax with respect thereto, to such Tax Indemnitee on an interest-free basis and on an after-tax basis, and (z) the subject matter of the claim shall not be of a continuing nature which has been

previously decided by a court of competent jurisdiction pursuant to the contest provisions of this Section 7.1(g) unless there shall have been a change in facts or law after the date with respect to which such previous contest shall have been decided, and the Tax Indemnitee shall have received, at Lessee's expense, an opinion of independent tax counsel chosen by the Lessee and reasonably acceptable to the Tax Indemnitee that as a result of such change in facts or law it is more likely than not that such contest will prevail. For purposes of the preceding sentence, a

Reasonable Basis for a position shall exist if tax counsel may properly advise reporting such position on a tax return in accordance with ABA Formal Opinion 85-352 issued by the Standing Committee on Ethics and Professional Responsibility of the American Bar Association. The Tax Indemnitee shall consult in good faith with the Lessee regarding the conduct of any contest controlled by such Tax Indemnitee and the Lessee shall consult in good faith with the Tax Indemnitee regarding the conduct of any contest controlled by the Lessee. Notwithstanding the above, a Tax Indemnitee may settle and will not be required to contest the imposition of any Taxes if such Tax Indemnitee shall waive its right to indemnity with respect to such Taxes and any future and logically related Taxes unless, with respect to such future Taxes, the facts or law with respect thereto change in a manner which would render a new contest of such Taxes reasonable.

(h) Reports. In the event any reports with respect to Taxes are required to be made, the Lessee will either prepare and file such reports (and in the case of reports which are required to be filed on the basis of individual Units, such reports shall be prepared and filed in such manner as to show as required the interests of each Tax Indemnitee in such Unit) or, (x) if it shall not be permitted to file the same, it will notify each Tax Indemnitee of such reporting requirements, prepare such reports in such manner as shall be reasonably satisfactory to each Tax Indemnitee and deliver the same to each Tax Indemnitee within a reasonable period prior to the date the same is to be filed or (y) if it shall not possess the information required to so prepare and file (and such information is of the type which the Tax Indemnitee could reasonably be expected to possess and which is of the type which the Lessee and its Affiliates would not reasonably be expected to possess) it shall request such information from the Tax Indemnitee, which Tax Indemnitee will cooperate with the Lessee in good faith to provide such information, if within the possession of such Tax Indemnitee, or if not within its possession, to obtain (at the Lessee's expense) such information; it being understood that the ultimate responsibility for obtaining such information not in the possession of the Tax Indemnitee shall be that of the Lessee.

## 7.2 General Indemnification and Waiver of Certain Claims.

(a) Claims Defined. For the purposes of this Section 7.2, Claims shall mean any and all costs, expenses (including reasonable attorneys' and consultants' fees and disbursements), liabilities, obligations, losses, damages, penalties, proceedings, actions or suits or claims of whatsoever kind or nature (whether or not on the basis of negligence, strict or absolute liability or liability in tort) which may be imposed on, incurred by, suffered by, or asserted against an Indemnified Person or any Unit or any other portion of the Trust Estate and, except as otherwise expressly provided in this Section 7.2, shall include, but not be limited to, all reasonable out-of-pocket costs, disbursements and expenses paid or incurred by an Indemnified Person in connection therewith or thereto.

(b) Indemnified Person Defined. For the purposes of this Section 7.2, "Indemnified Person" means the Owner Participant, the Owner Trustee (both in its individual capacity and as Owner Trustee), the Trust Estate, the Indenture Trustee (both in its individual capacity and as Indenture Trustee), the Indenture Estate, the Construction Lenders, the Construction Loan Agent, the holders of Notes (and if such holder is the nominee of another Person, such other Person) and the respective shareholders, directors,

officers, employees, Affiliates, successors and permitted assigns, agents and servants of the Owner Participant, the Owner Trustee (both in its individual capacity and as Owner Trustee), the Indenture Trustee (both in its individual capacity and as Indenture Trustee), the Construction Loan Agent, the Construction Lenders, and the holders of Notes.

(c) Claims Indemnified. Subject to the exclusions stated in paragraph (d) below, the Lessee agrees to indemnify, protect, defend and hold harmless each Indemnified Person on an After-Tax Basis against Claims relating to, resulting from or arising out of the Units, any of the property constituting a part of the Trust Estate, the Operative Agreements or the transactions contemplated thereby (whether or not such Indemnified Person shall be indemnified as to such Claim by any other Person), including, without limitation:

(i) this Agreement or any other Operative Agreement or any of the transactions contemplated hereby and thereby, or the location, replacement, condition, ownership, acquisition, lease, operation, possession, repossession, redelivery, modification, improvement, abandonment, use, non-use, maintenance, assembly, installation, presence, rebuilding, import, export, addition, assignment, transfer of title, preparation, sublease, rental, substitution, control, repair, storage, alteration, transfer, sale or other application or disposition (including the imposition of a Lien other than a Lessor's Lien), return, overhaul, transportation, insuring, inspection, testing or registration of any Unit (including, without limitation, injury, death or property damage of passengers, shippers or others), and strict liability in tort;

(ii) the actual or alleged presence, release or threatened release of Hazardous Substances on, in, under or from the Premises, Easements or Units during the Lease Term, whether discovered during or after the Lease Term; any Environmental Claim based on Lessee's operations on or at the Premises, Easements or Units, but excluding any matters based solely on the gross negligence or willful misconduct of the Owner Participant, the Owner Trustee, the Indenture Trustee and the holders of the Notes; and any violation by Lessee of any Environmental Law;

(iii) the construction, manufacture, financing, mortgaging, refinancing, design, purchase, acceptance, rejection, delivery, non-delivery or condition of any Unit (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement);

(iv) any act or omission (whether negligent or otherwise) or any breach of or failure to perform or observe, or any other noncompliance with, any covenant, condition or agreement to be performed by, or other obligation of, the Lessee or Bayer under any of the Operative Agreements, or the falsity of any representation or warranty of the Lessee or Bayer in any of the Operative Agreements or in any document or certificate delivered in connection therewith, other than representations and warranties in the Tax Indemnity Agreement;

(v) without limiting Section 10.3, the offer, issue, sale or delivery of any Notes or the Construction Advances or the Construction Notes or any interest in the Trust Estate and any refinancing of the Notes or the Construction Advances or the Construction Notes, other than violations of applicable securities laws attributable to such Indemnified Person's own actions or omissions (and not imputed to such Indemnified Person solely by reason of its entering into the Operative Agreements, its participation in the transactions contemplated by the Operative Agreements and its interest in the Units or the acts or omissions of the Lessee or Bayer);

(vi) the imposition of any Lien on any Unit other than Lessor's Liens;

(vii) endeavoring to enforce the Operative Agreements or exercising remedies thereunder;

(viii) violations of ERISA, including, without limitation, by reason of this Agreement or any other Operative Agreement or any transactions contemplated hereby or thereby constituting a prohibited transaction within the meaning of Section 406 of ERISA;

(ix) any violation of any law, rule, regulation or order by the Lessee or its directors, officers, employees, agents or servants; and

(x) any costs incurred directly or indirectly by the Construction Lenders in connection with the purchase by Bayerische of a participation in Security Pacific s Construction Advances as contemplated by Section 2.5 of the Construction Loan Agreement which result from any breakage of an Interest Period for outstanding Construction Advances or the establishment of any short-period match-funding by Bayerische related to the purchase of such participation.

(d) Claims Excluded. The following are excluded from the agreement to indemnify under this Section 7.2:

(i) Claims with respect to any Unit to the extent attributable to acts or events occurring in connection with and after (and not attributable to events having occurred or conditions existing prior to) (A) in the case of the consummation by the Lessee of a purchase option with respect to all of the Units under Section 22 of the Lease, or the payment of Termination Value by the Lessee in respect of Proposed Terminated Units under Section 10.2 of the Lease, or the occurrence of an Event of Loss with respect to all of the Units for which Stipulated Loss Value is paid under Section 11 of the Lease, the payment of all amounts due from the Lessee in connection with any such event, and (B) in all other cases, with respect to such Unit, the last to occur of (x) the earlier to occur of the termination of the Lease or the expiration of the Lease Term thereof, (y) the return of such Unit to the Owner Trustee in accordance with the terms of the Lease (it being understood that, so long as any Unit is in storage as provided in Section 6.3 of the Lease, the date of return thereof for the purpose of this Clause (i)(B)(y) shall be the end of the last day of such storage period), and (z) the payment in full of the principal of, Premium, if any, and interest on the Notes and all other amounts due and payable to or for the account of the Indenture Trustee and the Note holders under the Indenture and the other Operative Agreements;

(ii) Claims which are Taxes (other than amounts necessary to indemnify Claims on an After-Tax Basis), or any cost or expense of contesting any such Taxes whether or not the Lessee is required to indemnify therefor under Section 7.1 hereof or the Tax Indemnity Agreement, the Lessee's entire obligation with respect to Claims which are Taxes under Section 4975 of the Code and to Taxes and losses of tax benefits being fully set out in such Section 7.1 or the Tax Indemnity Agreement;

(iii) with respect to any particular Indemnified Person and only as to such Indemnified Person, Claims to the extent attributable to the gross negligence or wilful misconduct (other than any gross negligence or wilful misconduct imputed as a matter of law to such Indemnified Person solely by reason of its participation in the transactions and entering into the Operative Agreements, its interest in the Units or the acts or omissions of the Lessee or Bayer) of, or the falsity or inaccuracy of any representation or warranty of, or any breach of any covenant of, such Indemnified Person; and

(iv) Claims attributable to (A) any voluntary transfer, assignment or other disposition ( Transfer ) by such Indemnified Person subsequent to the applicable Purchase Date, of any interest in some or all of the Units, any of the property constituting the Trust Estate, the Lease, its interest in the Trust Estate, the Notes, the Construction Advances or any other interests or obligations arising under the Operative Agreements other than (x) Transfers which occur as a result of the exercise of remedies after a Lease Event of Default has occurred and is continuing, (y) any Transfer pursuant to the terms of the Lease at the request or option of the Lessee (including the Lessee's exercise of the option granted pursuant to Section 22 of the Lease), or (z) any Claim under ERISA that would not have been made if the representation made by the Owner Participant in Section 3.4(i) had been true and correct when made or (B) any involuntary Transfer by such Indemnified Person of any interest in the Units, any of the property constituting the Trust Estate, the Lease, the Notes, the Construction Advances or any interests or obligations arising under the Operative Agreements resulting from any bankruptcy or other proceeding for relief of debtors in which such Indemnified Person is the debtor or any foreclosure by a creditor of the Indemnified Person other than (y) any such Transfer following the occurrence and continuance of a Lease Event of Default, or (z) any Claim under ERISA that would not have been made if the representation made by the Owner Participant in Section 3.4(i) had been true and correct when made.

(e) Insured Claims. In the case of any Claim indemnified by the Lessee hereunder which is covered by a policy of insurance maintained by the Lessee pursuant to Section 12 of the Lease or otherwise, each Indemnified Person agrees, at Lessee's cost and expense, to provide reasonable cooperation to the insurers in the exercise of their rights to investigate, defend or compromise such Claim as may be required to retain the benefits of such insurance with respect to such Claim.

(f) Claims Procedure. An Indemnified Person shall, after obtaining actual knowledge thereof, promptly notify the Lessee of any Claim as to which indemnification is sought (unless the Lessee theretofore has notified such Indemnified Person of such Claim); provided, however, that the failure to give such notice shall not release the Lessee from any of its obligations under this Section 7, except to the extent that failure to give notice of any action, suit or proceeding against such Indemnified Person shall materially and substantially prejudice the Lessee's ability to defend such Claim and such failure arises out of or is caused by the misconduct or negligence of such Indemnified Person, provided that, for purposes of this sentence, whenever (but only prior to the Lease Term Commencement Date) Bayerische, in its capacity as a Construction Lender, is an Indemnified Person, such Indemnified Person shall be deemed to have actual knowledge of a Claim only to the extent that both such Indemnified Person and the Construction Loan Agent have actual knowledge of such claim. Subject to the provisions of the following paragraph, the Lessee shall at its sole cost and expense be entitled to control, and shall assume full responsibility for, the defense of such Claim; provided that the Lessee shall keep the Indemnified Person which is the subject of such proceeding fully apprised of the status of such proceeding and shall provide such Indemnified Person with all information with respect to such proceeding as such Indemnified Person shall reasonably request.

Notwithstanding any of the foregoing to the contrary, no Lessee shall be entitled to control and assume responsibility for the defense of such Claim if (1) a Lease Event of Default shall have occurred and be continuing and the Indemnified Person notifies the Lessee that it is no longer permitted to control the defense of such Claim, (2) there exists an imminent risk of sale, forfeiture or loss of any Unit or any other portion of the Trust Estate or such proceeding will involve any material danger of the sale,

forfeiture or loss of, or the creation of any Lien (other than any Permitted Lien) on, any Unit or any other portion of the Trust Estate, (3) the amounts involved, in the reasonable opinion of such Indemnified Person, are likely to have a materially adverse effect on the business, taken as a whole, of such Indemnified Person (other than the ownership, leasing and financing of the Units), (4) in the reasonable opinion of such Indemnified Person, there exists an actual or potential material conflict of interest such that it is advisable for such Indemnified Person to retain control of such proceeding, (5) the Lessee has not acknowledged its liability to the Indemnified Person with respect to such Claim (except to the extent that thereafter any judicial determination or settlement establishes that the act, omission or event giving rise to such Claim was not indemnifiable under this Section 7.2) or (6) in the reasonable opinion of such Indemnified Person such Claim involves the risk of criminal sanctions or liability to such Indemnified Person. In the circumstances described in clauses (1) through (6), the Indemnified Person shall be entitled to control and assume responsibility for the defense of such claim or liability at the cost and expense of the Lessee. Unless a Lease Event of Default has occurred and is continuing, the Indemnified Person shall not settle or compromise any Claim without the prior consent of the Lessee, which consent shall not be unreasonably withheld. In addition, any Indemnified Person, at its own cost and expense, may participate in any proceeding controlled by the Lessee pursuant to this Section 7.2(f). The Lessee may in any event participate in all such proceedings at its own cost and expense. Nothing contained in this Section 7.2(f) shall be deemed to require an Indemnified Person to contest any Claim or to assume responsibility for or control of any judicial proceeding with respect thereto.

(g) Subrogation. If a Claim indemnified under this Section 7.2 is paid in full by the Lessee and/or an insurer under a policy of insurance maintained by the Lessee, or if payment of the Claim has otherwise been provided for in full in a manner reasonably satisfactory to the Indemnified Person, the Lessee and/or such insurer, as the case may be, shall be subrogated to the extent of such payment (or provision) to the rights and remedies of the Indemnified Person (other than under insurance policies maintained by such Indemnified Person) on whose behalf such Claim was paid (or provided for) with respect to the act or event giving rise to such Claim. So long as no Lease Default or Lease Event of Default shall have occurred and be continuing, should an Indemnified Person receive any refund, in whole or in part, with respect to any Claim paid by the Lessee hereunder, it shall promptly pay over the amount refunded (but not in excess of the amount the Lessee or any of its insurers has paid in respect of such Claim paid or payable by such Indemnified Person on account of such refund) to the Lessee.

(h) Waiver of Certain Claims. The Lessee hereby waives and releases any Claim now or hereafter existing against any Indemnified Person arising out of death or personal injury to personnel of the Lessee or any of its Affiliates or Bayer (including directors, officers, employees, agents and servants), loss or damage to property of the Lessee or its Affiliates or Bayer, or the loss of use of any property of Lessee or its Affiliates or Bayer, which may result from or arise out of the condition, use or operation of the Units during the Lease Term, including, without limitation, any latent or patent defect whether or not discoverable.

(i) No Guaranty. The general indemnification provisions of this Section 7.2 do not constitute a guaranty by the Lessee that the principal of, interest on or any other amounts payable with respect to the Notes will be paid.

## SECTION 8 LESSEE'S RIGHTS UNDER THE LEASE

Each party to this Agreement acknowledges notice of, and consents in all respects to, the terms of the Lease, and expressly, severally and as to its own actions only, agrees that unless a Lease Event of Default has occurred and is continuing,

it shall not take, or cause to be taken, any action contrary to the Lessee's rights under the Lease, including, without limitation, the right to possession, use and operation by the Lessee (or any permitted sublessee) of the Units.

## SECTION 9 SPECIAL RIGHTS OF NOTE PURCHASER

Notwithstanding any provision to the contrary in this Agreement, the Indenture or the Notes relating to the manner and place of payment, all amounts payable to the Note Purchaser with respect to any Notes held by the Note Purchaser or a nominee for the Note Purchaser shall be paid by the Indenture Trustee to the Note Purchaser (without any presentment thereof and without any notation of the payment being made thereon) by check, duly mailed, by first-class mail, postage prepaid, or delivered to such Note Purchaser at the address for payments for such Note Purchaser or, if a wire transfer to a bank account is designated opposite such Note Purchaser's name on Schedule 1 or in a written notice from such Note Purchaser to the Owner Trustee and the Indenture Trustee, by wire transfer of immediately available funds to the bank so designated for credit to the account and marked for attention as so designated, provided that such bank has facilities for the receipt of a wire transfer, or in any other manner or to any other address in the United States as may be designated by such Note Purchaser in a written notice from such Note Purchaser to the Owner Trustee and the Indenture Trustee. In the case of any wire transfer, the Indenture Trustee will transfer funds from the office of the Indenture Trustee not later than 2:00 p.m., Wilmington, Delaware time the date any payment or prepayment of principal, Premium, if any, or interest on the Notes is due, provided that funds therefor have been received by the Indenture Trustee in cash or in solvent credits acceptable to it by 12:00 noon, Wilmington, Delaware time, or if not so received, the Indenture Trustee shall transfer such funds promptly upon its receipt of such cash or solvent credits, but no later than 12:00 noon Wilmington, Delaware time the next Business Day. In the event the Indenture Trustee shall fail to make any such payment as provided in the immediately foregoing sentence after its receipt of funds by the time specified above, the Indenture Trustee agrees to compensate the Note holders for loss of use of funds. The Note Purchaser agrees that, if the Note Purchaser shall sell or transfer any Notes, the Note Purchaser will notify the Indenture Trustee of the name and address of the transferee and such Note Purchaser will, prior to the delivery of such Notes, make a notation on such Notes of the date to which interest has been paid thereon and of the amount of any payments or prepayments made on account of the principal thereof.

## SECTION 10 MISCELLANEOUS

10.1 Survival. All warranties, representations, indemnities and covenants made by any party hereto, whether herein or in any certificate or other instrument delivered by any such party or on behalf of any such party under this Agreement, shall be considered to have been relied upon by each other party hereto and shall survive the execution and delivery hereof, the consummation of the transactions contemplated hereby at the Closing or on each Purchase Date, each Advance Date and the Lease Term Commencement Date, regardless of any investigation made by any such party or on behalf of any such party. All indemnities made by any party hereto, whether herein or in any certificate or other instrument delivered by any such party or on behalf of any such party under this Agreement, shall survive the termination of this Agreement or any other Operative Agreement.

10.2 Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing, and any such notice shall become effective when received. Any written notice shall be by (a) personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) United States mail, certified, postage prepaid, return receipt requested or (c) facsimile transmission, confirmed by the method set forth in clause (a) or (b) above, in each case addressed to addressee at its respective address set forth on Schedule 1 or at such other address as such Person may from time to time designate by written notice to the other Persons party hereto.

10.3 No Guaranty. Nothing contained herein (including, without limitation, Section 7.2 hereof) or in the Lease, the Indenture, the Trust Agreement, the Bayer Letter, the Bayer

Support Agreement or the Tax Indemnity Agreement or in any certificate or other statement delivered by the Lessee or Bayer in connection with the transactions contemplated hereby or thereby shall be deemed to be (a) a guaranty by the Lessee or Bayer to the Owner Trustee, the Owner Participant, the Indenture Trustee or any holder of Notes that the Units will have any residual value or useful life, or (b) a guaranty by the Lessee or Bayer of payment of the principal of, Premium, if any, or interest on the Notes. Nevertheless, this Participation Agreement and each other document named in the foregoing sentence shall be enforceable in accordance with its terms.

10.4 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns as permitted by and in accordance with the terms hereof, including each successive holder of the Beneficial Interest permitted under Section 6.1 hereof and each successive holder of a Note permitted under Section 6.13 hereof. Except as expressly provided herein or in the other Operative Agreements, no party hereto may assign their interests herein without the consent of the other parties hereto.

