

RECORDATION NO. 9806-C + 9805-A Filed 1425

DEC 27 1979 - 12 50 PM

MELROD, REDMAN & GARTLAN

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INTERSTATE COMMERCE COMMISSION  
9-3614081

No. \_\_\_\_\_  
Date DEC 27 1979

Fee \$ 20.00  
ICC Washington, D.C.

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ROBERT J. FREDA  
WM. DANIEL SULLIVAN  
STANTON J. LEVINSON  
BYRON A. SMITH  
JOHN E. HARRISON ††  
BONNIE M. BORMAN

† ADMITTED IN MARYLAND ONLY  
†† ADMITTED IN VIRGINIA ONLY

December 27, 1979

EDWARD B. WEBB, JR.  
OF COUNSEL

Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
12th and Constitution Ave., N.W.  
Washington, D.C. 20423

*Robert F. Colton*

DEC 27 12 43 PM '79  
RECEIVED  
FEE OPERATIONS  
I.C.C. FILED

Dear Ms. Mergenovich:

Enclosed on behalf of Greyhound Leasing and Financial Corporation, for filing and recording pursuant to Section 20c of the Interstate Commerce Act is the following document relating to the railroad equipment described and marked in accordance with Equipment Schedule No. A attached hereto:

*Partial*  
~~Release and Satisfaction~~ dated as of December 7, 1979 between Smith Barney, Harris Upham Co., Incorporated (as Releasor) and Thomas B. Garber (as Releasee).

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

Releasor: Smith Barney, Harris Upham & Co., Incorporated  
1345 Avenue of the Americas  
New York, NY 10019

Releasee: Thomas B. Garber  
2510 Van Ness Ave.  
San Francisco, California 94109

Also enclosed is our check payable to the order of Interstate Commerce Commission in the amount of \$10.00, the prescribed fee for filing and recording the enclosed document.

Please return your letter confirming such filing and recording, together with your fee receipt and file-stamped copies of counterparts not required for filing to the undersigned at the above address.

Very truly yours,

*Robert F. Colton*  
Robert F. Colton, As Agent  
for Greyhound Leasing and  
Financial Corporation

*Jill R. Oberhouse*

*Cheney*

EQUIPMENT SCHEDULE NO. A

A.A.R. Mech. Design	Description	Numbers	Length	Dimensions Inside Width	Height	No. of Cars
LO	Covered Hoppers	RSLX 11001 - 11025	59'4"	10/4"	15'1"	25

Interstate Commerce Commission

Washington, D.C. 20423

12/27/79

OFFICE OF THE SECRETARY

Roberta F. Colton  
Melrod, Redman & Gartlan  
1801 K. St., N.W.  
Washington, D.C. 20006

Dear Ms. Colton:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/27/79 at 12:50pm, and assigned re-  
recording number(s). 9805-A & 9806-C

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

THIS AGREEMENT AND THE NOTES ISSUED HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE FEDERAL SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES ACT, AND MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED, ASSIGNED, PLEDGED, OR OTHERWISE DISPOSED OF UNLESS FIRST REGISTERED UNDER SUCH ACTS OR TRANSFERRED IN A TRANSACTION EXEMPT FROM SUCH REGISTRATION AND ALL RULES AND REGULATIONS RELATING TO THE SALE, TRANSFER, ASSIGNMENT, PLEDGE, OR OTHER DISPOSITIONS THEREUNDER HAVE BEEN COMPLIED WITH.

RECORDATION NO. <sup>3805</sup> Filed 1428

OCT 27 1978 4 1 58 PM  
INTERSTATE COMMERCE COMMISSION

LOAN AND SECURITY AGREEMENT

THIS AGREEMENT is made and entered into as of October 25, 1978, between Thomas B. Garber ("Borrower"), and The Bank of California, N.A., a national banking association (whether one or more, "Lender").

W I T N E S S E T H:

WHEREAS, Borrower desires to purchase that certain railroad equipment set forth in Exhibit A hereto (the "Equipment") for the purpose of leasing the Equipment under that certain Rail Car Lease and Service Contract dated as of May 10, 1978 (the "Lease") between Borrower as Lessor and Celanese Plastics Company, a Division of Celanese Corporation as Lessee ("Lessee"); and

WHEREAS, in order to acquire the Equipment and arrange for the Lease, Borrower desires to borrow a portion of the necessary funds from Lender on the terms and conditions hereinafter set forth; and

WHEREAS, Lender desires to lend such funds to Borrower, reserving a security interest in the Equipment and other Collateral hereinafter described.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower and Lender hereby agree as follows:

1. The Loan

1.1 The Loan - Subject to and upon the terms, covenants, and conditions hereinafter set forth, Lender shall loan to Borrower and Borrower shall borrow from Lender the principal sum of Seven Hundred Seventy-Five Thousand, Five Hundred Seventeen and 00/100

dollars (\$775,517.00) (the "Loan"). The Loan shall be made in one or more advances in the amounts and on the occurrence of the events specified in Schedule I hereto.