10.5 Business Day. If the date on which any payment is to be made pursuant to this Agreement or any other Operative Agreement is not a Business Day, the payment otherwise payable on such date shall be payable on the next succeeding Business Day, with the same force and effect as if made on the date when such payment is due.

10.6 GOVERNING LAW. THIS AGREEMENT SHALL BE IN ALL RESPECTS GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

10.7 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under the laws of any jurisdiction, such provision, as to such jurisdiction, shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement as to such jurisdiction or any other jurisdiction.

10.8 Counterparts. This Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one agreement.

10.9 Headings and Table of Contents. The headings of the Sections of this Agreement and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

10.10 Reproduction of Documents. This Agreement, all documents constituting exhibits hereto, and all documents relating hereto received by a party hereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received in connection with the purchase of the Notes, (c) documents received by the Owner Participant in connection with the Owner Trustee's purchase of the Units, and (d) financial statements, certificates, and other information previously or hereafter furnished to the Owner Participant, the Owner Trustee, the Construction Loan Agent and the Indenture Trustee, may be reproduced by the party receiving the same by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process. Each party hereto agrees and stipulates that, to the extent permitted by law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by such party in the regular course of business) and that, to the extent permitted by law, any enlargement, facsimile, or further reproduction of such reproduction shall likewise be admissible in evidence.

10.11 Limitations of Liability.

(a) Liabilities of the Indenture Trustee, the Owner

Trustee, the Construction Lenders, the Construction Loan Agent and the Participants. Neither the Indenture Trustee, the Owner Trustee, any Construction Lender, the Construction Loan Agent nor any Participant shall have any obligation or duty to the Lessee or to others with respect to the transactions contemplated hereby, except those obligations or duties expressly set forth with respect to it in this Agreement and the other Operative Agreements; and neither the Indenture Trustee, the Owner Trustee, any Construction Lender, the Construction Loan Agent nor any Participant shall be liable for performance by any other party hereto of such other party's obligations or duties hereunder. Without limiting the generality of the foregoing, under no circumstances whatsoever shall the Indenture Trustee, any Construction Lender, the Construction Loan Agent or any Participant be liable to the Lessee for any action or inaction on the part of the Owner Trustee in connection with the transactions contemplated herein, whether or not such action or inaction is caused by misconduct or negligence of the Owner Trustee unless such action or inaction is at the direction of the Indenture Trustee, such Construction Lender, the Construction Loan Agent or such Participant, as the case may be.

(b) No Recourse to the Owner Trustee. It is expressly understood and agreed by and among the Owner Trustee, the Lessee, each Participant, each Construction Lender, the Construction Loan Agent and the Indenture Trustee, and their respective successors and permitted assigns, that, subject to the proviso contained in this Section 10.11(b), all representations, warranties, covenants and undertakings of the Owner Trustee hereunder shall be binding upon the Owner Trustee only in its capacity as Owner Trustee under the Trust Agreement, and (except as otherwise expressly provided herein) the Owner Trustee shall not be liable in its individual capacity for any breach thereof, except in the case of handling funds for failure to act with the same care Boatmen's uses in handling its own funds, and in all other cases for its gross negligence or wilful misconduct; provided, however, that nothing in this Section 10.11(b) shall be construed to limit in scope or substance those representations, warranties, covenants and undertakings of the Owner Trustee made expressly in its individual capacity set forth herein or in any other Operative Agreement. The term "Owner Trustee" as used in this Agreement shall include any successor trustee under the Trust Agreement, or the Owner Participant if the trust created thereby is terminated or revoked.

(c) No Recourse to the Indenture Trustee. It is expressly understood and agreed by and among the Owner Trustee, the Lessee, each Participant, the Indenture Trustee and each holder of a Note, and their respective successors and permitted assigns, that, subject to the proviso contained in this Section 10.11(c), all representations, warranties, covenants and undertakings of the Indenture Trustee hereunder shall be binding upon the Indenture Trustee only in its capacity as Indenture Trustee under the Indenture, and (except as otherwise expressly provided herein) the Indenture Trustee shall not be liable in its individual capacity for any breach thereof, except in the case of handling funds for failure to act with the same care the Indenture Bank uses in handling its own funds and in all other cases for its gross negligence or wilful misconduct; provided, however, that nothing in this Section 10.11(c) shall be construed to limit in scope or substance those representations, warranties, covenants and undertakings of the Indenture Trustee made expressly in its individual capacity set forth herein or in any other Operative Agreement. The term Indenture Trustee as used in this Agreement shall include any successor trustee under the Indenture.

10.12 Amendments and Waivers. Subject to Section 2.9 hereof, no term, covenant, agreement or condition of this Agreement may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by each party against which enforcement of the termination, amendment or waiver is sought.

10.13 Disclosure of Information. (a) The Lessee authorizes each holder of a Note to disclose to any Note Purchaser or potential Note Purchaser, or to any assignee or potential assignee of a Note, any and all financial and other information in such holder's possession concerning the Lessee or LSB that has been delivered to such holder of a Note by or on behalf of the

Lessee or LSB pursuant to this Agreement or any other Operative Agreement or that has been delivered to such holder of a Note by or on behalf of the Lessee or LSB in connection with such holder's investigation of the Lessee and LSB prior to purchasing a Note.

(b) Subject to the provisions of Section 10.16, the Lessee authorizes the Owner Participant to disclose to any Transferee or potential Transferee of the Beneficial Interest any and all financial and other information in the Owner Participant's possession concerning the Lessee or LSB that has been delivered to the Owner Participant by or on behalf of the Lessee or LSB pursuant to this Agreement or any other Operative Agreement or that has been delivered to the Owner Participant by or on behalf of the Lessee or LSB in connection with the Owner Participant's investigation of the Lessee and LSB prior to purchasing the Beneficial Interest.

10.14 FORUM SELECTION AND CONSENT TO JURISDICTION. ANY LITIGATION BASED HEREON OR ON ANY OTHER OPERATIVE AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER OPERATIVE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, EXCEPT FOR LITIGATION BROUGHT IN THE COURTS OF OTHER JURISDICTIONS TO ENFORCE JUDGMENTS RENDERED BY SUCH COURTS OF THE STATE OF NEW YORK OR FEDERAL COURTS LOCATED IN NEW YORK. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND OF THE APPELLATE COURTS THEREFROM FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY FINAL JUDGMENT RENDERED THEREIN FOR WHICH APPEALS OR THE TIME FOR APPEAL HAVE EXPIRED IN CONNECTION WITH SUCH LITIGATION. EACH PARTY HERETO FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OR VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY PARTY HERETO HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, SUCH PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER OPERATIVE AGREEMENTS.

10.15 WAIVER OF JURY TRIAL. THE PARTIES HERETO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY MATTER ARISING HEREUNDER OR UNDER ANY OTHER OPERATIVE AGREEMENT.

10.16 Confidentiality. The parties hereto (other than Lessee) agree to take normal and reasonable precautions in accordance with their normal procedures and exercise due care to maintain the confidentiality of all information relating to the Lessee, Bayer and their respective Affiliates, which has been identified as confidential by the Lessee or Bayer, and neither such parties nor any of their Affiliates shall use any such information for any purpose or in any manner other than pursuant to the terms contemplated by the Operative Agreements; except to the extent such information (a) was or becomes generally available to the public other than as a result of a disclosure by such parties, or (b) was or becomes available on a non-confidential basis from a source other than the Lessee or Bayer; provided, that such source is not bound by a confidentiality agreement with either the Lessee or Bayer known to such parties; and provided, further, that any such party may disclose such information (i) at the request or pursuant to any requirement of any Governmental Authority to which such party is subject or in connection with an examination of such party by any such Governmental Authority including, without limitation, the National Association of Insurance Commissioners and any other industry regulators, (ii) pursuant to subpoena or other court process, (iii) when required to do so in accordance with the provisions of any applicable law, (iv) to each such party's independent auditors and other professional advisors, and (v) to

any Person and in any proceeding necessary in any such party's judgment to protect such party's interests in connection with any claim or dispute involving such party. Notwithstanding the foregoing, the Lessee authorizes such parties to disclose to any participant or assignee or purchaser of the Construction Notes, the Notes, the Trust Estate, the Indenture Estate, the Beneficial Interest or the Units (each, a "Transferee"), to any prospective Transferee and to any Affiliate, such financial and other information in such parties' possession concerning the Lessee, Bayer or their respective Affiliates which has been delivered to such parties pursuant to this Lease or the Participation Agreement; provided, that unless otherwise agreed by the Lessee or Bayer, as applicable, the Transferee agrees in writing with such parties to keep such information confidential to the same extent required of such parties hereunder.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered in New York, New York, all as of the date first above written.

Lessee: EL DORADO NITROGEN COMPANY

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

Owner Trustee: BOATMEN'S TRUST COMPANY OF TEXAS,  
not in its individual capacity, except as expressly provided herein, but solely as Owner Trustee

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

Owner Participant: SECURITY PACIFIC LEASING CORPORATION

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

Indenture Trustee: WILMINGTON TRUST COMPANY,  
not in its individual capacity, except as expressly provided herein, but solely as Indenture Trustee

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

Construction Loan Agent: BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

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

Construction Lender: SECURITY PACIFIC LEASING CORPORATION

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

Construction Lender  
and Note Purchaser:

BAYERISCHE LANDESBANK, NEW YORK BRANCH

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

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

EXHIBIT A  
Participation Agreement

FORM OF AMENDED AND RESTATED TRUST AGREEMENT

EXHIBIT B  
Participation Agreement

FORM OF INDENTURE

EXHIBIT C  
Participation Agreement

FORM OF CONSTRUCTION LOAN AGREEMENT

EXHIBIT D-1  
Participation Agreement

FORM OF BAYER SUPPORT AGREEMENT

EXHIBIT D-2  
Participation Agreement

FORM OF BAYER LETTER

EXHIBIT E  
Participation Agreement

FORM OF LEASE

EXHIBIT F-1  
Participation Agreement

FORM OF GROUND LEASE

EXHIBIT F-2  
Participation Agreement

FORM OF GROUND LEASE SUBLEASE

EXHIBIT G-1  
Participation Agreement

FORM OF OPINION OF LESSEE'S COUNSEL - EFFECTIVE DATE

EXHIBIT G-2  
Participation Agreement

FORM OF OPINION OF LESSEE'S COUNSEL - LEASE  
TERM COMMENCEMENT DATE

EXHIBIT H-1  
Participation Agreement

FORM OF OPINION OF OWNER TRUSTEE'S SPECIAL COUNSEL -  
EFFECTIVE DATE

EXHIBIT H-2  
Participation Agreement

FORM OF OPINION OF OWNER TRUSTEE'S SPECIAL COUNSEL -  
LEASE TERM COMMENCEMENT DATE

EXHIBIT I-1A  
Participation Agreement

FORM OF OPINION OF OWNER PARTICIPANT'S SPECIAL COUNSEL -  
EFFECTIVE DATE

EXHIBIT I-2A  
Participation Agreement

FORM OF OPINION OF OWNER PARTICIPANT'S SPECIAL COUNSEL -  
EFFECTIVE DATE

EXHIBIT I-2B  
Participation Agreement

FORM OF OPINION OF OWNER PARTICIPANT S SPECIAL  
COUNSEL-LEASE TERM COMMENCEMENT DATE

EXHIBIT J  
Participation Agreement

FORM OF OPINION OF INDENTURE TRUSTEE'S SPECIAL COUNSEL

EXHIBIT K-1A  
Participation Agreement

FORM OF OPINION OF BAYER'S COUNSEL -  
EFFECTIVE DATE

EXHIBIT K-1B  
Participation Agreement

FORM OF OPINION OF PAUL BERRY

EXHIBIT K-2A  
Participation Agreement

FORM OF OPINION OF BAYER'S COUNSEL -  
LEASE TERM COMMENCEMENT DATE

EXHIBIT K-2B  
Participation Agreement

FORM OF OPINION OF PAUL BERRY -  
LEASE TERM COMMENCEMENT DATE

EXHIBIT L  
Participation Agreement

FORM OF PRIVATE PLACEMENT CERTIFICATE

EXHIBIT M  
Participation Agreement

[INTENTIONALLY OMITTED]

EXHIBIT N  
Participation Agreement

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT O  
Participation Agreement

FORM OF BILL OF SALE

EXHIBIT P  
Participation Agreement

FORM OF PURCHASE NOTICE

EXHIBIT Q  
Participation Agreement

FORM OF ADVANCE DATE NOTICE

EXHIBIT R  
Participation Agreement

FORM OF AMENDED AND RESTATED  
CONSTRUCTION AGENCY AGREEMENT

EXHIBIT S  
Participation Agreement

FORM OF FACILITY DOCUMENTS

EXHIBIT T  
Participation Agreement

FORM OF SUPPORT DOCUMENTS

EXHIBIT U  
Participation Agreement

FORM OF ELIGIBLE OP ASSIGNEE GUARANTY

SCHEDULE 1  
Participation Agreement

PARTIES' ADDRESSES AND PAYMENT INSTRUCTIONS

Party	Address	Payment Instructions
-------	---------	----------------------

SCHEDULE 2  
Participation Agreement

RENTAL FACTORS

Rent Payment Date	Basic Rent Percentage In Arrears/In Advance
-------------------	--

SCHEDULE 3  
Participation Agreement

STIPULATED LOSS VALUE/TERMINATION VALUE

Determination Date	Stipulated Loss Value as Percent of Total Equipment Cost	Termination Value
-----	-----	-----

SCHEDULE 4  
Participation Agreement

[INTENTIONALLY OMITTED]

SCHEDULE 5  
Participation Agreement

AMORTIZATION SCHEDULE

SCHEDULE 6  
Participation Agreement

FIXED PRICE PURCHASE OPTION AMOUNT

Lease Term Expiration Date	Fixed Price Purchase Option Amount
-----	-----

SCHEDULE 7  
Participation Agreement

LEASED PROPERTY

SCHEDULE 8  
Participation Agreement

PRICING ASSUMPTIONS

SCHEDULE 9  
Participation Agreement

CONSTRUCTION COMMITMENT AMOUNTS

SCHEDULE 10  
Participation Agreement

NOTE PURCHASER'S PERCENTAGE AND COMMITMENT

SCHEDULE 11  
Participation Agreement

LESSEE DISCLOSURES

APPENDIX A  
Participation Agreement

DEFINITIONS

LEASE AGREEMENT  
(EDNC Trust 1997)

Dated as of June 27, 1997

Between

BOATMEN'S TRUST COMPANY OF TEXAS,  
not in its individual capacity, except  
as expressly provided herein, but  
solely as Owner Trustee,  
as Lessor

and

EL DORADO NITROGEN COMPANY,  
as Lessee

Nitric Acid Production Facility

CERTAIN OF THE RIGHT, TITLE AND INTEREST OF THE LESSOR IN AND TO THIS LEASE, THE UNITS COVERED HEREBY AND THE RENT DUE AND TO BECOME DUE HEREUNDER HAVE BEEN ASSIGNED AS COLLATERAL SECURITY TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, WILMINGTON TRUST COMPANY, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS INDENTURE TRUSTEE UNDER A TRUST INDENTURE AND SECURITY AGREEMENT (EDNC TRUST 1997), DATED AS OF JUNE 27, 1997, BETWEEN SUCH INDENTURE TRUSTEE, AS SECURED PARTY, AND THE LESSOR, AS DEBTOR. INFORMATION CONCERNING SUCH SECURITY INTEREST MAY BE OBTAINED FROM THE INDENTURE TRUSTEE AT ITS ADDRESS SET FORTH IN SECTION 20 OF THIS LEASE. THIS LEASE HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS, BUT ONLY THE COUNTERPART TO BE DEEMED THE ORIGINAL COUNTERPART FOR CHATTEL PAPER PURPOSES CONTAINS THE RECEIPT THEREFOR EXECUTED BY WILMINGTON TRUST COMPANY, AS INDENTURE TRUSTEE, ON THE SIGNATURE PAGES THEREOF. SEE SECTION 25.2 FOR INFORMATION CONCERNING THE RIGHTS OF THE ORIGINAL HOLDER AND THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF.

TABLE OF CONTENTS

	Page
SECTION 1. DEFINITIONS; INTERPRETATION OF THIS LEASE. . . . .	.1
1.1 Definitions. . . . .	.1
1.2 Directly or Indirectly. . . . .	.1
SECTION 2. LEASE AND DELIVERY . . . . .	.2
SECTION 3. TERM AND RENT. . . . .	.2
3.1 Lease Term. . . . .	.2
3.2 Basic Rent . . . . .	.2
3.3 Sufficiency of Basic Rent. . . . .	.3
3.4 Supplemental Rent. . . . .	.3
3.5 Certain Adjustments. . . . .	.3
3.6 Manner of Payments . . . . .	.3
3.7 Net Lease, Etc . . . . .	.4
SECTION 4. OWNERSHIP AND MARKING OF UNITS; PERSONAL PROPERTY. . . . .	.5
4.1 Retention of Title . . . . .	.5
4.2 Duty to Mark Units . . . . .	.5
4.3 Prohibition Against Certain Designations . . . . .	.5
4.4 Personal Property. . . . .	.6
SECTION 5. DISCLAIMER OF WARRANTIES . . . . .	.6
SECTION 6. RETURN OF UNITS; CONDITION; STORAGE. . . . .	.8
6.1 Return . . . . .	.8
6.2 Condition of Units . . . . .	.8
6.3 Storage. . . . .	.8
SECTION 7. LIENS. . . . .	.9
SECTION 8. MAINTENANCE; OPERATION; POSSESSION; COMPLIANCE WITH LAWS; SUBLEASE; REPLACEMENT OF PARTS; SUBSTITUTION	.9

8.1	Maintenance and Operation . . . . .	9
8.2	Possession and Use . . . . .	10
8.3	Sublease . . . . .	10
8.4	Replacement of Parts . . . . .	11
SECTION 9. MODIFICATIONS. . . . .		12
9.1	Required Modifications . . . . .	12
9.2	Optional Modifications . . . . .	12
SECTION 10. VOLUNTARY TERMINATION . . . . .		13
10.1	Uneconomic or Surplus Condition Termination. . . . .	13
10.2	Sale of Units. . . . .	13
10.3	Retention of Units by the Lessor . . . . .	14
10.4	Termination of Lease . . . . .	15
SECTION 11. LOSS, DESTRUCTION, REQUISITION, ETC.. . . . .		15
11.1	Event of Loss. . . . .	15
11.2	Replacement or Payment upon Event of Loss. . . . .	15
11.3	Rent Termination . . . . .	16
11.4	Disposition of Units; Replacement of Units . . . . .	16
11.5	Applications of Event of Loss Proceeds . . . . .	17
11.6	Eminent Domain; Damage Not Constituting an Event of Loss . . . . .	18
11.7	Lease Event of Default . . . . .	18
SECTION 12. INSURANCE . . . . .		20
12.1	Property Damage, Public Liability and Other Insurance. . . . .	20
12.2	Policy Provisions. . . . .	21
12.3	Proceeds of Insurance. . . . .	22
12.4	Notice, Etc. . . . .	23
12.5	Reports and Certificates . . . . .	23
12.6	Additional Insurance . . . . .	23
SECTION 13. INSPECTION. . . . .		24
SECTION 14. LEASE EVENTS OF DEFAULT . . . . .		24
SECTION 15. REMEDIES. . . . .		26
15.1	Remedies . . . . .	26
15.2	Cumulative Remedies. . . . .	28
15.3	No Waiver. . . . .	29
15.4	Notice of Lease Default. . . . .	29
15.5	Specific Performance; the Lessor Appointed the Lessee's Agent. . . . .	29
SECTION 16. FURTHER ASSURANCES; REPORTS; OPINION. . . . .		29
16.1	Further Assurances. . . . .	29
16.2	Reports. . . . .	30
16.3	Opinion. . . . .	30
SECTION 17. THE LESSOR'S RIGHT TO PERFORM.. . . .		30
SECTION 18. ASSIGNMENT BY THE LESSOR. . . . .		30
SECTION 19. ASSIGNMENT BY THE LESSEE. . . . .		31
SECTION 20. NOTICES.. . . .		31
SECTION 21. CONCERNING THE INDENTURE TRUSTEE. . . . .		32
21.1	Rights and Immunities of Indenture Trustee . . . . .	32
21.2	Amendments; Exercise of Remedies . . . . .	33
SECTION 22. END OF LEASE TERM PURCHASE OPTION. . . . .		33
SECTION 23. LIMITATION OF THE LESSOR'S LIABILITY. . . . .		34
SECTION 24. INVESTMENT OF SECURITY FUNDS. . . . .		34
SECTION 25. MISCELLANEOUS. . . . .		34
25.1	Governing Law; Severability. . . . .	34
25.2	Execution in Counterparts. . . . .	35
25.3	Headings and Table of Contents; Section References.. . . .	35
25.4	Successors and Assigns . . . . .	35
25.5	True Lease . . . . .	35
25.6	Amendments and Waivers . . . . .	36
25.7	Survival . . . . .	35
25.8	Business Days. . . . .	36
25.9	Incorporation by Reference.. . . .	36
25.10	Lessee's Right of Use and Enjoyment . . . . .	36
25.11	License to Enter Land . . . . .	36
25.12	FORUM SELECTION AND CONSENT TO JURISDICTION . . . . .	36
SECTION 26. WAIVER OF JURY TRIAL . . . . .		37

Attachments:

- Exhibit A Form of Lease Supplement
- Exhibit B Description of Premises
- Appendix A Definitions

LEASE AGREEMENT  
(EDNC Trust 1997)

THIS LEASE AGREEMENT (EDNC Trust 1997), dated as of June 27, 1997 (as amended, supplemented or otherwise modified from time to time, this "Lease"), is between BOATMEN'S TRUST COMPANY OF TEXAS, a Texas state chartered trust company, not in its individual capacity except as expressly provided herein, but solely as Owner Trustee under the Trust Agreement (the "Lessor"), and EL DORADO NITROGEN COMPANY, an Oklahoma corporation (the "Lessee").