1.2 The Note - The Loan shall be evidenced by a note or notes, in the form of Exhibit B hereto (whether one or more, the "Note"). Concurrently with the making of each advance under the Loan, Borrower shall execute and deliver a Note, dated the date thereof, in the aggregate principal amount of the advance, and payable to the order of Lender. The Note shall be payable and prepayable and shall bear interest in the manner specified therein and shall be assignable, transferable, and enforceable in accordance with its terms by the assignee or transferee thereof or successor

in interest thereto. Borrower will, at any time, at the request of a holder of any Note and as soon as practicable after surrender of such Note to Borrower with notations thereon of Lender as to the extent of payments having been made on the Note, execute and deliver a new Note or Notes in exchange therefor, payable to the order of the holder or such person or persons as may be designated by such holder, dated the date to which interest has been paid on the surrendered Note, in an aggregate principal amount equal to the unpaid principal balance of such surrendered Note and substantially in the form of such Note with appropriate variations required by the circumstances.

1.3 Conditions Precedent to the Loan - Lender's obligation to make the Loan and disburse any funds hereunder is subject to Borrower's compliance with all covenants of Borrower contained in the Loan Documents (as defined in Schedule II hereto), to the accuracy of the representations and warranties of Borrower contained herein as of the date of execution of this Agreement and the date of each disbursement of funds hereunder, and to the fulfillment to Lender's reasonable satisfaction, prior to or contemporaneously with the making of the Loan and any disbursement of funds, of the following additional conditions precedent:

(a) The Note - The duly executed Note shall have been delivered to Lender.

(b) Perfection of Security Interests - The sole executed original of the Lease (which shall have been so marked by Borrower and Lessee) shall have been delivered to Lender to be retained by Lender to effect the lien on, and assignment of, the Lease created pursuant to this Agreement and the other Loan Documents. In addition, all action necessary or desirable in the opinion of Lender and Lender's counsel to perfect the liens of Lender created pursuant to this Agreement (including, without limitation, the filing of any financing statements or other instruments in appropriate public offices) shall have been duly taken, or arrangements satisfactory to Lender and Lender's counsel shall have been made for taking such action.

(c) Loan Documents - Lender shall have received all other Loan Documents to which Lessee or Borrower is a party, duly executed by Borrower or an authorized officer of Lessee.

(d) Opinion of Borrower's Counsel - Lender shall have received from Borrower's counsel an opinion or opinions, dated as of the date of the first disbursement of funds hereunder, in form and substance satisfactory to Lender and Lender's counsel, to the effect that Borrower's counsel has examined the Loan Documents and such other documents, opinions, and matters as he deems necessary

to reach the conclusions stated in his opinion, and that, based upon such examination, he is of the opinion that, in addition to such other matters incident to the transactions contemplated by this Agreement as Lender may reasonably request; (i) this Agreement and all other Loan Documents to which Borrower is a party have been duly authorized, executed, and delivered by Borrower and evidence the legal, valid, and binding obligations of Borrower, enforceable in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization or similar laws; and (ii) the liens granted to Lender pursuant to this Agreement and the other Loan Documents constitute, except for Permitted Encumbrances (as defined in Section 6.2 hereof), first and prior liens on the Collateral (as defined in Section 2.2 hereof), and all financing statements or other instruments for filing in any public offices as requested by Lender have been duly executed and delivered to Lender, and, assuming the timely and appropriate filing thereof in such public offices by Lender, all actions necessary to perfect such liens have been, or at the time of filing will have been, taken. In rendering the foregoing opinion,

Borrower's counsel may reasonably rely upon the opinion of other counsel, provided that the extent of such reliance is stated in Borrower's counsel's opinion, Borrower's counsel's opinion states that Lender is justified in relying upon such other counsel's opinion, and a copy of such other opinion so relied upon is attached to Borrower's counsel's opinion.

(f) Evidence of Delivery- Lender shall have received verification that the Equipment is acceptable to Lessee.

(f) Evidence of Title and Payment of Purchase Price - Provisions satisfactory to Lender shall have been made for Lender's receipt, upon the disbursement of funds hereunder, of (i) a duplicate invoice or invoices for the Equipment being purchased; (ii) a counterpart or counterparts of any and all bills of sale from the sellers of such Equipment to Borrower evidencing transfer to Borrower of title to such Equipment; (iii) a counterpart or counterparts of any and all receipts from the sellers of such Equipment to Borrower acknowledging payment for such Equipment; and (iv) copies of appropriate sales tax certificates or other suitable evidence of satisfaction of sales tax liabilities with respect to such Equipment.

(g) Evidence of Insurance - Lender shall have received all such evidence as Lender and Lender's counsel shall deem necessary to assure Lender that all insurance coverage in respect of the Equipment required by this Agreement, the Lease, or any other Loan Document is in full force and effect in accordance with the terms of the Loan Documents requiring such insurance coverage.

(h) Evidence of Maintenance - Lender shall have received all such evidence as Lender and Lender's counsel shall deem necessary to assure that adequate provision has been made for the maintenance of the Equipment.

(i) Additional Closing Documents - Lender shall have received the duly executed Additional Closing Documents (as defined in Schedule II hereto), if any.

(j) No Event of Default - On the date of the Loan and all disbursements of funds hereunder, no Event of Default (as defined in Section 7 hereof), or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

(k) Officers' Certificates - Lender shall have received officers' certificates from Lessee and BraeLease, Inc. ("Brae") dated the date of the first disbursement of funds hereunder with all required attachments appended thereto, duly executed by the President or a Vice President and the Secretary or an Assistant Secretary of each of

Lessee and Brae and such other evidence of fulfillment of the foregoing conditions as Lender or its counsel may reasonably require to establish to their satisfaction the fulfillment of those conditions.