W I T N E S S E T H:

WHEREAS, the Lessor and the Lessee each desire to enter into this Lease on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the Lessor and the Lessee agree as follows:

SECTION 1. DEFINITIONS; INTERPRETATION OF THIS LEASE.

1.1 Definitions. For all purposes of this Lease, except as otherwise defined herein or unless the context otherwise requires:

(a) capitalized terms used herein (including the foregoing recitals) shall have the meanings assigned to them in Appendix A hereto;

(b) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision; and

(c) all references in this Lease to Articles, Sections, Exhibits and Schedules refer to Articles, Sections, Exhibits and Schedules of this Lease unless otherwise indicated.

1.2 Directly or Indirectly. Where any provision in this Lease refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

SECTION 2. LEASE AND DELIVERY.

The Lessor hereby agrees (subject to satisfaction or waiver of the conditions set forth in Sections 4.1 and 4.2 of the Participation Agreement) on the date of execution and delivery hereof to sublease (and does hereby sublease) the Premises (as described in Exhibit B hereto) to the Lessee and the Lessee agrees to sublease (and does hereby sublease) the Premises from the Lessor. The Lessor hereby further agrees (subject to the satisfaction or waiver of the conditions set forth in Sections 4.3, 4.4, 4.5 and 4.8 of the Participation Agreement) on the Lease Term Commencement Date to subject to this Lease the Units, described in Schedule 1 to the Lease Supplement dated the Lease Term Commencement Date and covering such Units, by executing and delivering on the Lease Term Commencement Date such Lease Supplement. The Lessee hereby agrees (subject to satisfaction or waiver of the conditions set forth in Section 4.6 of the Participation Agreement) on the Lease Term Commencement Date to lease from the Lessor on the terms and conditions set forth herein the Units, as conclusively evidenced by the execution and delivery by the Lessee and the Lessor of a Lease Supplement

covering such Units. The Lease Supplement executed and delivered on the Lease Term Commencement Date shall describe the Units subjected to this Lease on the Lease Term Commencement Date, shall set forth the Total Equipment Cost thereof, shall confirm that each Unit has been assembled and installed at the Premises, and shall state and represent that such Units are free and clear of all Liens, except the Lien of this Lease and the Indenture and Permitted Liens of the type described in clauses (iii) and (iv) of the definition thereof, and subject to the express rights of Bayer under the Facility Documents. The Lessee hereby agrees that execution and delivery of a Lease Supplement by the Lessee shall, without further act, irrevocably constitute acceptance by the Lessee of the Units identified in such Lease Supplement for all purposes of this Lease. All risk of loss of the Premises shall pass to the Lessee upon the execution and delivery hereof and all risk of loss of a Unit shall pass to the Lessee upon the acceptance of each such Unit.

### SECTION 3. TERM AND RENT.

3.1 Lease Term. The Lease Term of this Lease (the "Lease Term") shall commence, with respect to the Premises, on the execution and delivery hereof, and, with respect to the Units, on the Lease Term Commencement Date. Subject to earlier termination pursuant to Sections 10, 11 and 15, the Lease Term shall expire at 11:59 p.m. (New York City time) on the Lease Term Expiration Date.

3.2 Basic Rent. The Lessee hereby agrees to pay the Lessor Basic Rent for the Units throughout the Lease Term in consecutive monthly installments payable on each Rent Payment Date in arrears. Each such monthly payment of Basic Rent shall be in an amount equal to the product of the Total Equipment Cost multiplied by the Basic Rent percentage set forth opposite such Rent Payment Date on Schedule 2 to the Participation Agreement (as such Schedule 2 shall be adjusted in accordance with Section 2.9 of the Participation Agreement). In addition, if the Lease Term Commencement Date is other than the first day of a calendar month, an additional amount equal to the product of (i) the daily average of the Basic Rent payable during the Lease Term, times (ii) the number of days from, and including, the Lease Term Commencement Date to, but excluding, the first day of the next calendar month, shall be paid by the Lessee to the Lessor on the first day of such next calendar month.

3.3 Sufficiency of Basic Rent. Notwithstanding anything to the contrary contained in this Lease or any other Operative Agreement, (i) each installment of Basic Rent (both before and after any adjustment in accordance with Section 2.9 of the Participation Agreement) shall be in an amount at least sufficient to pay in full the principal and interest on the Notes due on the due date of such installment of Basic Rent; and (ii) assuming prior performance of the Lease, all Stipulated Loss Values and Termination Values shall be an amount at least sufficient to pay in full as of the date of payment thereof, together with any installment of Basic Rent payable in arrears, as of the scheduled date of payment thereof, the aggregate unpaid principal of and all unpaid interest on the Notes accrued to the date on which Stipulated Loss Value or Termination Value, as the case may be, is scheduled to be paid in accordance with the terms hereof. The foregoing shall not constitute a guaranty of the payment of the Notes.

3.4 Supplemental Rent. The Lessee also agrees to pay to the Lessor, or to whomsoever shall be entitled thereto, any and all Supplemental Rent, promptly as the same shall become due and owing, or where no due date is specified, promptly after demand by the Person entitled thereto, and in any event within ten Business Days after such demand, and in the event of any failure on the part of the Lessee to pay any Supplemental Rent, the Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise as in the case of nonpayment of Basic Rent. The Lessee will also pay, as Supplemental Rent, (i) on demand, to the extent permitted by applicable law, an amount equal to interest at the applicable Late Rate on any part of any installment of Basic Rent not paid when due for any period for which the same shall be overdue and on any payment of Supplemental Rent payable to any Indemnified Person not paid when due or demanded, as the case may be, for the period from such due date or demand, as the case may be, until the same shall be paid, and (ii) in the case of any prepayment or

repayment of the Notes or in the case of any change in the amortization schedule, in each case pursuant to the Indenture, on the date such Notes are prepaid or repaid or on the date the amortization schedule is to be adjusted, an amount equal to the Premium, if any, payable in connection therewith. All Supplemental Rent to be paid pursuant to this Section 3.4 shall be payable in the type of funds and in the manner set forth in Section 3.6 and, except in the case of payments designated as interest or payments of Stipulated Loss Value, Termination Value, Fixed Price Purchase Option Amount or Premium, Supplemental Rent shall be payable on an After-Tax Basis.

3.5 Certain Adjustments. The Lessee and the Lessor agree that Basic Rents, Stipulated Loss Values and Termination Values shall be adjusted to the extent provided in Section 2.9 of the Participation Agreement.

3.6 Manner of Payments. All Rent (other than Supplemental Rent payable to Persons other than the Lessor, which shall be payable to such other Persons in accordance with written instructions furnished to the Lessee by such Persons, unless otherwise provided in any of the Operative Agreements or required by law) shall be paid by the Lessee to the Lessor by transferring or delivering such amounts to the Lessor's account number 55-05-300-4673100 at Boatmen's First National Bank of Amarillo, ABA No. 111-300-945, account name: Credit Trust Account, with a reference to EDNC Trust-1997. All Rent shall be paid by the Lessee in funds consisting of lawful currency of the United States of America, which shall be immediately available to the recipient not later than 1:00 p.m. (New York City time) on the date of such payment; provided that unless and until the Lessee shall have received written notice from the Indenture Trustee that the Lien of the Indenture has been discharged pursuant to the terms thereof, the Lessor hereby directs, and the Lessee agrees, that all Rent (excluding Excepted Property) payable to the Lessor and assigned to the Indenture Trustee shall be paid directly to the Indenture Trustee at the times and in funds of the type specified in this Section 3.6 at the office of the Indenture Trustee, or at such other location in the United States of America as the Indenture Trustee may otherwise direct.

3.7 Net Lease, Etc. This Lease is a net lease and the Lessee's obligation to pay all Rent payable hereunder shall be absolute, unconditional and irrevocable and shall not be affected by any circumstance of any character whatsoever, including, without limitation, (i) any set-off, abatement, counterclaim, suspension, recoupment, reduction, rescission, defense or other right that the Lessee may have against the Lessor, the Owner Participant, Bayer, the Indenture Trustee or any holder of a Note, any vendor or manufacturer of any Unit, or any other Person for any reason whatsoever, (ii) any defect in or failure of title, merchantability, condition, design, compliance with specifications, operation or fitness for use of all or any part of any Unit or the Premises, (iii) any damage to, or removal, abandonment, requisition, taking, condemnation, loss, theft or destruction of all or any part of any Unit or the Premises or any interference, interruption, restriction, curtailment or cessation in the use or possession of any Unit or the Premises by the Lessee or any other Person for any reason whatsoever or of whatever duration, (iv) to the maximum extent permitted by law, any insolvency, bankruptcy, reorganization or similar proceeding by or against the Lessee, the Lessor, the Owner Participant, Bayer, the Indenture Trustee, any holder of a Note or any other Person, (v) any Liens, security interest or rights of the Lessor, the Owner Trustee, Bayer, the Indenture Trustee, any holder of a Note or any other Person with respect to the Units, (vi) the invalidity, illegality or unenforceability of this Lease, any other Operative Agreement, or any other agreement, document or instrument referred to herein or therein or any other infirmity herein or therein or any lack of right, power or authority or authorization of the Lessee, the Lessor, the Owner Participant, Bayer, the Indenture Trustee, any holder of a Note or any other Person to enter into this Lease or any other Operative Agreement or to perform the obligations hereunder or thereunder or consummate the transactions contemplated hereby or thereby or any doctrine of force majeure, impossibility, frustration or failure of consideration, (vii) the breach or failure of any warranty or representation made in this Lease or any other Operative Agreement by any Lessee, the Lessor, Bayer, the Owner Participant, the Indenture Trustee, any holder of a Note or any other Person, or (viii) any other circumstance or happening

whatsoever, whether or not similar to any of the foregoing, any present or future law notwithstanding, it being the intention of the parties hereto that all Rent being payable by the Lessee shall continue to be payable in all events in the manner and at the times provided herein. To the maximum extent permitted by law, the 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 this Lease, except in accordance with the express terms hereof. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise, except as specifically provided herein, the Lessee nonetheless agrees to the maximum extent permitted by law, to pay to the Lessor and/or to any other Person entitled thereto, amounts equal to each installment of Basic Rent and all Supplemental Rent due and owing at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. The obligations of the Lessee in the immediately preceding sentence shall survive the expiration or termination of this Lease other than in accordance with its terms. Each payment of Rent made by the Lessee hereunder shall be final and the Lessee shall not seek or have any right to recover all or any part of such payment from the Lessor or any Person for any reason whatsoever. All covenants, agreements and undertakings of the Lessee under this Lease and under any other Operative Agreement shall be performed, complied with and satisfied at the Lessee's sole cost, expense and risk unless otherwise expressly stated herein or therein. Nothing contained herein shall be construed to waive any claim which the Lessee might have under any of the Operative Agreements or otherwise, or to limit the right of the Lessee to independently make any claim it might have against the Lessor or any other Person or to independently pursue such claim in such manner as the Lessee shall deem appropriate.

#### SECTION 4. OWNERSHIP AND MARKING OF UNITS; PERSONAL PROPERTY.

4.1 Retention of Title. The Lessor shall and hereby does retain, subject to the rights and interests of the Indenture Trustee under the Indenture so long as the Indenture shall remain in effect, full legal title to and ownership of the Units notwithstanding the delivery to and possession and use of the Units by the Lessee hereunder or any sublessee under any sublease permitted hereby.

4.2 Duty to Mark Units. The Lessee will promptly, on or prior to the date a Unit becomes subject to this Lease, cause such Unit (and Replacement Unit or Substitute Unit) to be plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon such Unit, with the following legend:

"LEASED FROM BOATMEN'S TRUST COMPANY OF TEXAS,  
AS OWNER TRUSTEE, AND SUBJECT TO A SECURITY  
INTEREST IN FAVOR OF WILMINGTON TRUST COMPANY"

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's right, title and interest in and to such Unit, its rights under this Lease and the rights of the Indenture Trustee; provided, however, that the Lessee will not, under any circumstances, be required to place more than five plates, stencils or legends (in the aggregate) on the Units or otherwise at the Premises. The Lessee will replace promptly any such plates, stencils or legends which may be removed, defaced, obliterated or destroyed.

4.3 Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any Person to be placed on any Unit or at the Premises as a designation that might reasonably be interpreted as a claim of ownership.

4.4 Personal Property. It is intended by the Lessor and the Lessee that each Unit is and shall be and remain personal property notwithstanding the manner in which such Unit may be attached or affixed to realty, and that, upon termination of the Lease Term, the Lessor shall have the right, to remove such Unit from the premises whereon the same is located, whether or not affixed or attached to the realty or any building, at the sole cost and expense of the Lessee. The Lessor shall not be liable for, and the Lessee hereby indemnifies each Indemnified Person

(which indemnification shall survive the termination of this Lease), and agrees to hold each Indemnified Person harmless from and against, any claim, loss or liability resulting from, any damage caused to the realty or any building by the removal of such Unit, other than those arising from the gross negligence or willful misconduct of such Indemnified Person.

#### SECTION 5. DISCLAIMER OF WARRANTIES.

Without waiving any claim the Lessee may have against any seller, supplier or manufacturer, THE LESSEE ACKNOWLEDGES AND AGREES THAT, (i) EACH UNIT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY AND ACCEPTABLE TO THE LESSEE, AND THAT THE LESSEE HAS EXAMINED AND APPROVED ALL SUPPLY AND PURCHASE CONTRACTS RELATING TO ANY UNIT, (ii) THE LESSEE IS SATISFIED THAT EACH UNIT AND THE PREMISES ARE SUITABLE FOR THEIR PURPOSES, (iii) NEITHER THE LESSOR NOR THE OWNER PARTICIPANT IS A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND, (iv) EACH UNIT AND THE PREMISES ARE LEASED HEREUNDER SUBJECT TO ALL APPLICABLE LAWS AND GOVERNMENTAL REGULATIONS NOW IN EFFECT OR HEREAFTER ADOPTED AND IN THE STATE AND CONDITION OF EVERY PART THEREOF WHEN THE SAME FIRST BECAME SUBJECT TO THIS LEASE, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND BY THE LESSOR (IN ITS INDIVIDUAL CAPACITY OR OTHERWISE) OR THE OWNER PARTICIPANT, AND (v) THE LESSOR LEASES AND THE LESSEE TAKES EACH UNIT AND THE PREMISES "AS-IS", "WHERE-IS" AND "WITH ALL FAULTS", IN WHATEVER CONDITION THEY MAY BE, AND THE LESSEE ACKNOWLEDGES THAT NEITHER THE LESSOR, AS THE LESSOR OR IN ITS INDIVIDUAL CAPACITY, NOR THE OWNER PARTICIPANT MAKES, NOR SHALL BE DEEMED TO HAVE MADE, AND EACH EXPRESSLY DISCLAIMS, ANY AND ALL RIGHTS, CLAIMS, WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN, OPERATION, MERCHANTABILITY, OR TITLE, OF ANY UNIT OR THE PREMISES, THE QUALITY OF THE MATERIAL THEREIN OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT, THE ABSENCE OF ANY LATENT OR OTHER DEFECT, WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF ANY OBLIGATIONS BASED ON STRICT LIABILITY IN TORT OR ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT THERETO, IT BEING AGREED THAT ALL SUCH RISKS, AS AMONG THE LESSOR, THE OWNER PARTICIPANT AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE, except that the Lessor hereby represents and warrants that (i) the Lessor shall have received whatever title to the Units that was conveyed to it by the seller thereof, (ii) the Lessor shall have received whatever interest in the Premises that was conveyed to it pursuant to the Ground Lease Sublease and (iii) the Units and the Premises are free and clear of Lessor's Liens attributable to it. It is also agreed that, as between the Indemnified Persons and the Lessee, all risks incident to the matters discussed in the preceding sentence are to be borne by the Lessee. The provisions of this Section 5 have been negotiated, and except to the extent otherwise expressly stated in the Operative Agreements, the foregoing provisions are intended to be a complete exclusion and negation of any representations or warranties by any Participant, the Lessor or the Indenture Trustee, expressed or implied, with respect to the Units, the Premises or any part of any thereof, that may arise pursuant to any applicable law now or hereafter in effect, or otherwise. The Lessee hereby sells, assigns, conveys and transfers to the Lessor all of the Lessee's right, title and interest in and to all warranty and indemnity provisions contained in or to be provided pursuant to the purchase agreements that relate to the Units and all claims thereunder in respect of the Units arising as a result of any default by the applicable manufacturer under a purchase agreement; provided that, except as otherwise expressly stated in the Operative Agreements, it is expressly agreed that the Lessor shall have no obligation or liability under any such purchase agreement by reason of, or arising out of, the foregoing assignment or be obligated to perform any of the obligations of the Lessee under any such purchase agreement. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the Lease Term to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Units against the manufacturer, vendor or subcontractor of any such Unit or any prior owner thereof; provided, however, that if at any time a Lease Event of Default shall have occurred and be continuing, at the Lessor's option, such power of attorney shall terminate, and the Lessor may assert

and enforce, at the Lessee's sole cost and expense, such claims and rights. None of the Owner Participant, the Indenture Trustee, any holder of a Note, the Construction Loan Agent, any Construction Lender or the Lessor shall have any responsibility or liability to the Lessee or any other Person with respect to any of the following: (w) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Unit or the Premises or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith, other than, as to any such Person, that arising directly from the gross negligence or willful misconduct of such Person during any visit by such Person to the Premises; (x) the use, operation or performance of any Unit or the Premises or any risks relating thereto; (y) any interruption of service, loss of business or anticipated profits or consequential damages; or (z) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Unit or the Premises. The Lessee's delivery of a Lease Supplement shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in good order and condition, appear to conform to specifications applicable thereto and all governmental standards and requirements reasonably interpreted as being applicable thereto and are in all respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor or the Owner Participant based on any of the foregoing matters.

#### SECTION 6. RETURN OF UNITS; CONDITION; STORAGE.

6.1 Return. At the end of the Lease Term, unless the Lessee has exercised the Fixed Price Purchase Option under Section 22, the Lessee shall surrender each Unit which is subject to the Lease at such time to Lessor at the Premises in accordance with the terms of this Section 6, and the Lessee shall promptly vacate the Premises.

6.2 Condition of Units. Each Unit when surrendered to the Lessor pursuant to Section 6.1 shall be in the condition required by Section 8.1 (as then currently tooled) and free and clear of all Liens, other than Lessor's Liens, with all Severable Modifications that are not Required Modifications to which title was retained by the Lessee pursuant to Section 9.2 having been removed from such Unit and with any damage caused by such removal having been repaired. All logs, documents, instruments, specifications, manuals, drawings, records, books, service bulletins and other materials relating to such Unit and the use, damage, repair and maintenance of such Unit shall be surrendered to the Lessor or its designee upon the surrender of such Unit. In addition, all licenses, patents and similar rights necessary for the operation of each Unit by a third party shall be assigned or conveyed to the Lessor or its designee upon surrender of such Unit.