(1) Borrower shall have deposited the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in the escrow account described in Section 3.1 below.

1.4 Use of Proceeds - Borrower shall use the proceeds of the Loan to pay a portion of the purchase price of the Equipment. Lender is hereby authorized to disburse the necessary proceeds of the Loan directly to the seller(s) of the Equipment at the direction of Borrower.

1.5 Representations of Lender - Lender represents that it is purchasing the Note for its own account, for investment, and not with a view to resale, or for offer or sale in connection with any distribution or resale thereof except in compliance with the Federal Securities Act of 1933, as amended, or any applicable state securities act. Lender understands that if it should in the future decide to dispose of the Note, it must do so only in accordance with applicable federal and state securities laws, including the rules and regulations of the Securities and Exchange Commission and the provisions of any applicable state securities or "blue sky" laws. Lender acknowledges that the Note is not registered under the Securities Act of 1933 or any state securities

law and Borrower has no obligation or intention so to register it. Lender further represents and warrants that it is engaged in the business of making loans, that it has a substantial net worth and can bear the economic risk involved in making the Loan, and that it has had access to all information deemed necessary by it.

## 2. The Security

2.1 The Obligations - The obligations secured by this Agreement are the following (the "Obligations"):

(a) The Loan - The indebtedness of Borrower to Lender evidenced by the Note, and any and all interest accruing thereon and extensions, renewals, or refinancings thereof.

(b) Preservation of Collateral - Any and all sums advanced by Lender in order to preserve the Collateral or to perfect its security interest in the Collateral.

(c) Expenses of Collection - In the event of any proceedings to enforce the Obligations or to collect the Obligations after an Event of Default, the reasonable expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral, or of any exercise by Lender of its rights upon the occurrence of an Event of Default, together with reasonable attorneys' fees and court costs.

(d) Breach - Any claim of Lender against Borrower arising out of a breach of any of the Loan Documents by Borrower or any third party.

2.2 Grant of Security Interest - For value received, Borrower, in order to secure the timely and full payment and performance of the Obligations, hereby assigns to Lender all of Borrower's rights in connection with and hereby grants to Lender a security interest in the following (collectively, the "Collateral"):

(a) Equipment - Any and all equipment, parts, and accessories thereto now owned or hereafter acquired by Borrower which now is or hereafter shall be subject to the Lease including, without limitation, all equipment and accessories described in Exhibit A hereto, any and all additions, upgrades, and accessions thereto and all substitutions or replacements therefor, and any and all rights of Borrower in said equipment and accessories thereto all of which, for purposes of this Agreement, shall be deemed to be the "Equipment."

(b) The Lease - Any and all right, title and interest which Borrower now has or may hereafter have under, pursuant to, or in connection with the Lease or any subsequent lease or sublease of the Equipment, or arising out of any and all renewals, extensions, amendments or modifications of the Lease or supplements thereto including, but not limited to: (i) All rental payments due

and to become due under the Lease; (ii) all other claims and rights of Borrower under the Lease including, without limitation, any and all rights of Borrower in and to the Equipment, and all contractual obligations, damages, rights to exercise any election or remedy, and to give any notice or otherwise act thereunder; and (iii) full power and authority to demand, receive, enforce, collect, or receipt for any and all of the foregoing, to endorse or execute any checks or other instruments or orders, to file any claims, all in the name of Borrower or otherwise, and to take any action which Lender may deem necessary or advisable in connection with any of the foregoing.

(c) Claims - All rights and claims, if any, that Borrower may have against any manufacturer or seller of the Equipment or any other party, by contract or otherwise.

(d) Proceeds - Any and all proceeds and products arising from the sale, lease, or other disposition of the foregoing, including, but not limited to, the proceeds of any insurance covering the Equipment and all amounts payable to Borrower under the Lease.

2.3 Duties of Lender - The assignment under Section 2.2 is made only in consideration for the Obligations, and shall not subject Lender to, or transfer, or in any way affect

or modify the liabilities, obligations, and duties of Borrower under the Lease, it being understood and agreed that notwithstanding such assignment, or any subsequent assignment, all liabilities, obligations, and duties of Borrower under the Lease shall remain enforceable by Lessee and its successors and other parties thereto and their respective successors and assigns against, and only against, Borrower. Lender makes no representations or warranties with respect to the Collateral or any part thereof, and Lender shall not be chargeable with any obligations or liabilities of Borrower with respect thereto. Borrower shall settle any and all claims against it with respect to the Collateral, and Lender shall have no liability or obligation arising out of any such claims. Without limiting the generality of the foregoing, Lender may, at its sole discretion and from time to time, assume or discharge any obligation or responsibility of Borrower under the Lease which Lender may deem necessary for the maintenance, preservation, or protection of its security interest in the Collateral without otherwise affecting Lender's rights and the limitations upon Lender's responsibilities hereunder.

### 3. Application of Money

3.1 Escrow Agreement - Lender shall hold as escrowee the sum deposited by Borrower pursuant to Section 1.3(1) above together with all rental and service payments made

by Lessee under the Lease which shall be remitted to Lender by Brae pursuant to the Management Agreement (as defined in Schedule II hereto). At the option of Lender, all or any funds so held by it as escrowee may be deposited in a demand account. Pending satisfaction in full of the Obligations, Lender shall disburse funds held by it as escrowee only for the purposes of (a) the payment of all interest (including penalties, if any) payable under the Note and (b) making on behalf of Borrower any payments required to be made by him under the Management, to the extent that the payments described in (a) and (b) above remain unpaid from other sources. Notwithstanding the foregoing, upon the occurrence of an Event of Default hereunder, all funds so held by Lender as escrow shall be deemed Collateral and may be applied by Lender in satisfaction of the Obligations. Upon payment or discharge in full of all of the Obligations, Lender shall promptly distribute the funds held by it as escrowee, together with any interest earned thereon, pursuant to written instructions jointly executed by Borrower, Brae and Daniel Elliston.

3.2 Other Payments - Any other payments received by Lender from Lessee or Brae shall be applied: (a) first to any amounts owing by Lessee to Lender pursuant to its indemnification obligations under (b) then to any Obligations described in Section 2.1(b) above, including, without limitation, any sums expended by Lender in discharge

of any obligation required to be but not paid or performed by Lessee under the Lease; (c) then to all interest then accrued and unpaid on the Note; (d) then to the prepayment of the Note at a price of 100% of the unpaid principal amount thereof, but without any prepayment penalty or premium; and (e) then to the remaining Obligations outstanding, if any, and the balance, if any, shall be remitted in immediately available funds to or upon the order of Borrower.

3.3 Prepayment - In addition to Borrower's obligations to prepay the Note as specified in Section 3.2 above, Borrower shall have the right from time to time and at any time to prepay the Note, in whole or in part, without premium or penalty. Partial prepayments of the Note shall be applied first to the payment of all interest then the payment of installments of principal due thereon in the inverse order of their maturity.

3.4 Collection of Money - Borrower agrees to direct Lessee to make all payments to be made by Lessee under the Lease directly to or at the direction of Brae. Lender agrees to hold in separate accounts all money received by it hereunder as part of the Collateral and shall apply it as herein provided.

3.5 Satisfaction of Obligations - If Borrower or its successors or assigns shall pay or cause to be paid to Lender, or otherwise discharge in full, all of the Obligations in

accordance with the terms of this Agreement and the Note, and shall well and faithfully perform and observe all of the agreements, covenants, and provisions hereof when and as specified, this Agreement and the grant of the security interest in the Collateral shall terminate and shall be of no further force or effect, and all estate, right, title, and interest of Lender in and to the Collateral shall revert to Borrower.

4. Representations and Warranties of Borrower

Borrower represents and warrants to Lender that:

4.1 Authority of Borrower - Borrower has full power and authority to enter into and perform this Agreement, the Lease and the other Loan Documents to which Borrower is a party. The Loan Documents have been duly authorized, executed and delivered by Borrower, and evidence legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms. The execution and delivery of the Loan Documents to which he is a party by Borrower do not and will not contravene the provisions of, or constitute a default under, any indenture, mortgage, contract or other instrument to which he is a party or by which he or his property is bound.

4.2 Governmental Consent - No consent, approval, or authorization of, registration with, or declaration to, any governmental authority is required in connection with the

execution and delivery of any of the Loan Documents, except as may already have been obtained and except such filings and recordings as may be necessary to perfect the liens granted to Lender hereunder.

4.3 Compliance with Laws - Borrower is not in violation of any law in any respect which may have any effect whatsoever upon the validity, performance, or enforceability of any of the terms of the Loan Documents.

4.4 Judgments and Taxes - There are no outstanding or unpaid judgments against Borrower that might impair Borrower's ability to perform his obligations hereunder; and Borrower has paid all taxes or filed all tax returns which are required to be paid or filed by him, as the case may be, unless such taxes are being duly contested by appropriate proceedings being conducted diligently and in good faith.

4.5 Title to the Equipment - Exhibit A hereto contains a true and accurate description of all items of Equipment subject to the Lease as of the date hereof, including the correct serial numbers or other similar identifying marks attached thereto. Borrower is or upon payment of the purchase price of the Equipment from the proceeds of the Loan will be the owner of all Equipment free from any and all liens (other than Permitted Encumbrances) with full right to grant the liens granted to Lender pursuant to this Agreement and upon the timely and proper perfection thereof by Lender,

the security interest created by and arising hereunder constitutes or will constitute a valid first priority lien on the Collateral, subject only to Permitted Encumbrances.

4.6 Marking of the Equipment - The Equipment will be marked permanently and conspicuously to the effect that it is subject to the security interest created by this Agreement.

4.7 Equipment is Personal Property - The Equipment is and shall remain at all times personal property regardless of its attachment to realty in any manner, and it shall not be attached to realty in such a manner that it may be deemed a fixture.

4.8 No Defaults - No event has occurred and no condition exists that would constitute an Event of Default or an event which with the passage of time or the giving of notice or both would constitute an Event of Default. Borrower is not in default in any material respect with respect to any term of any agreement, instrument, or obligation to which Borrower is a party or by which it or its properties may be bound.