6.3 Storage. If requested by the Lessor, the Lessee will provide for free storage of each Unit (i) so long as no Lease Event of Default has occurred and is continuing, for a period not exceeding 60 days or (ii) subject to the rights of Bayer under the Facility Documents, if a Lease Event of Default has occurred and is continuing, for a period not exceeding one year, in each case on the Premises, during which time the Lessee will, at its sole cost and expense, maintain and insure such Unit in accordance with the provisions of this Lease. During such period of storage, the Lessor or any Person designated by it and any prospective purchaser or user, shall have the right to inspect, at its sole cost, expense and risk (except that if a Lease Default or a Lease Event of Default shall have occurred and be continuing, any such inspection shall be at the cost, expense and risk of the Lessee) any Unit that is surrendered pursuant to Section 6.1. If the Lessee has not exercised the Fixed Price Purchase Option, the Lessee will cause the Units to be kept in a state where such Units can be demonstrated to a prospective purchaser or user during the last 180 days of the Lease Term. The Lessor agrees to indemnify, protect and keep harmless, on an After-Tax Basis, the Lessee, its employees, agents, successors and assigns from and against any and all liabilities, obligations, losses, damages, injuries, claims, actions, costs and expenses (including reasonable attorney's fees) for personal injuries or property damage arising directly out of the gross negligence or willful misconduct of the Lessor, or the acts or omissions of any Person designated by it or any prospective purchaser or user in connection with the inspection of the Units

pursuant to this Section 6.3, whether or not such acts or omissions of such Person, prospective purchaser or user constitute gross negligence or willful misconduct. The Lessee will provide to the Lessor or any Person designated by it such cooperation and assistance as the Lessor or such Person shall reasonably request in connection with the remarketing of the Units.

#### SECTION 7. LIENS.

The Lessee will not directly or indirectly create, incur, assume, permit or suffer to exist any Lien on or with respect to any Units or the Premises or the Lessee's leasehold interest therein under this Lease, except Permitted Liens, Lessor's Liens and Liens described in Section 6.4 of the Participation Agreement and the Lessee shall promptly, at its own expense, take such action or cause such action to be taken as may be necessary to duly discharge (by bonding or otherwise) any such Lien not excepted above if the same shall arise at any time. Without limiting the foregoing and except for the Lien of this Lease and the Indenture and Permitted Liens of the type described in clauses (iii) and (iv) of the definition thereof, and subject to the express rights of Bayer under the Facility Documents, the Lessee covenants and agrees that it will keep each Unit and the Premises free and clear of any Liens, rights of distraint, charges, encumbrances or claims of the owner or owners of any interest in the real estate on which any Unit may from time to time be located and any purchaser of, or present or future creditor obtaining a Lien on, such real estate, and will obtain and deliver, promptly after delivery or change in location of any Unit, such waivers of any of the foregoing in recordable form reasonably satisfactory to the Lessor as are necessary to so maintain each Unit free and clear as aforesaid.

#### SECTION 8. MAINTENANCE; OPERATION; POSSESSION; COMPLIANCE WITH LAWS; SUBLEASE; REPLACEMENT OF PARTS; SUBSTITUTION.

8.1 Maintenance and Operation. The Lessee, at its own cost and expense, shall maintain, service, repair, protect and keep, or shall cause to be maintained, serviced, repaired, protected and kept, each Unit and the Premises, and shall operate and use each Unit and the Premises, (i) in good operating order, condition and repair, and in at least as good operating order, condition and repair as on the date of the delivery by the manufacturer of such Unit, ordinary wear and tear excepted, and in a manner comparable to and no less favorable than maintenance practices used by the Lessee in respect of equipment owned or leased by the Lessee similar in type to such Unit, (ii) in accordance with all manufacturer's standards and warranties and in accordance with standards and procedures necessary to preserve coverages under all insurance policies required to be maintained pursuant to Section 12, if applicable, (iii) in material compliance with all applicable laws, rules and regulations or as required by any Governmental Authority, and (iv) in accordance with sound engineering practice and standards which will enable the Lessee to operate the Units at or above the contracted capacity levels or otherwise fully perform its obligations under the Operative Agreements. The Lessee shall at all times, at its own expense, comply with such operating or repair standards and periodic maintenance inspections as are required to enforce warranty claims against manufacturers or subcontractors in respect of each Unit or which are otherwise established by such manufacturers or subcontractors as normal operating procedures. The Lessee shall use each Unit and the Premises only in the manner for which they were designed and intended; provided that the Lessee may retool such Unit so long as the operation and maintenance thereof otherwise complies with this Section 8. In no event shall the Lessee adversely discriminate as to the use or maintenance of any Unit (including the periodicity of maintenance or record keeping in respect of such Unit) as compared to other equipment of a similar nature which the Lessee owns or leases. The Lessee will maintain all blueprints, operating manuals, maintenance manuals, parts lists, service bulletins and other technical documents and information necessary for the assembly and operation of each Unit and all records, logs and other materials for each Unit required by any Governmental Authority, all as if the Lessee were the owner of such Unit, regardless of whether any such requirements, by their terms, are nominally imposed on the Lessee, the Lessor or the Owner Participant. The Lessee, at its sole cost and expense, shall promptly repair,

restore, rebuild or replace any Units which from time to time become damaged, destroyed, seized or confiscated so that at all times the condition of such Unit shall be in compliance with this Section 8.1, except to the extent such damage, destruction, seizure or confiscation constitutes an Event of Loss, in which case the provisions of Section 11 shall apply.

8.2 Possession and Use. Subject to Section 8.3, the Lessee agrees that each Unit will be used solely in the conduct of its business and will at all times remain in the possession and control of the Lessee on the Premises. The Lessee warrants that each Unit will at all times be used and operated under and in material compliance with all contracts or agreements applicable to use or operation of such Unit to which the Lessee is a party or by which the Lessee is bound and under and in material compliance with the laws of the jurisdiction in which the Premises is situated, and in material compliance with all lawful acts, rules, regulations and orders of any Governmental Authority having power to regulate or supervise the use of the Units.

8.3 Sublease. The Lessee, but only with the prior written consent of the Lessor (and, unless the Lien of the Indenture shall have been discharged in accordance with the terms thereof, the Indenture Trustee) (which consent shall not be unreasonably withheld) and upon receipt by the Lessor of an Officer's Certificate of Bayer addressed to the Lessor pursuant to which Bayer expressly consents to the proposed sublease and the sublessor, shall be entitled to sublease all or a portion of the Units to a business entity (each a "Permitted Sublease") so long as: (i) on the effective date of any such sublease, no Lease Default or Lease Event of Default has occurred and is continuing and such sublessee is not subject to any bankruptcy, insolvency or similar proceedings; (ii) any sublease, and the rights and interest of any sublessee thereunder, shall be in all events subject and subordinate to this Lease and the rights and interests of the Lessor and its respective successors and assigns hereunder, and the Lessee shall remain primarily and directly liable for the performance of its obligations hereunder; (iii) any sublease shall not be for a term which extends beyond the Lease Term; (iv) such sublease will prohibit further subleasing by the sublessee; (v) all filings of any such sublease necessary to protect the rights of the Lessor (including, without limitation, filings necessary to comply with Section 7) and the Lien of the Indenture shall have been made in a timely fashion; (vi) without limiting the foregoing clause (ii), any such sublease shall include appropriate provision (whether by requiring such obligations to be performed by the sublessee, the Lessee or both) for the operation, maintenance and insurance in accordance with the terms hereof of the Units subleased thereby; (vii) any sublease of any Unit shall require that each Unit subject to such sublease shall at all times be located on the Premises; and (viii) the Lessor (and, unless the Lien of the Indenture shall have been discharged in accordance with the terms thereof, the Indenture Trustee) shall be satisfied that the Bayer Letter and, prior to the expiration thereof pursuant to its terms, the Bayer Support Agreement, as the case may be, remain fully in effect after giving effect to any such sublease. No sublease shall permit the sublessee thereunder to take any action inconsistent with the terms of this Lease or any other Operative Agreement. The Lessee shall provide to the Lessor and the Indenture Trustee not less than 30 days prior written notice of such sublease, such notice to identify the sublessee and to specify the term of the sublease and confirm that the location at which any Unit or Units are to be used under the sublease is at the Premises. In addition, if the term of any sublease exceeds one year, the Lessee shall promptly, and in any event within 45 days of the execution and delivery of such sublease, deliver a true, correct and complete copy of such sublease to the Lessor and the Indenture Trustee. Throughout the term of any such sublease, all of the terms and provisions of this Lease shall continue to be applicable thereto and no such sublease shall relieve the Lessee of any of its liabilities or obligations hereunder, which shall be and remain those of a principal and not a surety.

8.4 Replacement of Parts. The Lessee, at its sole cost and expense, will promptly replace, or cause to be replaced at no cost to the Lessor, the Owner Participant, the Indenture Trustee or any holder of a Note, all tooling, appliances, parts, instruments, appurtenances, accessories, furnishings and other equipment of whatever nature (herein collectively called "Parts")

which are or may from time to time be incorporated or installed in or attached to any Unit and which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use by damage or obsolescence. All replacement Parts shall be free and clear of all Liens and rights of others on the date they become subject to this Lease (other than the Liens of the Lease and the Indenture and Permitted Liens of the type described in clauses (iii) and (iv) of the definition thereof) and shall be in as good operating condition as, and shall have a fair market value, utility, remaining economic useful life and estimated residual value at least equal to, the Parts replaced, assuming such replaced Parts were in at least the condition and repair required to be maintained by the terms of this Lease.

All Parts at any time removed from such Unit shall remain subject to the rights of the Lessor, no matter where located, until such time as such Parts shall be replaced by Parts which have been incorporated or installed in or attached to such Unit and which meet the requirements for replacement Parts specified above. Immediately upon any replacement Part becoming incorporated or installed in or attached to any Unit as above provided, without further act:

(i) Such replacement Part shall become subject to this Lease and, unless the Lien of the Indenture shall have been discharged, the Lien of the Indenture, and such replacement Part shall be deemed part of such Unit, for all purposes hereof to the same extent as the Parts originally incorporated or installed in such Unit;

(ii) Title to such replacement Part shall thereupon vest in the Lessor; and

(iii) Title to the removed Part shall thereupon vest in the Lessee or in such Person as shall be designated by the Lessee, free and clear of all rights of the Lessor, the Owner Participant and the Indenture Trustee.

## SECTION 9. MODIFICATIONS.

9.1 Required Modifications. The Lessee, at its own expense, shall make such alterations, modifications and additions to the Units as may be required from time to time to meet the requirements of applicable law, insurance, or any Governmental Authority, or to maintain manufacturer's warranties, or to enable the Lessee to operate the Units at the contracted capacity levels or otherwise fully perform its obligations under the Facility Documents and the other Operative Agreements to which it is a party (a "Required Modification"). Title to any Required Modification (regardless of whether such Required Modification is a Severable Modification or a Non-Severable Modification) shall immediately vest in the Lessor.

9.2 Optional Modifications. The Lessee at any time may modify, alter, improve, replace or substitute any Unit (an "Optional Modification"; and each of an Optional Modification and a Required Modification is a "Modification"); provided that no Optional Modification shall (i) diminish the fair market value, utility, condition, remaining economic useful life, or estimated residual value of such Unit below the fair market value, utility, condition, remaining economic useful life, or estimated residual value thereof immediately prior to such Modification, assuming such Unit was then in the condition required to be maintained by the terms of this Lease, (ii) cause any Unit to become "limited use property" within the meaning of Revenue Procedure 76-30, (iii) otherwise result, in the opinion of Owner Participant's tax counsel, in adverse tax consequences to the Owner Participant or the Lessor which are not subject to indemnification under the Tax Indemnity Agreement, or (iv) alter the essential function of such Unit from that for which it was designed and intended. Title to any Non-Severable Modification which is an Optional Modification shall be immediately vested in the Lessor. Title to any Severable Modification which is not a Required Modification shall, as between the Lessor and the Lessee, remain with the Lessee (subject to the rights, if any, of Bayer to such Severable Modification arising under the terms of the Facility Documents). During the Lease Term or at the return of such Unit, and so long as no Lease Default or Lease Event of Default shall have occurred and be continuing, the Lessee may remove and replace any Severable Modification which is not a Required Modification;

provided, however, that the Lessee may remove in the ordinary course of the operation of the Units precious metal catalysts, commonly referred to as gauze changeouts (each, a "Gauze Changeout"), provided that each Gauze Changeout which is removed is simultaneously replaced with an operationally equivalent Gauze Changeout of equal or greater utility. Upon the return of a Unit, if the Lessee, at its cost, shall cause any Severable Modifications which are not Required Modifications to be made to such Unit, and such Severable Modifications theretofore made have not been removed, the Lessor shall have the right to purchase such Severable Modifications (other than Severable Modification consisting of proprietary equipment of the Lessee) at their then fair market value. If the Lessor does not elect to purchase such Severable Modifications or such Severable Modification consists of proprietary equipment of the Lessee and has not been removed, it shall have the right to cause, at the Lessee's cost and expense, such Severable Modifications to be removed upon return of the Unit.

#### SECTION 10. VOLUNTARY TERMINATION.

10.1 Uneconomic or Surplus Condition Termination. So long as no Lease Default or Lease Event of Default shall have occurred and be continuing, the Lessee shall have the right, at its option at any time (subject to the terms and conditions of this Section 10.1), during the Lease Term on any Rent Payment Date occurring after the fifth anniversary of the Lease Term Commencement Date to terminate the Lease Term with respect to all (and not less than all) of the Units then subject to the Lease if the Lessee determines in good faith (as evidenced by a certificate executed by a Responsible Officer of the Lessee certifying that the Board of Directors of EDNC has made a good faith determination that the Units are uneconomic or surplus) that such Units (the "Proposed Terminated Units") have become uneconomic or surplus to the Lessee's needs. The Lessee shall deliver at least 180 days' revocable prior notice to the Lessor and the Indenture Trustee, specifying a proposed date of termination for the Proposed Terminated Units (the "Termination Date"), which date shall be a Rent Payment Date, and which notice (as an express condition precedent to the exercise by the Lessee of its rights under this Section 10.1) must be accompanied by an Officer's Certificate of Bayer addressed to the Lessor and the Indenture Trustee pursuant to which Bayer expressly consents to the termination of the Lease Term by the Lessee pursuant to this Section 10.1. Any such termination will be effective on the Termination Date after all amounts payable under Section 10.2 or 10.3, as applicable, and all other obligations thereunder, have been paid and performed in full. So long as the Lessor shall not have given the Lessee a notice of election to retain the Proposed Terminated Units in accordance with Section 10.3, the Lessee may withdraw the termination notice at any time prior to the thirtieth (30th) Business Day preceding the Termination Date, whereupon this Lease shall continue in full force and effect; provided that the Lessee may not exercise its right to withdraw such a termination notice more than once. Unless theretofore withdrawn, the termination notice shall become irrevocable upon the thirtieth (30th) Business Day preceding the Termination Date. The Lessee agrees that, without limiting Section 2.8(b) of the Participation Agreement, it will reimburse the Lessor, the Indenture Trustee, the Owner Participant and each holder of a Note for all out-of-pocket costs and expenses (including, without limitation, reasonable legal fees and expenses) incurred by the Lessor, the Owner Participant, the Indenture Trustee and each holder of a Note in connection with the proposed termination of any Unit, whether or not consummated, including, without limitation, costs, if any, associated with an early termination of the Swap Agreement.

10.2 Sale of Units. (a) With respect to the Proposed Terminated Units, during the period from the date of such notice given pursuant to Section 10.1 to the Termination Date, the Lessee, as agent for the Lessor and at the Lessee's sole cost and expense, shall use its reasonable efforts to obtain bids from Persons other than the Lessee or Affiliates thereof for the cash purchase of the Proposed Terminated Units on the Termination Date, and it shall promptly, and in any event at least ten Business Days prior to the proposed date of sale, certify to the Lessor in writing the amount and terms of each such bid and the name and address of the party submitting such bid. The Lessor and the Owner Participant shall have the right, at its own expense, to obtain bids for the purchase of the Proposed

Terminated Units, either directly or through agents other than the Lessee, from the Owner Participant or other Persons, but shall be under no duty to solicit bids, inquire into the efforts of the Lessee to obtain bids or otherwise take any action in connection with arranging such sale. Unless the Lessor shall have elected to retain the Proposed Terminated Units in accordance with Section 10.3, subject to Section 10.2(b), on the Termination Date: (i) the Lessee shall, subject to receipt (x) by the Indenture Trustee or, if the Lien of the Indenture has been discharged, the Lessor of all amounts owing to the Lessor pursuant to the next sentence, and (y) by any other Persons entitled thereto of all unpaid Supplemental Rent accrued on or before the Termination Date, deliver the Proposed Terminated Units to the bidder (which shall not be the Lessee or any Affiliate thereof), if any, which shall have submitted the highest cash bid prior to such date for such Proposed Terminated Units (or to such other bidder as the Lessee and the Lessor shall agree); and (ii) the Lessor shall, without recourse or warranty (except as to the absence of any Lessor's Lien attributable to the Lessor) simultaneously therewith (including with the receipt of the amounts described in clause (i) above by the Persons entitled to receive such amounts) sell such Proposed Terminated Units "as-is, where-is" to such bidder. The cash selling price realized at such sale shall be paid to and retained by the Indenture Trustee or, if the Lien of the Indenture has been discharged, the Lessor (after reimbursement to the Lessee of all of its costs and expenses in connection with such sale) and, in addition, on the Termination Date, the Lessee shall pay to (A) the Indenture Trustee or, if the Lien of the Indenture has been discharged, the Lessor (x) all unpaid Basic Rent due and payable prior to, and in arrears on, the Termination Date, and (y) the excess, if any, of (1) the Termination Value for all of the Units computed as of the Termination Date, over (2) the net cash sales proceeds (after the deduction of all costs and expenses of the Lessee, the Lessor, the Indenture Trustee, each holder of a Note and the Owner Participant in connection with such sale of the Proposed Terminated Units), (B) the Persons entitled thereto, any other unpaid Supplemental Rent accrued on or before the Termination Date and (C) without limiting clause (B), an amount equal to the Premium, if any, on the Notes payable on the Termination Date. Neither the Lessee nor any Affiliate thereof shall purchase, lease or otherwise acquire the Proposed Terminated Units or any portion thereof from the purchasing bidder or any Affiliate thereof for a period of three years from the Termination Date relating to the Proposed Terminated Units, such prohibition, notwithstanding any provision to the contrary in Section 10.4 or otherwise, to survive the termination of this Lease with respect to such Proposed Terminated Unit.

(b) If (x) the Lessor has not elected to retain the Proposed Terminated Units in accordance with Section 10.3, (y) the Lessee has not withdrawn its termination notice pursuant to Section 10.1 and (z) on the Termination Date, no bidder described in Section 10.2(a) shall exist, this Lease shall continue with respect to such Proposed Terminated Units.

10.3 Retention of Units by the Lessor. Notwithstanding the provisions of Sections 10.1 and 10.2, the Lessor may, with respect to all Proposed Terminated Units, irrevocably elect by written notice to the Lessee, no later than 60 days after receipt of the Lessee's notice of termination, not to sell such Proposed Terminated Units on the Termination Date, whereupon the Lessee shall (i) deliver the Proposed Terminated Units to the Lessor in the same manner and condition as if delivery were made to the Lessor pursuant to Section 6, treating the Termination Date as the last day of the Lease Term with respect to such Proposed Terminated Units, (ii) pay to the Lessor, the Owner Participant, the Indenture Trustee and each holder of a Note, all Basic Rent and all Supplemental Rent due and owing on or before the Termination Date and unpaid excluding any Termination Value and (iii) pay to the Lessor an amount equal to the Premium, if any, on the Notes paid pursuant to the next sentence of this Section 10.3. On such Termination Date, the Lessor shall pay, or cause to be paid, to the Indenture Trustee in funds of the type specified in Section 3.6 an amount equal to the outstanding principal amount of the Notes issued in respect of such Proposed Terminated Units, all accrued interest to the date of prepayment of such Notes on such Termination Date and the Premium, if any, on such Notes.

10.4 Termination of Lease. In the event of either (x) any

such sale and receipt by the Lessor and the Indenture Trustee of all of the amounts provided in Section 10.2 or (y) retention of the Proposed Terminated Units by the Lessor pursuant to Section 10.3 and compliance by the Lessor with the provisions of Section 10.3, and upon compliance by the Lessee with the provisions of this Section 10, the obligation of the Lessee to pay Basic Rent hereunder for such Proposed Terminated Units shall cease with respect to any period after the Termination Date and the Lease Term shall end.

#### SECTION 11. LOSS, DESTRUCTION, REQUISITION, ETC.

11.1 Event of Loss. The term "Event of Loss" shall mean that (i) all Units shall suffer damage or destruction resulting in an insurance settlement on the basis of an actual, constructive or compromised total loss; (ii) all Units shall suffer destruction or damage beyond repair; (iii) all Units shall suffer damage which, in the Lessee's good faith judgment (with the written concurrence of Bayer), makes repair uneconomic or renders all Units unfit for commercial use; (iv) all Units shall suffer theft, loss or disappearance for a period in excess of 90 days or, if less, the remaining portion of the Lease Term then in effect; (v) all Units shall have title thereto taken or appropriated by any Governmental Authority under the power of eminent domain or otherwise; or (vi) all Units shall be taken or requisitioned for use by any Governmental Authority under the power of eminent domain or otherwise, and such taking or requisition for use pursuant to this clause (vi) is for an indefinite period or a period that exceeds 180 days or, if less, the remaining portion of the Lease Term then in effect.

11.2 Replacement or Payment upon Event of Loss. Upon the occurrence of an Event of Loss, the Lessee shall, promptly after a Responsible Officer of the Lessee shall have actual knowledge of such occurrence (and in any event within 10 days after the occurrence of such Event of Loss), give the Lessor and the Indenture Trustee written notice of such Event of Loss and, within 60 days after such notice, give the Lessor and the Indenture Trustee further notice of its election to perform one of the following options (it being agreed that if the Lessee shall not have given notice of such election within 60 days after giving notice of such occurrence, the Lessee shall be deemed to have elected to perform the option set forth in the following paragraph (ii)); provided that the Lessee shall not have the right to select the option set forth in paragraph (i) (A) if a Lease Default or Lease Event of Default shall have occurred and be continuing or (B) after the seventh anniversary of the Lease Term Commencement Date; and, provided, further, that the selection of the option set forth in paragraph (i) shall be subject to the provisions of the Tax Indemnity Agreement:

(i) as promptly as practicable (but no sooner than ten days after giving of its notice of election to perform the option set forth in this paragraph (i)), and in any event on or before the 540th day following the date on which the Event of Loss occurred, the Lessee shall comply with Section 11.4(b) and shall convey or cause to be conveyed to the Lessor Replacement Units to be leased to the Lessee hereunder, such Replacement Units to be free and clear of all Liens (other than the Liens of the Lease and the Indenture and Permitted Liens of the type described in clauses (iii) and (iv) of the definition thereof) and to have a Fair Market Value, utility, condition, remaining economic useful life and estimated residual value at least equal to the Units so replaced (assuming such Units have not suffered an Event of Loss and were in the condition required to be maintained by the terms of this Lease); provided that, if the Lessee shall not perform its obligation to effect such replacement under this paragraph (i) during the period of time provided herein, then the Lessee shall comply with the following paragraph (ii) except that the related Settlement Date may occur within 570 days following the Event of Loss; or

(ii) on the next succeeding Determination Date (the "Settlement Date") occurring at least 90 days after the date on which the Event of Loss occurred, the Lessee shall pay or cause to be paid to the Indenture Trustee or, if the Lien of the Indenture has been discharged, the Lessor (or in the case of Supplemental Rent, to the Persons entitled thereto) in funds of the type specified in Section 3.6, the

sum of (x) an amount equal to the Stipulated Loss Value, determined as of such Settlement Date, (y) to the extent not theretofore paid, Basic Rent due and payable prior to, and in arrears on, such Settlement Date, and (z) all other accrued and unpaid Supplemental Rent. Notwithstanding the foregoing, if the Event of Loss occurs prior to the Lease Term Commencement Date, any amounts payable to the Indenture Trustee pursuant to this Section 11.2(ii) shall be paid to the Construction Loan Agent.

11.3 Rent Termination. Upon the payment of all sums required to be paid pursuant to Section 11.2(ii) hereof, the Lease and the obligation to pay Basic Rent due and accruing subsequent to the date of payment of Stipulated Loss Value shall terminate, without prejudice to the continuation of those obligations which, by the express terms of the Operative Agreements, survive termination of the Lease Term.

#### 11.4 Disposition of Units; Replacement of Units.

(a) Upon satisfaction of all conditions in Section 11.2(ii), the Lessor will transfer to the Lessee "as-is, where-is" all right, title and interest of the Lessor in and to all Units having suffered the Event of Loss, without recourse or warranty, except for the absence of Lessor's Liens attributable to the Lessor.

(b) At the time of or prior to any replacement of the Units, the Lessee, at its own expense, will (A) furnish the Lessor with a full warranty (as to title) Bill of Sale (together with an assignment of the manufacturer's warranties, if any such warranties exist) with respect to the Replacement Units, (B) cause a Lease Supplement substantially in the form of Exhibit A hereto with appropriate modifications, subjecting such Replacement Units to this Lease, and duly executed by the Lessee, to be delivered to the Lessor for execution, (C) furnish the Lessor and the Indenture Trustee with an opinion of the Lessee's counsel, to the effect that (x) each of the Bill of Sale and Lease Supplement referred to in clauses (A) and (B) above constitutes a legal, valid, binding and enforceable obligation of the Lessee (subject to customary qualifications as to bankruptcy and equitable principles), (y) legal title and ownership of such Replacement Units have been conveyed to the Lessor, free and clear of all Liens (other than the Liens of the Lease and the Indenture and Permitted Liens of the type described in clauses (iii) and (iv) of the definition thereof), and (z) all filings, recordings and other action necessary or appropriate to perfect and protect the Lessor's and the Indenture Trustee's respective interests in the Replacement Units have been accomplished, (D) furnish the Lessor and the Indenture Trustee with an Officer's Certificate of the Lessee certifying that as of said date, and upon consummation of the replacement, no Lease Default or Lease Event of Default exists, and the Replacement Units have a Fair Market Value (as supported by an independent appraisal satisfactory in form and substance to the Owner Participant from an appraiser of recognized standing and knowledgeable in equipment of the type being appraised and selected by the Lessee and satisfactory to the Owner Participant), utility, condition, remaining economic useful life and estimated value at least equal to the Units replaced (assuming such Units have not suffered an Event of Loss and were in the condition required to be maintained by the terms of this Lease), (E) furnish to the Lessor and the Indenture Trustee evidence of compliance with the provisions of Section 12 with respect to the Replacement Units, and (F) furnish such other documents and evidence as the Owner Participant, the Lessor, Indenture Trustee, a Majority In Interest, or their respective counsel, may reasonably request in order to establish the consummation of the transactions contemplated by this Section 11.4. For all purposes hereof, upon passage of title thereto to the Lessor the Replacement Units shall be deemed part of the property leased hereunder and each Replacement Unit shall be deemed a "Unit" as defined herein. Upon such passage of title, and upon payment in full of any indemnity due and payable as a result of such replacement pursuant to Section 7 of the Participation Agreement, the Lessor will transfer to the Lessee "as-is, where-is" all the Lessor's right, title and interest in and to the replaced Units, without recourse or warranty (except as to the absence of Lessor's Liens attributable to the Lessor). No Event of Loss under the circumstances contemplated by the terms of Section 11.2(i) shall result in any reduction of Basic Rent. The Lessee shall pay all reasonable costs and expenses

(including, without limitation, reasonable attorney's fees) of the Lessor, the Owner Participant, the Indenture Trustee and the holders of the Notes incurred in connection with such replacement.

11.5 Applications of Event of Loss Proceeds. The Indenture Trustee (or, after the Lien of the Indenture has been discharged, the Lessor) shall be entitled to receive, and, subject to the provisions of Section 12.2, the Lessee hereby irrevocably assigns to the Indenture Trustee (and, after the Lien of the Indenture has been discharged, the Lessor), all right, title and interest of the Lessee in and to any proceeds of any claims for damage, insurance or award received on account of an Event of Loss; provided that the insurance proceeds and claims for damage, in each case with respect to insurance carried by the Lessee, shall be applied pursuant to and in the manner set forth in Section 12.3; and provided further that, with respect to an Event of Loss described in clause (v) or (vi) of Section 11.1 hereof, so long as no Lease Default or Lease Event of Default shall have occurred and be continuing (i) the Lessee shall be entitled to a credit for the amount of such proceeds or any award (other than insurance) so received and retained by the Lessor against the Lessee's obligation to pay Stipulated Loss Value and (ii) following the payment of Stipulated Loss Value and all other amounts payable under Section 11.2(ii), any such proceeds or award shall be payable to the Lessor and the Lessee as their interests may appear. Notwithstanding the foregoing, if the Event of Loss occurs prior to the Lease Term Commencement Date, any amounts payable to the Indenture Trustee pursuant to this Section 11.5 shall be paid to the Construction Loan Agent.

11.6 Eminent Domain; Damage Not Constituting an Event of Loss. In the event that during the Lease Term the use of any Unit is requisitioned or taken by any Governmental Authority under the power of eminent domain or otherwise for a period which does not constitute an Event of Loss, this Lease and the Lessee's obligation to pay all installments of Basic Rent, the Supplemental Rent and any other amount payable hereunder shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such Governmental Authority as compensation for requisition or taking of possession; provided, however, that nothing herein contained shall affect the obligations of the Lessee contained in Section 6 hereof with respect to the condition in which the Unit is to be returned to the Lessor. A requisition or taking of use for an indefinite period of time shall not be deemed to exceed the remaining Lease Term with respect to any Unit unless and until the period of such requisition or taking does, in fact, exceed the remaining Lease Term. In such case, the Event of Loss shall be deemed to have occurred on the 41st day preceding the last day of the Lease Term, unless the Lessee has exercised its Fixed Price Purchase Option pursuant to Section 22 hereof, and, all payments received by the Lessor or the Lessee from any Governmental Authority for the use of such Unit after the Lease Term shall be applied in the manner set forth in the final proviso to Section 11.5. If any damage or destruction, theft, loss or disappearance shall occur, the occurrence of which does not constitute an Event of Loss, the Lessee shall promptly, and in any event within ten days after the occurrence of such event give the Lessor and the Indenture Trustee notice thereof. The Lessee shall make or cause to be made such repairs as are necessary to ensure that the Units and the Premises are maintained in the condition and state of repair required under Section 8; provided that such repairs shall be commenced promptly and shall be completed promptly, before the earlier of (i) 60 days after the occurrence of the event, except that in the event such repairs cannot be reasonably commenced and completed during such 60-day period, such longer period as is reasonably necessary to commence and complete such repairs, provided that in no event shall such period exceed, in the aggregate, 180 days, and (ii) the last day of the Lease Term. If such repairs have not been completed within the time period referred to in the foregoing proviso, then an Event of Loss shall be deemed to have occurred at the 41st day preceding the last day of the Lease Term, unless the Lessee has exercised the Fixed Price Purchase Option pursuant to Section 22 hereof. No such event shall result in any reduction of Basic Rent.

11.7 Lease Event of Default. Any amount referred to in Section 11.5, or any amount payable in connection with events

described in the first sentence of Section 11.6, or any amount which is insurance proceeds received in connection with any damage or destruction, theft, loss or disappearance which does not constitute an Event of Loss, which is payable to the Lessee shall not be paid to the Lessee, or if it has been previously paid directly to the Lessee, shall not be retained by the Lessee, if at the time of such payment a Lease Default or Lease Event of Default shall have occurred and be continuing, but shall be paid to and held by the Lessor (or, so long as the Lien of the Indenture has not been discharged, the Indenture Trustee) as security for the obligations of the Lessee under this Lease, and at such time as there shall not be continuing any such Lease Default or Lease Event of Default, such amount (unless theretofore otherwise applied to the obligations of the Lessee hereunder) shall be paid over to the Lessee.

11.8 Substitution of Units. So long as no Lease Default or Lease Event of Default has occurred and is continuing, the Lessee shall have the right, from time to time during the Lease Term, to replace any Unit or a portion of any Unit that has become uneconomic, obsolete or surplus to the Lessee's operating requirements, as determined by the Lessee in its reasonable business judgment (the Replaced Unit), with equipment of substantially like kind and of equal or greater Fair Market Value, utility, condition, remaining economic useful life and estimated residual value (the Substitute Unit) (assuming that such Replaced Unit has not suffered an Event of Loss and was then in the condition and state of repair required to be maintained under the terms of this Lease), so long as: (a) the Lessee gives at least 90 days prior written notice to the Lessor, the Owner Participant and the Indenture Trustee, which notice shall specify and describe the Replaced Unit, the Substitute Unit and the date of such substitution, and which notice shall also contain a certification signed by a Responsible Officer of the Lessee on behalf of the Lessee that the Replaced Unit has become uneconomic, obsolete or surplus to the Lessee's operating requirements, as determined by the Lessee in its reasonable business judgment, other than as a result of damage or destruction, (b) the Lessee complies with Section 11.4(b) (with the Substitute Unit being treated as a Replacement Unit for the purposes thereof) in connection with such substitution, and (c) the Lessee indemnifies the Owner Participant, on an After Tax-Basis, for any adverse tax consequences to the Lessor or Owner Participant associated with such substitution. The Lessee's right to substitute any Unit pursuant to this Section 11.8 shall also be subject to the condition that the Replaced Unit be promptly disposed of by the Lessee to a Person, other than the Lessee, any Affiliate of the Lessee, Bayer or any Affiliate of Bayer, and that none of the Lessee, any Affiliate of the Lessee, Bayer or any Affiliate of Bayer may purchase, lease or otherwise acquire the Replaced Unit for a period of not less than three years from the substitution date thereof, such prohibition, notwithstanding any provision herein or in any other Operative Agreement to the contrary, to survive the termination of this Lease with respect to such Replaced Unit. Upon satisfaction of all of the conditions set forth in this Section 11.8, (i) the Replaced Unit shall no longer be deemed part of the property leased hereunder, (ii) the Substitute Unit shall be deemed part of the property leased hereunder and shall be deemed a Unit defined herein, and (iii) the Lessor shall convey the Replaced Unit as is where is, without recourse or warranty (except as to the ability and authority of the Lessor to transfer and convey such Replaced Unit free and clear of Lessor's Liens) to the transferee.

## SECTION 12. INSURANCE.

12.1 Property Damage, Public Liability and Other Insurance. (a) The Lessee will, at all times prior to the return of a Unit to the Lessor or the exercise of the Fixed Price Purchase Option pursuant to Section 22, and during any storage period for such Unit hereunder, at its own expense, cause to be carried and maintained with insurance companies reasonably acceptable to the Owner Participant and, so long as the Indenture is in effect, the Indenture Trustee (i) all risk property insurance in respect of such Unit (including coverage for loss by fire, lightning, windstorm, hail, explosion, riot, civil strife or commotion, vandalism and malicious mischief, damage from aircraft, vehicles and smoke, and with an extended coverage endorsement covering all such other risks (including flood, hurricane and earthquake) commonly used in the state where the Premises are located, and

against such other risks as are customarily insured against by prudent Persons engaged in the same business as the Lessee) in an amount not less than the Stipulated Loss Value of such Unit, subject to a deductible provision not exceeding in the aggregate for all Units suffering a loss, \$1,000,000 per occurrence; provided that such deductible provisions shall not be higher than deductible provisions applicable to insurance coverage maintained by the Lessee for property similar to such Unit; (ii) public liability insurance, against loss or damage for personal injury, death or property damage occurring as a result of the ownership, use, maintenance or operation of the Units (whether in, on or about the Premises, including adjoining areas), and in any event assuring against such loss or damage from such risks and in such amounts as is maintained by the Lessee in respect of similar equipment owned or leased by it; provided, however, that such general public liability insurance shall at least be in an amount not less than that maintained by prudent companies operating similar equipment (but in any event, not less than \$1,000,000 per occurrence), subject to a deductible provision not exceeding \$250,000 per occurrence; and provided further that such deductible provisions shall not be higher than deductible provisions applicable to insurance coverage maintained by the Lessee in connection with property similar to the Units; and (iii) such other insurance, including comprehensive motor vehicle, workers compensation and business interruption insurance, in each case as is generally carried by companies operating similar equipment and in such amounts and against such risks as are then customary for properties similar in use. Such liability insurance may be carried under blanket policies maintained by the Lessee so long as such policies otherwise comply with the provisions of this Section 12. All such insurance shall cover the interest of the Lessor (in its individual capacity and as Owner Trustee), the Owner Participant, the Indenture Trustee, the holders of Notes and the Lessee in the Units or, as the case may be, shall protect the Lessor (in its individual capacity and as Owner Trustee), the Owner Participant, the Indenture Trustee, the holders of the Notes and the Lessee in respect of risks arising out of the condition, maintenance, use, ownership or operation of the Units. It is agreed that any casualty insurance which the Lessee obtains in respect of the Units in excess of any amount payable to the Lessor (in its individual capacity and as Owner Trustee), the Owner Participant, and/or the Indenture Trustee hereunder shall be obtained as insurance of the Lessee's rights and interests under this Lease, and shall be payable to the Lessee. All policies of insurance required to be maintained pursuant to this Section 12 shall be sufficient in amount, such that the Lessee will under no circumstances be deemed to be a co-insurer with respect to any such policy.

(b) The insurance companies providing the coverages described in this Section 12 shall have a general policyholder rating of A and a financial rating of at least XII by A.M. Best's Insurance Guide (or a similar rating from another insurance rating agency with a similar national reputation if such insurance company is not rated in A.M. Best's Insurance Guide), or be otherwise expressly acceptable to the Owner Participant and a Majority In Interest.

12.2 Policy Provisions. All policies carried by the Lessee which cover loss or damage to a Unit shall (i) name the Lessee as insured and the Indenture Trustee (until the Lien of the Indenture has been discharged in accordance with the terms thereof), the Owner Participant, each holder of a Note and the Lessor) as loss payees, (ii) provide that any payment thereunder for any loss or damage shall (except as provided below) be made to the Indenture Trustee under a standard mortgagee loss payable clause or, if the Lien of the Indenture has been discharged in accordance with the terms of the Indenture, to the Lessor, (iii) provide that such insurance as to the interest of the Lessor (in its individual capacity and as Owner Trustee), the Owner Participant, each holder of a Note and the Indenture Trustee therein shall not be invalidated as against such insured by any act or neglect of the Lessee or of any other Person (other than, with respect to such Person, the acts of such Person) or by any breach or violation by the Lessee or by any other Person (other than, with respect to such Person, breaches or violations by such Person) of any warranties, declarations or conditions contained in such policies or by any change in the title or ownership of the Units or any interest therein or with respect thereto. Upon the occurrence of any event giving rise to a payment to be made

under any policy of insurance required by the terms of the first sentence of this Section 12, the Lessor (and, until the Lien of the Indenture shall have been discharged in accordance with the terms thereof, the Indenture Trustee) shall instruct the relevant insurer in writing as to the Person(s) entitled to receive such amounts pursuant to the terms of this Section 12. All liability policies carried by the Lessee shall (A) name the Lessor (in its individual capacity and as Owner Trustee), the Owner Participant, each holder of a Note, the Indenture Trustee and the Lessee as insureds and (B) insure the interests of the Lessor, the Owner Participant, each holder of a Note and the Indenture Trustee regardless of any action or inaction of the Lessee or of any other Person (other than, with respect to such Person, the acts of such Person) or any breach or violation by the Lessee or by any other Person (other than, with respect to such Person, breaches or violations by such Person) of any warranties, declarations or conditions contained in such policies. So long as no Lease Default or Lease Event of Default has occurred and is continuing, the loss, if any, under any policy carried by the Lessee covering the Units shall be adjusted with the insurance companies by the Lessee (otherwise by the Lessor); provided, however, that the Lessor may, at its option, participate in the adjustment of any loss that exceeds \$5,000,000. If a loss relating to damage to a Unit or Units does not exceed \$5,000,000, then, so long as no Lease Default or Lease Event of Default has occurred and is continuing, said loss shall be paid under such policy directly to the Lessee and the Lessor shall receive notice of such payment. All policies described in this Section 12 shall provide: (i) that coverage thereunder shall not be canceled, reduced or otherwise materially changed without at least 30 days' prior written notice from the insurer to the Lessor, the Owner Participant and the Indenture Trustee, (ii) that none of the loss payees or additional insureds shall have any obligation or liability for premiums, commissions, if any, additional premiums or assessments in connection with such insurance, (iii) that the insurers shall waive any rights of subrogation, setoff, counterclaim or other deduction, whether by attachment or otherwise, against Lessor (in its individual capacity and as Owner Trustee), the Owner Participant, each holder of a Note and the Indenture Trustee as the loss payees or additional insureds, (iv) that such insurance shall be primary, without right of contribution from any other insurance which is carried by any loss payee or additional insured with respect to its interest in the Units and shall expressly provide that all provisions except the limits of liability shall operate in the same manner as if there were a separate policy insuring each loss payee or insured, and (v) the interests of the Lessor (in its individual capacity and as Owner Trustee), the Owner Participant, each holder of a Note and the Indenture Trustee shall not be invalidated by any act or negligence or failure to act of, or breach or violation of any warranties, declarations or conditions by, the Lessee or any Person having an interest in the Premises or any of the Units.