5. Borrower's Affirmative Covenants

Borrower covenants and agrees that until the Obligations have been satisfied in full:

5.1 Compliance with Law - Borrower shall comply with all laws, ordinances, or governmental rules and regulations to which Borrower or the Collateral is subject, and will

obtain or cause to be obtained all licenses, permits, governmental authorizations necessary to the ownership or use of the Equipment and will take all necessary steps to insure that the Equipment is used in compliance with all applicable laws and regulations.

5.2 Payment of Taxes - Borrower shall pay, or cause to be paid, when due, all taxes, assessments on the Collateral or its use, and other expenses that, if not paid, would result in a lien on the Collateral except such as may be contested in good faith or as to which a bona fide dispute may exist, and for the payment of which adequate bond or other reserve has been established by Borrower, and the contest of which, in the reasonable opinion of counsel for Lender, will not impair Lender's security interest in the Collateral.

5.3 Defense of Collateral - Borrower shall promptly notify Lender of any claim, action, or proceeding affecting title to the Collateral or any part thereof, or the validity or priority of Lender's lien thereon. Borrower shall at all times defend Lender's interest in the Collateral against any and all claims of any person adverse to Lender, except Lessee's claims under the Lease, and Borrower shall discharge or cause to be discharged immediately all liens and encumbrances that affect the Collateral, except for Permitted Encumbrances. Borrower shall take or cause to be taken such action and execute such documents as Lender may from time

to time request to maintain Lender's perfected security interest in the Collateral or to secure payment of the Obligations. If any item of Equipment or any component thereof is, or is to become, attached to realty, Borrower shall promptly obtain and deliver to Lender such disclaimers of interest signed by all persons having an interest in such realty as Lender may reasonably request.

5.4 Maintenance of Equipment - As to all Equipment, Borrower shall: (a) use or cause the Equipment to be used with reasonable skill, care, and caution; (b) keep or cause the Equipment to be kept in good repair, working order, and condition reasonable wear and tear excepted, in accordance with industry and regulatory requirements; and (c) allow or cause Lender or its representatives to be allowed to enter upon the premises where the Equipment is located for the purpose of inspecting the same and otherwise protecting the lien granted to Lender on the Equipment.

5.5 Insurance - Borrower shall, at all times prior to satisfaction of the Obligations, insure or cause the Equipment to be insured in an amount at least equal to its purchase price against loss, damage, or destruction and such other risks as may be reasonably requested by lender, with the loss payable to Lender as its interest may appear, or make such other arrangements as may be acceptable to Lender. Borrower shall cause each insurer to agree, by endorsement

on the policy or policies or certificates of insurance issued by it or by independent instrument furnished to Lender, that such insurer will give thirty (30) days written notice to Lender before such policy is expired, altered, or cancelled. Borrower shall furnish to Lender satisfactory proof that such insurance is in full force and effect.

5.6 Borrower as Owner and Lessor - During the term of the Lease, Borrower will perform, or cause to be performed, all requirements and obligations of Lessor under the Lease and Owner under the Management Agreement. In the event that any claim, cause of action, or other right arises in favor of Lessee, Brae or any other person, as a direct or indirect result of the Lease or any other of the Loan Documents, Borrower shall cause to be made full and prompt performance of any obligation or payment of any amount to which Lessee, Brae or said other person is entitled on account thereof, and shall indemnify, defend, and hold harmless Lender from and against any claims, causes of action, or other rights of Lessee, Brae or said other person and shall reimburse Lender for any expenses and costs, including reasonable attorneys' fees, which it may have incurred in the investigation and defense of said claims or causes of action.

5.8 Further Documentation - Without in any manner, or to any extent or degree, qualifying its obligations hereunder, at any time and from time to time, upon written request

of Lender and at the sole expense of Borrower, Borrower shall promptly and duly execute, acknowledge, witness and deliver any and all such further instruments and documents, and take such further actions, as Lender may reasonably request, to obtain for Lender the full benefits of this Agreement and of the rights and powers herein granted. The costs and expenses of Lender with respect to such actions shall be payable by Borrower on demand.

5.9 Notice of Default - Immediately upon becoming aware of the existence of any condition or event that constitutes an Event of Default or an event which with lapse of time or notice or both would constitute an Event of Default, Borrower shall deliver, or cause to be delivered, to Lender a written notice specifying the nature and period of existence thereof and what action the Borrower is taking and proposes to take with respect thereto.

5.10 Delivery of Equipment - In the event of the occurrence of an Event of Default, Borrower, at its own expense, shall deliver, or cause to be delivered, the Equipment to such location or locations as may be designated by Lender.

5.11 Management Agreement - Borrower shall cause the Management Agreement to remain in full force and effect.

## 6. Borrower's Negative Covenants

Borrower covenants and agrees that until the Obligations have been satisfied in full:

6.1 Alienation - Except for the transactions contemplated herein, Borrower shall not sell, lease, assign, transfer, exchange, or grant a security interest in or otherwise dispose of any of the Collateral.

6.2 Impairment of Collateral - Borrower shall not cause or permit anything to be done that may impair the value of the Collateral or the security interest therein granted hereby or under the other Loan Documents, and shall not permit any of the Collateral to be levied upon under legal process or to fall under any other lien or encumbrance of whatever nature except the following "Permitted Encumbrances": (a) Liens or charges for current taxes, assessments or other governmental charges that are not yet due, or if due, the validity of which is contested in good faith by appropriate proceedings upon stay of execution of the enforcement thereof and which in the opinion of Lender's counsel will not impair the security interest of Lender hereunder; (b) inchoate materialman's, mechanics', employees', or similar liens arising in the ordinary course of business and not delinquent; (c) Lessee's rights under the Lease provided, however, that Lessee's rights shall be and remain subordinate in all respects to the security interest of Lender in the Equipment created by this Agreement; and (d) the liens created by this Agreement.

6.3. Amendment of Loan Documents - Borrower shall not enter into or permit any agreement amending or supplementing any of the other Loan Documents or affecting any of its rights thereunder without the prior written consent of Lender.

6.4. Insurance - Borrower shall not obtain insurance relating to the Collateral or any item thereof separate from that required by the Loan Documents unless the proceeds of such insurance are payable to Lender under a standard mortgagee endorsement.

6.5. Setoff - Borrower shall not claim any credit on or make any deduction from the principal of or interest on the Note by reason of the payment of any tax or other charge levied or assessed upon the Collateral or any component thereof or any other payment made by Borrower in respect thereof or for any other reason.

7. Events of Default

Borrower shall be in default hereunder upon the occurrence of any one or more of the following "Events of Default":

7.1 Failure to Make Payment - The failure or refusal of Borrower to pay or prepay, in the manner required herein, principal of or interest on the Obligations, or any part thereof, as such payments become due, whether by acceleration or otherwise, in accordance with the terms of the Loan Documents, and such amount is not paid within ten (10) days of the date upon which the same is due.

7.2 Failure to Observe Covenants - The failure or refusal of Borrower timely and properly to perform or observe any covenants or warranties contained herein or in any of the Loan Documents (other than covenants to pay the Obligations) and such failure shall continue for twenty (20) days following notice thereof from Lender to Borrower.

7.3 Lease - If the validity or effectiveness of the Lease or of its assignment to Lender shall be impaired, or if the Lease shall be amended without the prior written consent of Lender, hypothecated or assigned (except as contemplated hereby), subordinated, or if there shall be a default under the Lease by Lessee or Borrower, or if the Lease shall be terminated.

7.4 Liens - If any lien shall be created on, or extended to, or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or in the revenues, rents, issues, or profits thereof, other than Permitted Encumbrances, and such lien is not discharged within thirty (30) days of the date upon which it attached to the Collateral.

7.5 Voluntary Debtor Relief - If Borrower shall: (a) execute an assignment for the benefit of creditors; (b) become or be adjudicated a bankrupt or insolvent; (c) admit in writing his inability to pay its debts generally as they become due; (d) apply for or consent to the appointment of a conservator,

receiver, trustee, or liquidator of him or of all or a substantial part of his assets; (e) file a voluntary petition seeking relief under any bankruptcy, reorganization, or similar laws; (f) file an answer admitting the material allegations of or consenting to, or default in, a petition filed against him in any proceedings under any bankruptcy, reorganization, or similar laws; or (g) institute or voluntarily be or become a party to any other judicial or non-judicial arrangement or proceedings intended to effect a discharge of debts, in whole or in part, or a postponement of the maturity or the collection thereof, or a suspension of any of the rights of Lender granted in any of the Loan Documents.

7.6 Involuntary Proceedings - If an order, judgment, or decree shall be entered by any court of competent jurisdiction approving a petition appointing a conservator, receiver, trustee, or liquidator of Borrower, or of any or any substantial part of his assets, and such order, judgment, or decree is not permanently stayed or reversed within sixty (60) days after the entry thereof, or a petition is filed against Borrower seeking relief under bankruptcy, reorganization, or similar laws and such petition is not discharged within sixty (60) days after the filing thereof.

7.7 Attachment - If Borrower fails to have discharged within a period of sixty (60) days after the commencement thereof any attachment, sequestration, or similar proceeding against any of the assets of Borrower.

7.8 Misrepresentations - If Lender discovers that any statement, representation, or warranty in the Loan Documents, or in any writing delivered to Lender pursuant to the Loan Documents, is false, misleading, or erroneous in any material respect.

## 8. Remedies

8.1 Rights of Parties Upon Default - Upon the occurrence and during the continuation of any Event of Default, but subject always to any mandatory requirement of applicable law then in effect, Lender may, at its option and in its sole and complete discretion, do one or more or all of the following acts, in addition to all rights and remedies provided for in Article 9 of the Uniform Commercial Code or other similar law as in force with respect to the parties and the Collateral, and except as limited by Section 8.7:

(a) Acceleration - Declare the entire principal amount of the Note to be due and payable forthwith, whereupon the Note shall become due and payable, both as to principal and interest, without presentment, demand, protest, or notice of any kind, all of which are hereby expressly waived.

(b) Assemble Collateral - Require Borrower, at his own expense, immediately to assemble the Collateral of which Borrower has or is entitled to possession, at a place designated by Lender.

(c) Take Possession - Personally, or by agents or attorneys, enter into and upon any premises wherein the Collateral or any part thereof may then be located, and take possession of all or any part thereof or render it unusable, and, without being responsible for loss or damage, hold, store, and keep idle, or operate, lease, or otherwise use or permit the use of the same or any part thereof for such time and upon such terms as the Lender may determine, in its sole and complete discretion and in light of its own best interests.