12.3 Proceeds of Insurance. The Lessee shall promptly pay to the Indenture Trustee (or, if the Lien of the Indenture has been discharged in accordance with the terms thereof, to the Lessor) any proceeds of insurance the Lessee receives (other than pursuant to the next to last sentence of Section 12.2 hereof) covering loss or damage to the Units which are payable under the provisions of this Section 12. The proceeds of any insurance carried by the Lessee which are received by the Indenture Trustee or the Lessor on account of or for any loss or damage in respect of any Unit shall be applied as follows:

(i) If such Unit is to be repaired or replaced, the insurance proceeds shall be released to the Lessee or as it may direct from time to time as restoration, replacement, rebuilding, alterations and additions ("Restoration") progresses to pay (or reimburse the Lessee for) the cost of Restoration, but only upon receipt by the Lessor and the Indenture Trustee of (A) an Officer's Certificate of the Lessee in form and substance reasonably acceptable to the Lessor and the Indenture Trustee showing in reasonable detail the nature of the Restoration, the purpose for which the expenditures were made, the actual cash expenditures made for such purpose and the remaining proceeds held by the Indenture Trustee or the Lessor after such release are not less than 100% of the reasonably estimated remaining cost of completing the Restoration, and stating that there is no Lease Default or Lease Event of Default, and (B) if necessary, a supplement to this Lease and the Indenture

sufficient to lease such Restoration and to grant a security interest therein to the Indenture Trustee (and the Lessor agrees to cooperate with the Lessee to effectuate the requirements of this clause (B)); or

(ii) If this Lease is terminated in accordance with the provisions of Section 11.2(ii) hereof and all amounts payable by the Lessee under Section 11.2(ii) have been paid, all insurance proceeds shall be released to the Lessee;

provided that any amount referred to herein which is payable to the Lessee shall not be paid to the Lessee if at the time of such payment a Lease Default or Lease Event of Default shall have occurred and be continuing, and in such event all such amounts shall be paid to and held by the Indenture Trustee (or, after the Lien of the Indenture has been discharged in accordance with the terms thereof, the Lessor) as security for the obligations of the Lessee to make payments under and perform this Lease. At such time as there shall not be continuing any Lease Default or Lease Event of Default, all such amounts at the time held by the Indenture Trustee or the Lessor (unless theretofore otherwise applied to the obligations of the Lessee hereunder) shall be paid to the Lessee. Notwithstanding the foregoing, any amounts payable to the Indenture Trustee pursuant to this Section 12.3 as a result of a loss or casualty occurring prior to the Lease Term Commencement Date shall be paid to the Construction Loan Agent.

12.4 Notice, Etc. The Lessee will advise the Lessor and the Indenture Trustee in writing promptly of any default in the payment of any premium and of any other act or omission on the part of the Lessee which might invalidate or render unenforceable, in whole or in part, any insurance on any Unit. The Lessee will advise the Lessor and the Indenture Trustee in writing of the expiration or termination of any insurance carried and maintained on any Unit pursuant to this Section 12 at least thirty (30) days prior to the expiration or termination date unless such insurance has been replaced. In the event that the Lessee shall fail to maintain or renew insurance as herein provided, the Lessor or the Owner Participant may at its sole option provide such insurance and, in such event, the Lessee shall thereupon reimburse the Lessor or the Owner Participant, as appropriate, as Supplemental Rent, for the cost thereof; provided, however, that no exercise by the Lessor or the Owner Participant of said option shall affect the provision of this Lease, including the provisions that failure by the Lessee to maintain the prescribed insurance shall constitute a Lease Event of Default.

12.5 Reports and Certificates. On the Lease Term Commencement Date, and annually upon renewal of the insurance policies carried by the Lessee pursuant to this Section 12, and upon any material modification of the insurance policies required by this Section 12, the Lessee will furnish to the Lessor, the Owner Participant and the Indenture Trustee (a) all applicable certificates of insurance and a report, including, without limitation, a copy of the certificate of insurance signed by the Lessee's broker, describing in reasonable detail the insurance then maintained pursuant to this Section 12 and stating that no premiums are then delinquent, (b) a certificate signed by a Responsible Officer of the Lessee stating that such insurance is in accordance with this Section 12 and (c) any other document evidencing compliance by the Lessee with this Section 12 as may be reasonably requested by the Lessor, the Owner Participant and the Indenture Trustee.

12.6 Additional Insurance. At any time the Lessor (either directly or in the name of the Owner Participant) or the Owner Participant may at its own expense carry insurance with respect to its interest in the Units and the Premises; provided that such insurance does not interfere with the Lessee's ability to insure the Units as required by this Section 12, or the Lessee's ability to insure the Units for replacement cost, or the ability of the Lessee to collect a claim under any such insurance policy. Any insurance payments received from policies maintained by the Lessor or the Owner Participant pursuant to the previous sentence shall be retained by the Lessor or the Owner Participant, as the case may be, without reducing or otherwise affecting the Lessee's obligations hereunder.

SECTION 13. INSPECTION.

During the Lease Term, each of the Lessor, the Owner Participant, the Indenture Trustee and each holder of a Note (provided that the holders of the Notes shall in good faith endeavor to coordinate the dates of inspection) shall have the right, but not the obligation, at its sole cost, expense and risk (except that if a Lease Default or Lease Event of Default shall have occurred and be continuing such inspection shall be at the cost, expense and risk of the Lessee) by its authorized representatives to inspect the Units and the Premises and all logs, records, books and other materials relating to the use, damage, repair and maintenance of the Units, to make copies and take extracts therefrom, and to discuss the affairs, finances and accounts with respect to the Units and the Premises with the Lessee's officers, in each case during the Lessee's normal business hours, subject to the Lessee's and Bayer's standard security and safety rules and procedures and, unless a Lease Event of Default shall have occurred and be continuing, upon five days' prior notice to the Lessee (such notice being waived by Lessee during the continuance of a Lease Event of Default). Without limiting the foregoing, the Lessee shall promptly furnish to the Lessor, the Owner Participant and the Indenture Trustee such information with respect to the Units and the Premises, this Lease and the other Operative Agreements as the Lessor, the Owner Participant or the Indenture Trustee may from time to time reasonably request.

#### SECTION 14. LEASE EVENTS OF DEFAULT.

The following events shall constitute "Lease Events of Default" hereunder (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) and each such Lease Event of Default shall be deemed to exist and continue so long as, but only as long as, it shall not have been remedied:

(a) the Lessee shall fail to make (x) any payment of Basic Rent, within five Business Days after the same shall have become due or (y) any payment under Section 10.2, 10.3, 11.2 or 22 when due; or

(b) the Lessee shall fail to make any other payment under the Operative Agreements (provided that any failure to pay any amount owed by the Lessee under the Tax Indemnity Agreement or any failure of the Lessee to pay to the Lessor (in its individual or trust capacity) or the Owner Participant when due any amounts constituting Excepted Property shall not constitute a Lease Event of Default prior to the discharge of the Lien of the Indenture in accordance with the terms thereof unless written notice is given by the Owner Participant to the Lessee that such failure shall constitute a Lease Event of Default), including, without limitation, any payment of Supplemental Rent, other than Supplemental Rent payable under Section 10.2, 10.3, 11.2 or 22 (which failure is covered by paragraph (a) above), after the same shall have become due and such failure shall continue unremedied for a period of 30 days after receipt by the Lessee of written notice of such failure from the Lessor, the Owner Participant or the Indenture Trustee; or

(c) the Lessee shall fail to maintain the insurance coverages required of it by Section 12; or

(d) any representation or warranty made by the Lessee in this Lease or in any other Operative Agreement or in any other document or certificate furnished by the Lessee (or a Responsible Officer of the Lessee) pursuant to the terms of the Operative Agreements (other than representations set forth in the Tax Indemnity Agreement) that was untrue or incorrect in any material respect as of the date of making thereof and such untruth or incorrectness shall continue to be material and the facts or circumstances causing such untruth or incorrectness are not modified to conform to such representation or warranty after a period of 30 days following receipt by the Lessee of written notice thereof from the Lessor, the Owner Participant or the Indenture Trustee; or

(e) the Lessee, LSB or Bayer shall (i) commence a

voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (ii) consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, or (iii) generally fail to pay, or admit in writing its inability to pay, its debts as they come due, or (iv) make a general assignment for the benefit of creditors, or (v) take any corporate action to authorize or in furtherance of any of the foregoing; or

(f) an involuntary case or other proceeding shall be commenced against the Lessee, LSB or Bayer seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 days; or

(g) the Lessee shall fail to observe or perform any of its covenants or agreements (other than those described in the foregoing clauses of this Section 14) to be observed or performed by it under any Operative Agreement (other than the Tax Indemnity Agreement) and such failure shall continue unremedied for 30 days after notice from the Lessor, the Owner Participant or the Indenture Trustee to the Lessee specifying the failure and demanding the same to be remedied; provided that, if such failure is capable of being remedied and such remedy does not involve the payment of money alone, no such failure shall constitute a Lease Event of Default hereunder so long as the Lessee is diligently proceeding to remedy such failure, but in no event shall such failure continue unremedied for a period in excess of the lesser of 180 days from the notice referred to above and the remaining number of days in the Lease Term; or

(h) any of the Facility Documents shall be, or Bayer or the Lessee shall assert that any of the Facility Documents are, unenforceable, in whole or in part, for any reason, or Bayer or the Lessee repudiates, seeks to disaffirm or terminates its obligations under any of the Facility Documents; or

(i) the Bayer Letter or the Bayer Support Agreement shall be, or Bayer shall assert that either the Bayer Letter or the Bayer Support Agreement is, unenforceable, in whole or in part, for any reason, or Bayer repudiates, or seeks to disaffirm, its obligations under either the Bayer Letter or the Bayer Support Agreement, except pursuant to the express terms of the Bayer Letter or the Bayer Support Agreement, as applicable; or

(j) The Turnkey Construction Agreement shall not have been duly executed and delivered by the parties thereto on or before August 31, 1997 on terms materially consistent with the Construction Letter of Intent.

## SECTION 15. REMEDIES.

15.1 Remedies. Upon the occurrence of any Lease Event of Default and at any time thereafter so long as the same shall be continuing, the Lessor may, at its option, declare this Lease to be in default by a written notice to the Lessee (a copy of which notice Lessor shall provide to Bayer at or about the same time at which the Lessor provides such notice to the Lessee) (but this Lease shall be deemed to be in default in the event of the occurrence of a Lease Event of Default under Section 14(e) or 14(f) without such declaration); and at any time thereafter, the Lessor may do one or more of the following as the Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirement of, applicable law then in effect:

(a) proceed by appropriate court action or actions,

either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or the other Operative Agreements or to recover damages for the breach thereof, including, without limitation, as described in Section 15.5;

(b) by notice in writing to the Lessee, the Lessor may (x) rescind or terminate the Lease; and/or (y) demand of the Lessee, and the Lessee shall, upon written demand of the Lessor and at the Lessee's expense, forthwith return all of the Units to the Lessor or its order in the manner and condition required by, and otherwise in accordance with all of the provisions of, this Lease; or the Lessor with or without notice or judicial process, and without the necessity for first instituting any proceedings, or by summary proceedings or otherwise, may by its agents enter upon the premises (including the Premises) of the Lessee where any of the Units may be located, or are believed to be located, and take immediate possession of and remove all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successor or assigns, to use such Units for any purpose whatever, all without liability of the Lessor or its agents for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such action or otherwise;

(c) with or without taking possession thereof, sell or otherwise dispose of any Unit at public or private sale, with or without advertisement or notice to the Lessee, as the Lessor may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such sale or for the proceeds thereof (except to the extent required by paragraph (e) or (f) below if the Lessor elects to exercise its rights under either of said paragraphs), and the Lessor may hold the Lessee liable for any installment of Basic Rent due on or before the date of such sale or disposition (and, if payable in arrears, the pro rata portion of the installment of Basic Rent due on the next succeeding Rent Payment Date in respect of any period commencing on the immediately preceding Rent Payment Date to the date of such sale or disposition, in which event the Lessee's obligation to pay Basic Rent with respect to such Unit hereunder due for any periods subsequent to the date of such sale shall terminate (except to the extent that Basic Rent is to be included in computations under paragraph (e) or (f) below if the Lessor elects to exercise its rights under either of said paragraphs));

(d) hold, use, operate or lease to others or keep idle any Unit as the Lessor in its sole discretion may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds with respect thereto, except that the Lessee's obligation to pay Basic Rent with respect to such Unit due for any periods subsequent to the date upon which the Lessee shall have been deprived of possession and use of such Unit pursuant to this Section 15 shall be reduced by the net proceeds, if any, received by the Lessor from leasing such Unit to any Person other than the Lessee;

(e) whether or not the Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (a), (b), (c) or (d) above with respect to any Unit, the Lessor, by written notice to the Lessee specifying a payment date (for purposes of this paragraph (e), the "Default Payment Date") which shall be a Determination Date not earlier than ten days after the date of such notice, may demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on account of any Unit selected by the Lessor on the Default Payment Date, as liquidated damages and not as a penalty (in lieu of the Basic Rent for such Unit due after the Default Payment Date), the sum of: (x) any unpaid Basic Rent on account of such Unit due prior to, and payable in arrears on, the Default Payment Date; plus (y)(A) an amount equal to the excess, if any, of (1) the Stipulated Loss Value for such Unit determined as of the Default Payment Date over (2) the Fair Market Value of such Unit (and if such Unit has been sold, the net sales proceeds (after deduction of all of the Lessor's and the Owner Participant's costs and expenses of

such sale, including, without limitation, sales or transfer taxes, costs of storage, overhaul, maintenance, preparation and transportation of such Unit and brokers' and attorneys' fees) shall be deemed to be equal to Fair Market Value) or (B) if so specified in the notice, an amount equal to the excess, if any, of (1) the present value as of the Determination Date of all remaining installments (including any installment of Basic Rent due on the Determination Date) of Basic Rent for such Unit until the end of the Lease Term, discounted back to the Determination Date at a rate per annum equal to 7.0%, over (2) the Fair Market Rental Value for such Unit, discounted back at a rate per annum equal to 11.5%; plus interest on such sum of (x) plus (y) at the Late Rate from the Default Payment Date to the date of actual payment; and upon payment in full of such amount, together with payment of all other amounts of Supplemental Rent then due, the Lease Term for such Unit, if not theretofore ended, shall end;

(f) unless the Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under Section 15.1(e) with respect to a Unit, the Lessor, by written notice to the Lessee specifying a payment date which shall be a Determination Date occurring not earlier than ten days after the date of such notice (for purposes of this paragraph (f), the "Default Payment Date"), may require that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on account of such Unit on the Default Payment Date as liquidated damages and not as a penalty (in lieu of scheduled Basic Rent due after the Default Payment Date), the sum of: (x) any unpaid Basic Rent on account of such Unit due prior to, and payable in arrears on, the Default Payment Date; plus (y) the Stipulated Loss Value for such Unit, computed as of the Default Payment Date; plus interest on such sum of (x) and (y) at the Late Rate from the Default Payment Date to the date of actual payment; and upon payment in full of such amount, together with all other amounts of Supplemental Rent then due, the Lessor shall transfer "as is", "where is", without recourse or warranty (except as to the absence of Lessor's Liens attributable to the Lessor) all right, title, and interest of the Lessor to such Unit to the Lessee or as it may direct, and the Lease Term for such Unit, if not theretofore ended, shall end; and/or

(g) The Lessor may exercise any other right or remedy that may be available to it at law, in equity or by statute, including all rights or remedies available under Article 2A of the Uniform Commercial Code.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before, during and after the exercise of any of the foregoing remedies (together with interest thereon at the Late Rate from the due date thereof until paid), for all amounts payable by the Lessee under the Participation Agreement and the other Operative Agreements before and after any termination thereof, and for reasonable legal fees and other costs and expenses incurred by reason of the occurrence of any Lease Event of Default or the exercise of the Lessor's remedies with respect thereto, including, without limitation, all costs and expenses incurred in connection with the return of such Unit in accordance with the terms of this Lease or in placing such Unit in the condition required by this Lease or in connection with any use, operation, maintenance, storage or leasing carried out as part of such exercise of remedies.

15.2 Cumulative Remedies. Except as otherwise provided in this Section 15, each right, power and remedy in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other rights, powers and remedies in its favor existing at law, in equity or by statute; and the exercise or beginning of exercise by the Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by the Lessor of any or all other remedies. Subject to Section 3.7, the Lessee hereby waives any and all existing or future claims of any right to assert any offset or counterclaim against the Rent payments due hereunder, and agrees to make the Rent payments regardless of any offset or counterclaim or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Units.

15.3 No Waiver. No delay or omission to exercise any right, power or remedy accruing to the Lessor upon any breach or default by the Lessee under this Lease shall impair any such right, power or remedy of the Lessor, nor shall any such delay or omission be construed as a waiver of any breach or default, or of any similar breach or default, thereafter occurring; nor shall any express or implied waiver of a single breach or default be deemed a waiver of any subsequent breach or default.

15.4 Notice of Lease Default. The Lessee agrees to furnish to the Lessor, the Owner Participant, the Indenture Trustee, Bayer and each holder of a Note, promptly upon any Responsible Officer becoming aware of any condition which constituted or constitutes a Lease Default or Lease Event of Default, an Officer's Certificate of the Lessee specifying such condition or event and the nature, period of existence and status thereof and what action the Lessee has taken or proposes to take with respect thereto.

15.5 Specific Performance; the Lessor Appointed the Lessee's Agent. The delivery of possession of the Units as provided in Section 6.1 and/or Section 15.1 is of the essence of this Lease and shall not be impaired, and upon application to any court of competent jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to deliver possession of the Units. Without in any way limiting the obligation of the Lessee under the provisions of Section 6.1 or Section 15.1, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Units to the Lessor pursuant to this Section 15, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Unit.

#### SECTION 16. FURTHER ASSURANCES; REPORTS; OPINION.

16.1 Further Assurances. The Lessee will, at its own expense, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, transfers and assurances as the Lessor, the Owner Participant or the Indenture Trustee may reasonably request in order to protect the right, title and interest of the Lessor hereunder or the perfection or protection of the Lien and first priority security interest granted by the Indenture including, without limitation, ordering such searches for Uniform Commercial Code financing statements (for both personal property and fixtures) and preparing such "fixture filings" and real estate recordings as the Lessor or the Indenture Trustee may reasonably request. Without limiting the foregoing, the Lessee, at its own expense, will take, or cause to be taken, such action with respect to the recording, filing, re-recording and re-filing of the Indenture, the Lease and any financing statements and continuation statements or other instruments as are necessary, or requested by the Lessor, the Owner Participant or the Indenture Trustee, to maintain the perfection of the Lien and first security interest created by the Indenture and the protection of the Lessor's right and title to and interest in the Units and the Premises and the Trust Estate as against the Lessee and any third parties, or will furnish to the Lessor and the Indenture Trustee timely notice of the necessity of such action, together with such instruments, in execution and recordable form, and such information as may be required to enable the Lessor or the Indenture Trustee, as the case may be, to take such action in a timely manner and at the Lessee's expense.

16.2 Reports. The Lessee will, at its own expense, promptly file any reports, or furnish to the Lessor and the Owner Participant such information as may be required to enable the Lessor and the Owner Participant, at the Lessee's cost and expense, timely to file any reports, required to be filed by the Lessor or the Owner Participant with any Governmental Authority.

16.3 Opinion. The Lessee will, at its own expense, furnish to the Lessor, the Owner Participant, the Indenture Trustee and each holder of a Note, on or prior to the fifth anniversary of the Lease Term Commencement Date, an opinion, reasonably satisfactory to the Owner Participant and the Indenture Trustee of Lessee's counsel(i) stating either (x) that in the opinion of such counsel all action has been taken with respect to the

recording, filing, re-recording, and re-filing of the Indenture, the Lease and any supplements to any of them, and any financing statements, continuation statements or other instruments, and all other action has been taken, as is necessary to establish and maintain the protection of the Lessor's interests and the perfection of the Liens and security interests created by the Operative Agreements, and reciting the details of such action, or (y) that in the opinion of such counsel, no such action is necessary to establish and maintain protection of the Lessor's interest and the perfection of such security interests; and (ii) specifying all action which needs to be taken in order to establish and maintain the protection of the Lessor's interest and the perfection of such security interests.