(d) Dispose of Collateral - Personally, or by agents or attorneys, enter into and upon any premises wherein the Collateral or any part thereof may then be located, and take possession of all or any part thereof with or without process of law and without being responsible for loss or damage, and sell or dispose of all or any part of the same in accordance with Section 8.2 hereof, free from any and all claims of Borrower or of any other party claiming by, through, or under Borrower at law, in equity, or otherwise.

(e) Collect Monies - Collect any and all money due or to become due pursuant to Sections 8.1(c) or (d) or otherwise and enforce in Borrower's name all rights with respect to the Collateral, including the collection

of payments of rent or amounts otherwise payable by Lessee under the Lease on behalf of Borrower, indorse checks, notes, drafts, instruments, or other evidences of payment.

(f) Legal Remedies - Take such steps and exercise all rights afforded by applicable law to secure payment and performance of the Obligations, including, at Lender's discretion, the right to (i) proceed by a suit or suits at equity to foreclose its lien and sell the Collateral or any portion thereof, or seek specific performance of any covenant or agreement herein undertaken by Borrower, under a judgment or decree of a court of competent jurisdiction, (ii) retain the Collateral in satisfaction of the Obligations whenever allowed to do so under applicable laws, (iii) surrender any policies of insurance on the Collateral and receive the unearned premiums, or (iv) enter upon the premises where any of the Collateral is located and take possession thereof and remove the same with or without judicial process.

8.2 Sale of Collateral - If Lender exercises its rights to realize on the Collateral under Section 8.1(d), Lender may apply the cash, if any, then held by it as Collateral hereunder to the payment of the Obligations, and if there shall be no such cash or the cash so applied shall be insufficient to pay in full all of the Obligations, Lender

or its agents may sell, lease, or otherwise dispose of, at any such location or locations as may be chosen by Lender, all or any part of the Collateral, in its then condition or following any commercially reasonable preparation or processing, as a unit or in parcels, by public or private sale (it being agreed that the sale of any part of the Collateral shall not exhaust Lender's power of sale, but that sales may be made from time to time, at any time, until all Collateral has been sold or the Obligations have been paid and performed in full), for cash, upon credit, or for future delivery, and at such price or prices as Lender may deem satisfactory, and Lender may be the purchaser of any or all of the Collateral so sold. Lender may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at the time or place to which the same may be so adjourned. In case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by Lender until the selling price is paid by the purchaser thereof, but Lender shall not incur any liability in case of the failure of such purchaser to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may again be sold upon like notice.

8.3 Waiver of Borrower - To the fullest extent that he may lawfully so agree, Borrower agrees, for him and for all who claim through him, that he, shall not at any time insist upon, claim, plead, or take any benefit or advantage of, any appraisement, valuation, stay, extension, moratorium, redemption, or any similar law now or hereafter in force in order to prevent, delay, or hinder the enforcement of this Agreement or the absolute sale of any part or all of the Collateral or the possession thereof by any purchaser at any sale pursuant to this Section 8; and Borrower, for him and all who may claim through him, as far as he or they now or hereafter lawfully may do so, hereby waives the benefit of all such laws, and all right to have the Collateral marshalled upon any foreclosure hereof, and agrees that any court having jurisdiction to foreclose under this Agreement may order the sale of the Collateral as an entirety. In the event that any mandatory requirement of applicable law shall obligate Lender to give prior notice to Borrower of any of the acts in this Section 8, Borrower hereby covenants and agrees that a notice sent to it in writing by certified mail, return receipt requested, at least ten (10) days (or such longer period as may be required by applicable law) before the date of such act, at Borrower's address provided hereunder, shall be deemed to be reasonable notice of such act, and specifically, reasonable notification of the time and place of any public sale hereunder and the time after

which any private sale or other intended disposition is to be made hereunder.

8.4 Application of Proceeds - The proceeds of any sale of, or other realization upon, all or any part of the Collateral, or any other cash at the time held by Lender under this Agreement, shall be applied by Lender in the following order of priorities:

(a) First, to the payment of the costs and expenses of such sale or other realization, including compensation to Lender and its agents and all expenses, liabilities, and advances made or incurred by Lender in connection therewith.

(b) Second, to the payment of the remaining Obligations.

(c) Finally, to the payment to Borrower or its successors or assigns, or as a court of competent jurisdiction may direct, of any surplus then remaining from such proceeds and other cash.

8.5 No Waiver - The acceptance by Lender at any time and from time to time of partial payment on the Obligations shall not be deemed to be a waiver of any Event of Default then existing. No waiver by Lender shall be deemed to be a waiver of any other then existing or subsequent Event of Default. No delay or omission by Lender in exercising any right under the Loan Documents shall impair such right or be construed as a waiver thereof or any acquiescence therein,

nor shall any single or partial exercise of any right preclude other or further exercise thereof, or the exercise of any other right under the Loan Documents or otherwise.

8.6 Remedies Cumulative - Except as limited by Section 8.7 hereof, all remedies available to Lender hereunder shall be cumulative of and in addition to all other remedies granted to Lender at law or in equity, whether or not the Obligations be due and payable and whether or not Lender shall have instituted any suit for collection, foreclosure, or other action in connection herewith or with any of the other Loan Documents.

9. Assignment by Lender - Lender may assign any or all of its rights under this Agreement, in whole or in part, and to one or more parties, including its right to receive any payments due or to become due to it pursuant to this Agreement or any of the other Loan Documents. In the event of any such assignment, or any subsequent or successive assignments, the assignee or assignees shall, to the extent of such assignment, enjoy all of the rights and privileges and be subject to all of the obligations of Lender hereunder.

10. Miscellaneous

10.1 Number and Gender of Words - Whenever the singular number is used herein, the same shall include the plural

where appropriate, and words of any gender shall include each other gender where appropriate.

10.2 Captions - The paragraph and section headings in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

10.3 Notices - Whenever this Agreement requires or permits any consent, approval, notice, request, or demand from one party to another, the consent, approval, notice, request, or demand must be in writing to be effective and shall be delivered personally or sent by registered or certified mail, postage prepaid, addressed to the party to be notified at the address for such party stated on the signature page hereof (or at such address as may have been designated by written notice), and shall be deemed effective when received.

10.4 Payments Due on Non-Business Day - In any case where a payment or prepayment of principal or interest on the Note is due on a day on which commercial banks are authorized by governing law to remain closed, Borrower shall be entitled to delay such payment until the next succeeding business day.

10.5 Maximum Interest Rate - Notwithstanding any provision to the contrary in any of the Loan Documents, Lender shall never be entitled to receive, collect, or apply, as

interest on the Note, any amount in excess of the maximum rate of interest permitted to be charged by applicable law, and, in the event that Lender ever receives, collects, or applies, as interest, any such excess, such amount that would be excessive interest shall be applied toward the reduction of the principal and accrued interest on the Note; and if the Note is paid in full any remaining excess shall forthwith be paid to Borrower. In determining whether the interest paid or payable exceeds the highest lawful rate, Borrower and Lender shall, to the extent permitted by law, (a) characterize any non-principal payment as an expense, fee, or premium rather than as interest; (b) exclude voluntary prepayments and the effects thereof; and (c) spread the total amount of interest throughout the entire contemplated term of the Note so that the interest rate is uniform throughout the entire term of the Note.

10.6 Invalid Provisions - If any provision of any of the Loan Documents is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of the Loan Documents, such provision shall be fully severable; the Loan Documents shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of the Loan Documents; and the remaining provisions of the Loan Documents shall remain in full force and effect and shall not be affected by the illegal, invalid,

or unenforceable provision or by its severance from the Loan Documents.

10.7 Entirety and Amendments - This Agreement and the Loan Documents embody the entire agreement between the parties and supersede all prior agreements and understandings, if any, relating to the subject matter hereof, may be amended only by an instrument in writing executed jointly by an authorized officer of Borrower and of Lender, and may be supplemented only by documents delivered or to be delivered in accordance with the express terms hereof.

10.8 Multiple Counterparts - This Agreement may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively, one agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

10.9 Survival - All covenants, agreements, undertakings, representations, and warranties made herein shall survive all closings hereunder and, shall not be affected by any investigation made by any party.

10.10 Parties Bound - This Agreement shall be binding upon and inure to the benefit of Borrower and Lender, and their respective successors and assigns; provided, however, that Borrower may not, without the prior written consent

of Lender, assign any rights, duties, or obligations hereunder.

10.11 Power of Attorney - Borrower does hereby constitute and appoint Lender Borrower's true and lawful attorney with full power of substitution for Borrower in Borrower's name, place, and stead for the purpose of carrying out the provisions of this Agreement and taking any action and executing any instrument that Lender may deem necessary or convenient to accomplish the purposes hereof, which appointment is irrevocable and coupled with an interest.

10.12 Governing Law - The validity, construction, enforcement, and interpretation of this Agreement and, unless otherwise expressly stated therein, all of the other Loan Documents, shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first above written.

Address:

Thomas B. Garber  
Thomas B. Garber

2510 Van Ness Avenue  
San Francisco, California 94109

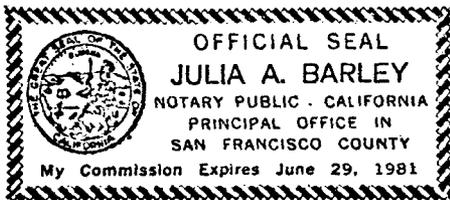
STATE OF CALIFORNIA )  
County of San Francisco ) SS.

On October 25, 1978, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas B. Garber, known to me to be the person whose name in subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

(SEAL)

Julia A. Barley  
Notary Public



Address:  
400 California Street  
San Francisco, California 94145

The Bank of California, N.A.  
as Lender

By Edgar T. Linder  
Title Vice President

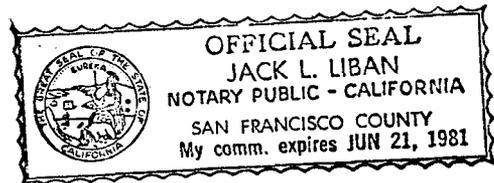
STATE OF CALIFORNIA )  
County of San Francisco ) SS.

On October 26, 1978, before the undersigned, Edgar T. Linder Jr., personally known to me to be a