#### SECTION 17. THE LESSOR'S RIGHT TO PERFORM.

If the Lessee fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its other agreements contained herein, the Lessor may itself, after notice to and demand upon the Lessee (unless a Lease Event of Default has occurred pursuant to Section 14(e), in which case no such notice or demand shall be required), make such payment or perform or comply with such agreement, but shall not be obligated hereunder to do so, and the amount of such payment and of the reasonable expenses of the Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Late Rate from the date of such payment or incurrance of expenditure until the Lessor has been fully reimbursed therefor, to the extent permitted by applicable law, shall be deemed to be Supplemental Rent, payable by the Lessee to the Lessor on demand.

#### SECTION 18. ASSIGNMENT BY THE LESSOR.

The Lessee and the Lessor hereby confirm that the Lessor will execute and deliver on or prior to the Lease Term Commencement Date to the Indenture Trustee the Indenture, which assigns as collateral security and grants a security interest in favor of the Indenture Trustee in and to the Units and the Premises, this Lease and certain of the Rent payable hereunder (excluding Excepted Property), to which assignment pursuant to the Indenture the Lessee hereby consents. The Lessor agrees that it shall not otherwise assign or convey its right, title and interest in and to this Lease, the Units or any Unit and the Premises, except as expressly permitted by and subject to the provisions of the Participation Agreement, the Trust Agreement and the Indenture.

#### SECTION 19. ASSIGNMENT BY THE LESSEE.

The Lessee will not, without the prior written consent of the Lessor, assign any of its rights hereunder; nor will the Lessee sublease any of the Units without the prior written consent of the Lessor, except in accordance with Section 8.3, provided that, in each case, the Lessor and the Owner Participant shall be satisfied that the Bayer Letter and, prior to the expiration thereof pursuant to its terms, the Bayer Support Agreement, as the case may be, remains fully in effect after giving effect to any such assignment or sublease. Notwithstanding the foregoing, the rights and obligations of the Lessee in respect of the Fixed Price Purchase Option may be assigned in whole or in part to Bayer or any entity designated by Bayer without the consent of the Lessor, provided that the Lessor and the Owner Participant shall be satisfied that the Bayer Letter and, prior to the expiration thereof pursuant to its terms, the Bayer Support Agreement, as the case may be, remains fully in effect.

#### SECTION 20. NOTICES.

Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing, and any such notice shall become effective when delivered. Any written notice shall be by (a) personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) United States mail, certified, postage prepaid, return receipt requested or (c) facsimile transmission, confirmed by the method set forth in clause (a) or (b) above, in each case addressed to the addressee at its respective address set forth below or at such other address as such Person may from time to time designate by written notice to

the other Persons listed below:

If to the Lessor:

Boatmen's Trust Company of Texas  
701 South Taylor Street  
Amarillo, Texas 79101  
Attention: Ms. Nancy Ward, Corporate Trust Department  
Facsimile No.: (806) 378-6621  
Confirmation No.: (806) 378-1932

If to the Owner Participant:

To the address specified in Section 10.2 of the  
Participation Agreement

If to the Indenture Trustee:

Wilmington Trust Company  
Rodney Square North  
1100 North Market Street  
Wilmington, Delaware 19890-0001  
Attention: Corporate Trust Administration  
Facsimile No.: (302) 651-1000  
Confirmation No.: (302) 651-8882

If to a holder of a Note:

To the address specified in Section 10.2 of the  
Participation Agreement

If to the Lessee:

El Dorado Nitrogen Company  
16 South Pennsylvania  
P.O. Box 754  
Oklahoma City, Oklahoma 73107  
Attention: General Counsel  
Facsimile No.: (405) 236-1209  
Confirmation No.: (405) 235-4546

If to Bayer:

Bayer Corporation  
100 Bayer Road  
Pittsburgh, Pennsylvania 15205-9741  
Attention: Controller - Polymers Division  
Facsimile No.: (412) 777-7755  
Confirmation No.: (412) 777-4802

## SECTION 21. CONCERNING THE INDENTURE TRUSTEE.

21.1 Rights and Immunities of Indenture Trustee. The Indenture Trustee shall not be obligated to perform any duty, covenant or condition required to be performed by the Lessor under any of the terms hereof, but, on the contrary, the Lessee by its execution hereof acknowledges and agrees that, notwithstanding any grant or assignment in the Indenture, each and all such duties, covenants or conditions required to be performed by the Lessor shall survive any such granting or assignment and shall be and remain the sole liability of the Lessor and of every Person succeeding (by merger, consolidation, purchase of assets or otherwise) to all or substantially all of the business assets or goodwill of the Lessor. Without limiting the foregoing, the Lessee further acknowledges and agrees that the rights of the Indenture Trustee in and to the Units and the Premises or the Rent shall not be subject to any abatement whatsoever, and shall not be subject to any defense, setoff, counterclaim or recoupment or reduction of any kind for any reason whatsoever, whether by reason of failure or defect in the Lessor's title to, or any interruption from whatsoever cause in the use, operation or possession of, the Units or the Premises or any part thereof, the taking of any affirmative act by the Lessor or any party, other than the Indenture Trustee itself through its gross negligence or willful misconduct, which would interfere with the Lessee's use and enjoyment of the Units or the Premises, or (except as provided elsewhere in this Lease) any damage to or loss or destruction of the Units or the Premises or any part thereof or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other Person or by reason of any cause whatsoever, it being

the intent hereof that the Lessee shall be unconditionally and absolutely obligated to pay the Indenture Trustee all of the Rent assigned under and pursuant to the Indenture.

21.2 Amendments; Exercise of Remedies. Unless and until the Lessee shall have received written notice from the Indenture Trustee that the Lien of the Indenture has been discharged in accordance with the terms thereof (i) no amendment or modification of, or waiver by or consent of the Lessor in respect of, any of the provisions of this Lease shall be effective unless the Indenture Trustee shall have joined in such amendment, modification, waiver or consent or shall have given its prior written consent thereto; provided, however, that amendments, modifications, waivers and consents with respect to matters which constitute Excepted Property may be made without such consent, and (ii) except as otherwise expressly provided in the Indenture, the Indenture Trustee shall have the right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use of and benefit of the Indenture Trustee) which by the terms of this Lease or by applicable law are permitted or provided to be exercised by the Lessor.

#### SECTION 22. END OF LEASE TERM PURCHASE OPTION.

Provided that no Lease Default or Lease Event of Default shall have occurred and be continuing at the scheduled expiration of the Lease Term and the Lessee shall have duly given the notice required by the next succeeding sentence of this Section 22, the Lessee shall have the right (the Fixed Price Purchase Option) to purchase all (but not less than all) of the Units then leased hereunder at the scheduled expiration of the Lease Term at a price equal to the Fixed Price Purchase Option Amount for such Units. The Lessee shall give the Lessor irrevocable written notice not less than 12 months (and not more than 18 months) prior to the scheduled end of the Lease Term of its election to exercise the Fixed Price Purchase Option provided for in this Section 22. Payment of the Fixed Price Purchase Option Amount, together with all other amounts due and owing by the Lessee under the Operative Agreements, shall be made at the place of payment specified in Section 3.6 hereof in immediately available funds and the Lessor shall transfer to the Lessee all of its right, title and interest in and to the Units on an "as-is, where-is" basis upon payment of the Fixed Price Purchase Option Amount and all such other amounts due and owing. The Lessor shall not be required to make any representation or warranty as to the condition of the Units or as to any other matters, except for the absence of Lessor's Liens attributable to the Lessor, and may specifically disclaim any such representations or warranties.

#### SECTION 23. LIMITATION OF THE LESSOR'S LIABILITY.

It is expressly agreed and understood that all representations, warranties and undertakings of the Lessor hereunder (except as expressly provided herein) shall be binding upon the Lessor only in its capacity as Owner Trustee under the Trust Agreement and in no case shall Boatmen s be personally liable for or on account of, any statements, representations, warranties, covenants or obligations stated to be those of the Lessor hereunder, except that the Lessor (or any successor Owner Trustee) shall be personally liable (i) in the case of handling funds, for its failure to act with the same care as Boatmen s uses in handling its own funds and, in all other cases, for its gross negligence or wilful misconduct and (ii) for its breach of its covenants, representations and warranties contained in the Operative Agreements to the extent covenanted or made in its individual capacity.

#### SECTION 24. INVESTMENT OF SECURITY FUNDS.

Any moneys received by the Lessor or the Indenture Trustee which are required to be paid to the Lessee pursuant to Section 11.5, 11.6, or 12.3, as the case may be, until paid to the Lessee as provided in Section 11.5, 11.6, or 12.3, or as otherwise applied as provided herein or in the Trust Agreement and Indenture, shall be invested in Permitted Investments by the Lessor (unless the Lien of the Indenture shall not have been discharged, in which case, by the Indenture Trustee as provided in Section 9.3 of the Indenture) from time to time as directed in writing by the Lessee, if such investments are reasonably available for purchase. There shall be promptly remitted to the Lessee, so long as no Lease Default or Lease Event of Default

shall have occurred and be continuing and unless applied as provided herein or in the Trust Agreement and Indenture, any gain (including interest received) realized as the result of any such investment (net of any fees, commissions and other expenses, if any, incurred in connection with such investment). The Lessee will promptly pay to the Lessor or the Indenture Trustee, as the case may be, on demand, the amount of any net loss realized as the result of any such investment (together with any fees, commissions and other expenses, if any, incurred in connection with such investment), such amount to be held and disposed of in accordance with the terms hereof and of the Trust Agreement and the Indenture.

## SECTION 25. MISCELLANEOUS.

25.1 Governing Law; Severability. THIS LEASE, AND ANY EXTENSIONS, AMENDMENTS, MODIFICATIONS, RENEWALS OR SUPPLEMENTS HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS AND DECISIONS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, EXCEPT AS TO MATTERS RELATING TO REAL PROPERTY AND THE EXERCISE OF REMEDIES WITH RESPECT THERETO, WHICH WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS. Whenever possible, each provision of this Lease shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Lease shall be prohibited by or invalid under the laws of any jurisdiction, such provision, as to such jurisdiction, shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Lease as to such jurisdiction or in any other jurisdiction.

25.2 Execution in Counterparts. This Lease may be executed in any number of counterparts, each executed counterpart constituting an original and all such counterparts constituting but one and the same agreement; provided, however, that to the extent that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code) no security interest in this Lease may be created through the transfer or possession of any counterpart hereof other than the counterpart bearing the receipt therefor executed by the Indenture Trustee on the signature page hereof, which counterpart shall constitute the only "original" hereof for purposes of the Uniform Commercial Code.

25.3 Headings and Table of Contents; Section References. The headings of the sections of this Lease and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof. All references herein to numbered sections, unless otherwise indicated, are to sections of this Lease.

25.4 Successors and Assigns. This Lease shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and permitted assigns. Except as expressly provided herein, no party hereto may assign its interests herein without the consent of the other parties hereto and the Indenture Trustee.

25.5 True Lease. It is the intent of the parties to this Lease that it will be a true lease and not a "conditional sale" and will be a "finance lease" under Article 2A of the Uniform Commercial Code, and that the Lessor shall at all times be considered to be the owner of each Unit which is the subject of this Lease for the purposes of all Federal, state, city and local income taxes or for franchise taxes measured by income, and that this Lease conveys to the Lessee no right, title or interest in any Unit or the Premises except as lessee. Nothing contained in this Section 25.5 shall be construed to limit the Lessee's use or operation of any Unit or the Premises in accordance with the terms hereof or to constitute a representation, warranty or covenant by the Lessor as to tax consequences.

25.6 Amendments and Waivers. No term, covenant, agreement or condition of this Lease may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by each party hereto and, to

the extent required by Section 21.2, by the Indenture Trustee, and except as may be permitted by the terms of the Indenture.

25.7 Survival. All warranties, representations, indemnities and covenants made by either party hereto, herein or in any certificate or other instrument delivered by such party or on the behalf of any such party under this Lease, shall be considered to have been relied upon by the other party hereto and shall survive the consummation of the transactions contemplated hereby regardless of any investigation made by either such party or on behalf of either such party.

25.8 Business Days. If the date on which any payment is to be made pursuant to this Lease is not a Business Day, the payment otherwise payable on such date shall be payable on the next succeeding Business Day.

25.9 Incorporation by Reference. The obligations set forth in Sections 7.1 and 7.2 of the Participation Agreement are hereby incorporated by reference.

25.10 Lessee's Right of Use and Enjoyment. The Lessor shall not take, or cause to be taken, any action contrary to the Lessee's rights under this Lease, including, without limitation, the right to possession and use by the Lessee unless and until a Lease Event of Default has occurred and is continuing or the term of the Lease has expired (and the Lessee has not exercised its option to purchase the Units) or has been terminated (and the Lessee has not exercised its option to purchase the Units) in accordance with the terms hereof.

25.11 License to Enter Land. Subject to the proviso hereto, the Lessee hereby grants to the Lessor and the Indenture Trustee (or such Persons as the Lessor or the Indenture Trustee may designate) an irrevocable license to enter upon the land where any Unit is located; provided, however, that neither the Lessor nor the Indenture Trustee shall be entitled to exercise such license unless a Lease Event of Default has occurred and is continuing and this Lease or the Lessee's rights of possession hereunder have been terminated or the Lease Term has expired and the Lessee has failed or refused for any reason to surrender any Unit in the manner provided in Section 6 hereof.

25.12 FORUM SELECTION AND CONSENT TO JURISDICTION. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, EXCEPT FOR LITIGATION BROUGHT IN THE COURTS OF OTHER JURISDICTIONS TO ENFORCE JUDGMENTS RENDERED BY SUCH COURTS OF THE STATE OF NEW YORK OR FEDERAL COURTS LOCATED IN NEW YORK. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND OF THE APPELLATE COURTS THEREFROM FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE AND IRREVOCABLY AGREES TO BE BOUND BY ANY FINAL JUDGMENT RENDERED THEREIN FOR WHICH APPEALS OR THE TIME FOR APPEAL HAVE EXPIRED IN CONNECTION WITH SUCH LITIGATION. EACH PARTY HERETO FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY HAVE OR HEREAFTER MAY HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY PARTY HERETO HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, SUCH PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

#### SECTION 26. WAIVER OF JURY TRIAL

THE PARTIES HERETO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY MATTER ARISING HEREUNDER.

#### SECTION 27. BAYER RIGHTS UPON DEFAULT OR LOSS.

Upon the occurrence of (x) a Lease Event of Default (other than a Lease Event of Default arising under Section 14(e) or 14(f) with respect to Bayer or under Section 14(h) or Section 14(i)) and receipt by Bayer of (1) a written determination by the Indenture Trustee that the Indenture Trustee intends to exercise the remedies available to it under Section 15 (other than any remedy intended to cause performance and continuance of this Lease) in respect of such Lease Event of Default or (2) a written notice from the Owner Participant as contemplated by the Bayer Letter in respect of such Lease Event of Default, or (y) an Event of Loss and the receipt by Bayer of a written notice from the Indenture Trustee or the Owner Participant as contemplated by the Bayer Letter in respect of such Event of Loss, the parties hereto acknowledge that Bayer shall have all of the rights, duties and obligations set forth in the Bayer Letter and, to the extent relevant, shall be entitled to exercise the rights it obtains hereunder.

\* \* \* \* \*

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease to be duly executed and delivered in New York, New York on the day and year first above written.

LESSOR:

BOATMEN'S TRUST COMPANY OF TEXAS, not in its individual capacity except as otherwise expressly provided herein but solely as Owner Trustee

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

Name: \_\_\_\_\_

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

LESSEE:

EL DORADO NITROGEN COMPANY

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

Name: James L. Wewers  
-----

Title: President  
-----

Receipt of the original counterpart of the foregoing Lease is hereby acknowledged this \_\_\_\_ day of \_\_\_\_\_, 199\_.

WILMINGTON TRUST COMPANY,  
as Indenture Trustee

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

Name: \_\_\_\_\_

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

FORM OF

LEASE SUPPLEMENT (EDNC Trust 1997) NO.

Dated \_\_\_\_\_, 199\_

between

BOATMEN'S TRUST COMPANY OF TEXAS,  
not in its individual  
capacity except as expressly provided  
herein but solely as Owner Trustee,  
as Lessor

and

EL DORADO NITROGEN COMPANY,  
as Lessee

CERTAIN OF THE RIGHT, TITLE AND INTEREST OF THE LESSOR IN AND TO THIS LEASE SUPPLEMENT, THE UNITS COVERED HEREBY AND THE RENT DUE AND TO BECOME DUE UNDER THE LEASE HAVE BEEN ASSIGNED AS COLLATERAL SECURITY TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, WILMINGTON TRUST COMPANY, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS INDENTURE TRUSTEE UNDER A TRUST INDENTURE AND SECURITY AGREEMENT (EDNC TRUST 1997), DATED AS OF JUNE 27, 1997, BETWEEN SUCH INDENTURE TRUSTEE, AS SECURED PARTY, AND THE LESSOR, AS DEBTOR. INFORMATION CONCERNING SUCH SECURITY INTEREST MAY BE OBTAINED FROM THE INDENTURE TRUSTEE AT ITS ADDRESS SET FORTH IN SECTION 20 OF THE LEASE. THIS LEASE SUPPLEMENT HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS, BUT ONLY THE COUNTERPART TO BE DEEMED THE ORIGINAL COUNTERPART FOR CHATTEL PAPER PURPOSES CONTAINS THE RECEIPT THEREFOR EXECUTED BY WILMINGTON TRUST COMPANY, AS INDENTURE TRUSTEE, ON THE SIGNATURE PAGES THEREOF. SEE SECTION 25.2 OF THE LEASE FOR INFORMATION CONCERNING THE RIGHTS OF THE ORIGINAL HOLDER AND THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF.

LEASE SUPPLEMENT (EDNC Trust 1997) NO. \_\_

LEASE SUPPLEMENT (EDNC Trust 1997) NO. dated \_\_\_\_\_, 199\_ (this "Lease Supplement") is between BOATMEN'S TRUST COMPANY OF TEXAS, a Texas state chartered trust company, not in its individual capacity but solely as Owner Trustee (the "Lessor") under the Trust Agreement, and EL DORADO NITROGEN COMPANY, an Oklahoma corporation (the "Lessee");

W I T N E S S E T H :

WHEREAS, the Lessor and the Lessee have heretofore entered into that certain Lease Agreement (EDNC Trust 1997) dated as of June 27, 1997 (as amended, supplemented or otherwise modified from time to time, the "Lease"; unless otherwise defined herein, capitalized terms used herein shall have the meanings specified in Appendix A to the Lease); and

WHEREAS, the Lease provides for the execution and delivery of a Lease Supplement on the Lease Term Commencement Date substantially in the form hereof for the purpose of confirming the acceptance and lease of the Units under the Lease in accordance with the terms thereof;

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, the Lessor and the Lessee hereby agree as follows:

1. Inspection and Approval. The Lessee hereby acknowledges and confirms that it has inspected and approved the Units set forth on Schedule 1 hereto and, as between the Lessor and the Lessee, such Units comply in all material respects with the specifications for such Units and are in good working order.

2. Delivery and Acceptance. The Lessor hereby confirms delivery and lease to the Lessee, and the Lessee hereby confirms acceptance and lease from the Lessor, under the Lease as hereby supplemented, of the Units listed on Schedule 1 hereto.

3. Representations and Warranties. The Lessee hereby represents and

warrants that:

(a) No event which would constitute an Event of Loss under the Lease has occurred with respect to the Units set forth on Schedule 1 hereto as of the date hereof;

(b) The Total Equipment Cost for the Units listed on Schedule 1 hereto is \$[\_\_\_\_\_];

(c) Each Unit listed on Schedule 1 hereto has been assembled and installed at the Premises;

(d) The Units listed on Schedule 1 hereto are free and clear of all Liens, except the Liens of the Lease and the Indenture and Permitted Liens described in clauses (iii) and (iv) of the definition thereof;

(e) The Units and the current operation thereof do not violate any law or regulation, or any order of any Governmental Authority applicable to, or binding on, the Units, including, without limitation, any such law, regulation or order relating to matters of occupational safety and health or the environment, other than violations that would not, individually or in the aggregate, have a Material Adverse Effect; and

(f) As of the Lease Term Commencement Date (i) the Units, taken as a whole, and each major component thereof, are substantially complete such that they are ready and available to perform the function for which they were designed; (ii) all material approvals of any Governmental Authority necessary for the commercial operation of such Unit have been received and are in full force and effect; (iii) the Units have been maintained, serviced and repaired (A) in a manner consistent with sound engineering practice and standards which will enable the Lessee to operate the Units at or above the contracted capacity levels or otherwise fully perform its obligation under the Operative Agreements and (B) in compliance in all material respects with (1) applicable laws, rules, regulations and orders of any Governmental Authority and (2) all requirements of manufacturers of the Units for maintaining in full force and effect any warranties of such manufacturers with respect to the Units; (iv) there is no present event or condition that is directed, addressed or relates specifically to the Units and that would materially and adversely affect the capability of the Units to operate as intended by the Lessee or materially impair their fair market value, utility, condition or remaining economic useful life; and (v) all licenses, patents, trademark, tradenames and similar rights that are necessary for the operation of the Units by a third party are in full force and effect and have been, or on the Lease Term Commencement Date will be, duly assigned to the Lessor; it being understood that such licenses, patents, trademarks, tradenames and similar rights do not include licenses, patents, trademarks, tradenames and similar rights related to the products produced by the Lessee with the Units.

4. Basic Rent, Stipulated Loss Values and Termination Values. The Basic Rent payable under Section 3.2 of the Lease, Stipulated Loss Values, Termination Values and the Fixed Price Purchase Option Amount applicable in respect of the Units are set forth, respectively, on the appropriate portions of Schedules 2, 3, 4 and 6 to the Participation Agreement.

5. Confirmation. The Lessee hereby confirms its agreement, in accordance with the Lease as supplemented by this Lease Supplement, to pay Rent to the Lessor for each Unit leased hereunder as provided for in the Lease.

6. Incorporation into Lease. This Lease Supplement shall be construed in connection with and as part of the Lease, and all terms, conditions and covenants contained in the Lease, as supplemented by this Lease Supplement, shall be and remain in full force and effect.

7. References. Any and all notices, requests, certificates and other instruments executed and delivered concurrently with or after the execution and delivery of this Lease Supplement may refer to the "Lease Agreement, dated as of June 27, 1997", or may identify the Lease in any other respect without making specific reference to this Lease Supplement, but nevertheless all such references shall be deemed to include this Lease Supplement, unless the context shall otherwise require.

8. Counterparts. This Lease Supplement may be executed in any number of counterparts, each executed counterpart constituting an original but all together constituting one and the same instrument.

9. Governing Law. THIS LEASE SUPPLEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS AND DECISIONS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE



-----

EXHIBIT B  
DESCRIPTION OF PREMISES  
[TO BE PROVIDED]

SECURITY AGREEMENT AND COLLATERAL  
ASSIGNMENT OF FACILITY DOCUMENTS

FOR VALUE RECEIVED, and to secure the performance by EL DORADO NITROGEN COMPANY, an Oklahoma corporation ("Assignor"), of all of its obligations under that certain Participation Agreement dated as of June 27, 1997 (as the same may be amended, modified or restated from time to time, and together with all substitutions therefor and replacements thereof, the "Agreement") among Assignor, BOATMEN'S TRUST COMPANY OF TEXAS, a Texas state chartered trust company, not in its individual capacity, but solely as Owner Trustee ("Secured Party"), and the other parties thereto, and under the other Operative Agreements, Assignor does hereby collaterally assign and grant a security interest in and Lien upon, to Secured Party and its successors and assigns, all of Assignor's right, title and interest in and to the Facility Documents, now or hereafter existing, and all proceeds thereof (referred to collectively herein as the Collateral); provided, however, that Secured Party shall have no obligation or liability of any kind under or with respect to the Facility Documents, either before or after its exercise of any rights hereby granted to it, and Assignor agrees to save and hold Secured Party harmless from, and to indemnify it against, any and all such obligations and liabilities, contingent or otherwise.

All capitalized but undefined terms used herein shall have the same respective meanings as in the Agreement.

This Security Agreement and Collateral Assignment of Facility Documents shall inure to the benefit of Secured Party and its successors and assigns, and shall be binding upon Assignor and its successors and assigns, and shall continue in full force and effect until all obligations, liabilities and indebtedness of any kind now or hereafter due Secured Party from any of the other Operative Agreements, or which are otherwise secured hereby, whether now existing or hereafter arising or incurred (collectively, the "Liabilities"), have been fully paid, performed and satisfied, at which time this Security Agreement and Collateral Assignment of Facility Documents will terminate. Secured Party will not exercise any of its rights hereunder until a default by Assignor occurs under the Agreement or the other Operative Agreements (after giving effect to any applicable notice requirements or cure periods) (a "Default").

For purposes of operating the units and occupying the Premises either before or after a Default shall have occurred, Secured Party may, at its option, further assign its right, title and interest in the Collateral to the Construction Loan Agent and/or the Indenture Trustee without the consent of Assignor or any other Person.

This Security Agreement and Collateral Assignment of Construction Documents is a present security interest and collateral assignment. During the continuance of any Default, Secured Party may, without affecting any other right or remedy available to it, exercise its rights under this Security Agreement and Collateral Assignment of Facility Documents as provided herein in any manner permitted by law. If any notice to Assignor is required by law, such notice shall be deemed commercially reasonable if given at least 10 days prior to the date of intended action.

Assignor represents and warrants that it has more than one place of business and that its chief executive office, as such terms are used in Section 9-103(3) of the Uniform Commercial Code, is located at 16 South Pennsylvania, Oklahoma City, Oklahoma 73107.

Assignor represents and warrants that upon the filing of an appropriate Uniform Commercial Code financing statement with the Secretary of State of Oklahoma, the Secretary of State of Texas and in the Real Property Records of Chambers County, Texas, Secured Party will have an enforceable, perfected first priority security interest of record in the Collateral (except for (a) insurance proceeds to the extent excluded from Section 9-306 of the Uniform Commercial Code and (b) permits as to which (i) perfection of a security interest therein is not governed by the Uniform Commercial Code or (ii) the assignment thereof, or the

granting of a security interest therein, violates applicable law or the terms thereof) as against all Persons, including Assignor and its creditors.

Assignor, at its own cost and expense, will cause all financing statements (including precautionary financing statements), fixture filings and other documents, to be recorded or filed at such places and times in such manner, and will take all such other actions or cause such actions to be taken, as may be reasonably requested by Secured Party in order to establish, preserve, protect and perfect the first and prior Lien of Secured Party to the Collateral.

This Security Agreement and Collateral Assignment of Facility Documents may be effectively waived, modified, amended or terminated only by a written instrument executed by Secured Party. Any waiver by Secured Party shall be effective only with respect to the specific instance described therein. Delay or course of conduct shall not constitute a waiver of any right or remedy of Secured Party.

THIS SECURITY AGREEMENT AND COLLATERAL ASSIGNMENT OF FACILITY DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

[Signature Page Follows]

IN WITNESS WHEREOF, Assignor has caused this Security Agreement and Collateral Assignment of Facility Documents to be executed by its duly authorized officer as of this 27th day of June, 1997.

EL DORADO NITROGEN COMPANY,  
as Assignor

By: \_\_\_\_\_  
Name: James L. Wewers  
Title: President

BAYER CORPORATION, an Indiana corporation, joins in the execution hereof for the purpose of acknowledging and consenting to the terms and provisions of this Security Agreement and Collateral Assignment of Facility Documents, and agrees to look solely to Assignor and that it shall have no recourse to Secured Party with respect to any claims arising under the Facility Documents, except to the extent that Secured Party has assumed in writing any obligations under, or has foreclosed upon, the Facility Documents.

Dated: June \_\_\_\_, 1997

BAYER CORPORATION

By: \_\_\_\_\_  
Name: H. Lee Noble  
Title: Executive Vice President

Security Agreement and  
Collateral Assignment of Construction Documents

FOR VALUE RECEIVED, and to secure the performance by EL DORADO NITROGEN COMPANY, an Oklahoma corporation (HEREINAFTER REFERRED TO AS "Assignor"), of all of its obligations under that certain Construction Agency Agreement dated as of June 27, 1997 (as the same may be amended, modified or restated from time to time, and together with all substitutions therefor and replacements thereof, the "Agreement") between Assignor and Boatmen's Trust Company of Texas, not in its individual capacity, except as otherwise expressly provided herein, but solely as Owner Trustee (the "Secured Party"), and the other Operative Agreements, Assignor does hereby collaterally assign and grant a security interest in and Lien upon, to the Secured Party and its successors and assigns, all of Assignor's right, title and interest in and to the following, now or hereafter existing, (referred to collectively herein as the "Construction Agency Collateral"):

(i) all engineering, procurement and construction contracts, purchase orders and other agreements relating to the designing, engineering, selecting, ordering, installing, testing and placing into service of the Units, as each such agreement may heretofore or hereafter be entered into, supplemented, modified or amended from time to time (collectively, the "Construction Contracts");

(ii) all plans, specifications and drawings of any and every kind heretofore or hereafter prepared for use in connection with the designing, engineering, selecting, ordering, installing, testing and/or placing into service of the Units, and any supplements, amendments or modifications thereto (collectively, the "Plans");

(iii) to the extent assignable and to the extent permitted under applicable law, all building and other permits, licenses and government approvals which are necessary or useful to the commencement and completion of the designing, engineering, selecting, ordering, installing, testing and/or placing into service of the Units, or which otherwise relate thereto, heretofore or hereafter obtained or applied for by or on behalf of Assignor, and any deposits made in connection therewith (collectively, the "Permits");

(iv) to the extent assignable, all insurance policies, guarantees and bonds in favor of Assignor required pursuant to the Construction Contracts or otherwise, as each of the same be heretofore or hereafter supplemented, modified, or amended from time to time and the right to receive payments and proceeds under such insurance policies, guarantees and bonds (collectively, the "Insurance Policies"); and

(v) all proceeds of any of the foregoing;

provided, however, that Secured Party shall have no obligation or liability of any kind under or with respect to the Construction Contracts, the Permits, the Plans or the Insurance Policies, either before or after its exercise of any rights hereby granted to it, and Assignor agrees to save and hold Secured Party harmless from, and to indemnify it against, any and all such obligations and liabilities, contingent or otherwise.

All capitalized but undefined terms used herein shall have the same respective meanings as in the Construction Agency Agreement.

This Security Agreement and Collateral Assignment of Construction Documents shall inure to the benefit of Secured Party and its successors and assigns, and shall be binding upon Assignor and its successors and assigns, and shall continue in full force and effect until all obligations, liabilities and indebtedness of any kind now or hereafter due Secured party from Assignor under or with respect to the Construction Agency Agreement or any of the other Operative Agreements, or which are otherwise secured hereby, whether now existing or hereafter arising or incurred (collectively, the "Liabilities"), have been fully paid, performed and satisfied, at which time this Security

Agreement and Collateral Assignment of Construction Documents will terminate. Secured Party will not exercise any of its rights hereunder until a Construction Agency Event of Default occurs.

For purposes of completing the designing, engineering, selecting, ordering, installing, testing and/or placing into service of the Units after a Construction Agency Event of Default shall have occurred, Secured Party may, at its option, further assign its right, title and interest in the Construction Agency Collateral without the consent of Assignor, any contractor or any other Person.

This Security Agreement and Collateral Assignment of Construction Documents is a present security interest and collateral assignment; provided, however, that Secured Party shall not have the right to undertake completion of the designing, engineering, selecting, ordering, installing (or arranging for the installation of), testing and/or placing into service of the Units or directly to enforce the provisions of any Construction Contract until a Construction Agency Event of Default exists. During the continuance of any such Construction Agency Event of Default, Secured party may, without affecting any other right or remedy available to it, exercise its rights under this Security Agreement and Collateral Assignment of Construction Documents as provided herein in any manner permitted by law. If any notice to Assignor is required by law, such notice shall be deemed commercially reasonable if given at least 10 days prior to the date of intended action.

Assignor represents and warrants that it has more than one place of business and that its chief executive office, as such terms are used in Section 9-103(3) of the Uniform Commercial Code, is located at 16 South Pennsylvania, Oklahoma City, Oklahoma 73107.

Assignor represents and warrants that upon the filing of an appropriate Uniform Commercial Code financing statement with the Secretary of State of Oklahoma, the Secretary of State of Texas and in the Real Property Records of Chambers County, Texas, Secured Party will have an enforceable, perfected first priority security interest of record in the Construction Agency Collateral (except for (a) insurance proceeds to the extent excluded from Section 9-306 of the Uniform Commercial Code and (b) permits as to which (i) perfection of a security interest therein is not governed by the Uniform Commercial Code or (ii) the assignment thereof, or the granting of a security interest therein, violates applicable law) as against all Persons, including Assignor and its creditors.

Assignor, at its own cost and expense, will cause all financing statements (including precautionary financing statements), fixture filings and other documents, to be recorded or filed at such places and times in such manner, and will take all such other actions or cause such actions to be taken, as may be reasonably requested by Secured Party in order to establish, preserve, protect and perfect the first and prior Lien of Secured Party to the Construction Agency Collateral.

This Security Agreement and Collateral Assignment of Construction Documents may be effectively waived, modified, amended or terminated only by a written instrument executed by Secured Party. Any waiver by Secured Party shall be effective only with respect to the specific instance described therein. Delay or course of conduct shall not constitute a waiver of any right or remedy of Secured Party.

THIS SECURITY AGREEMENT AND COLLATERAL ASSIGNMENT OF FACILITY DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, Assignor has caused this Security Agreement and Collateral Assignment of Construction Documents to be executed by its duly authorized officer as of this 27th day of June, 1997.

EL DORADO NITROGEN COMPANY,  
as Assignor

By: \_\_\_\_\_  
Name: James L. Wewers  
Title: President

## PRIMARY EARNINGS PER SHARE COMPUTATION

	1997 quarter ended	
	March 31	June 30
Shares for primary earnings per share:		
Weighted average shares:		
Common shares outstanding from beginning of period	12,975,356	12,931,856
Common shares issued on conversion of redeemable preferred stock; calculated on weighted average basis	-	-
Common shares issued upon exercise of employee or director stock options; calculated on weighted average basis	13,440	35,198
Purchases of treasury stock; calculated on weighted average basis	(13,972)	(60,367)
	-----	-----
	12,974,824	12,906,687
Common Stock equivalents:		
Shares issuable upon exercise of options and warrants (including the weighted average for shares subject to options and warrants granted during the period)	-	790,942
Assumed repurchase of outstanding shares up to the 20% limitation (based on average market price for the period)	-	(539,953)
Common shares issuable on conversion of redeemable preferred stock, excluding shares included above on actual conversion	-	-
	-----	-----
	-	250,989
	-----	-----
	12,974,824	13,157,676
	=====	=====
Earnings for primary earnings per share:		
Net earnings (loss)	\$(5,437,954)	\$ 1,466,628
Dividends on cumulative preferred stocks	(60,000)	(75,390)
Dividends on convertible, exchangeable Class C preferred Stock (6.5% annually)	(743,438)	(743,438)
	-----	-----
Earnings (loss) applicable to common stock	\$(6,241,392)	\$ 647,800
	=====	=====
Earnings (loss) per share	\$(.48)	\$ .05
	=====	=====

## PRIMARY EARNINGS PER SHARE COMPUTATION

	Six months ended June 30, 1997
	-----
Net earnings (loss) applicable to common Stock	\$(5,593,592)
	=====
Weighted average number of common and common equivalent shares (average of two quarters above)	13,066,250

Earnings (loss) per share

=====  
\$(.43)  
=====

LSB INDUSTRIES, INC.

Exhibit 11.1

Page 3 of 6

PRIMARY EARNINGS PER SHARE COMPUTATION

	1996 quarter ended	
	March 31	June 30
Shares for primary earnings per share:		
Weighted average shares:		
Common shares outstanding from beginning of period	12,911,447	12,909,487
Common shares issued on conversion of redeemable preferred stock; calculated on weighted average basis	270	-
Common shares issued upon exercise of employee or director stock options; calculated on weighted average basis	-	-
Purchases of treasury stock; calculated on weighted average basis	(330)	(978)
	-----	-----
	12,911,387	12,908,509
Common Stock equivalents:		
Shares issuable upon exercise of options and warrants (including the weighted average for shares subject to options and warrants granted during the period)	-	737,640
Assumed repurchase of outstanding shares up to the 20% limitation (based on average market price for the period)	-	(359,676)
Common shares issuable on conversion of redeemable preferred stock, excluding shares included above on actual conversion	-	62,080
	-----	-----
	-	440,044
	-----	-----
	12,911,387	13,348,553
	=====	=====
Earnings for primary earnings per share:		
Net earnings (loss)	\$ (531,218)	\$ 2,371,797
Dividends on cumulative preferred stocks	(75,520)	(60,000)
Dividends on convertible, exchangeable Class C preferred Stock (6.5% annually)	(743,438)	(743,438)
	-----	-----
Earnings (loss) applicable to common stock	\$(1,350,176)	\$ 1,568,359
	=====	=====
Earnings (loss) per share	\$(.10)	\$ .12
	=====	=====

LSB INDUSTRIES, INC.

Exhibit 11.1

Page 4 of 6

PRIMARY EARNINGS PER SHARE COMPUTATION

Six months  
ended  
June 30, 1996

Net earnings applicable to common Stock	\$ 218,183
	=====
Weighted average number of common and common equivalent shares (average of two quarters above)	13,129,970
	=====
Earnings per share	\$ .02
	=====

LSB INDUSTRIES, INC.

Exhibit 11.1  
Page 5 of 6

FULLY DILUTED EARNINGS PER SHARE COMPUTATION

	1997 quarter ended	
	March 31	June 30
Shares for fully diluted earnings per share:		
Weighted average shares outstanding for primary earnings per share	12,974,824	12,906,687
Shares issuable upon exercise of options and warrants	-	790,942
Assumed repurchase of outstanding shares up to the 20% limitation (based on ending market price for the quarter if greater than the average)	-	(539,953)
Common shares issuable on conversion of redeemable preferred stock, excluding shares included above on actual conversion	-	-
Common shares issuable upon conversion of convertible note payable	-	4,000
Common shares issuable upon conversion of convertible preferred stock, if dilutive, from date of issue:		
Series B	-	-
Series 2	-	-
	-----	-----
	12,974,824	13,161,676
	=====	=====
Earnings for fully diluted earnings per share:		
Net earnings (loss)	\$(5,437,954)	\$ 1,466,628
Dividends on cumulative convertible preferred stocks:		
Series B	(60,000)	(75,390)
Series 2 Class C	(743,438)	(743,438)
	-----	-----
Earnings (loss) applicable to common stock	\$(6,241,392)	\$ 647,800
	=====	=====
Earnings (loss) per share	(.48)	\$.05
	=====	=====

Six months  
ended  
June 30, 1997  
-----

Net earnings (loss) applicable to common stock	\$(5,593,592)
	=====
Weighted average number of common and common equivalent shares (average of two quarters above)	13,068,250
	=====
Earnings (loss) per share	\$(.43)
	=====

## FULLY DILUTED EARNINGS PER SHARE COMPUTATION

	1996 quarter ended	
	March 31	June 30
Shares for fully diluted earnings per share:		
Weighted average shares outstanding for primary earnings per share	12,911,387	12,908,509
Shares issuable upon exercise of options and warrants	-	737,640
Assumed repurchase of outstanding shares up to the 20% limitation (based on ending market price for the quarter if greater than the average)	-	(359,676)
Common shares issuable on conversion of redeemable preferred stock, excluding shares included above on actual conversion	-	62,080
Common shares issuable upon conversion of convertible note payable	-	4,000
Common shares issuable upon conversion of convertible preferred stock, if dilutive, from date of issue:		
Series B	-	666,666
Series 2	-	-
	-----	-----
	12,911,387	14,019,219
	=====	=====
Earnings for fully diluted earnings per share:		
Net earnings (loss)	\$ (531,218)	\$2,371,797
Dividends on cumulative preferred stocks:		
Series B	(75,520)	-
Series 2 Class C	(743,438)	(743,438)
	-----	-----
Earnings (loss) applicable to common stock	\$(1,350,176)	\$1,628,359
	=====	=====
Earning (loss) per share	\$(.10)	\$.12
	====	===

	Six months ended June 30, 1996
Net earnings applicable to common stock	\$ 278,183
	=====
Weighted average number of common and common equivalent shares (average of two quarters above)	13,465,303
	=====
Earnings per share	\$ .02
	=====

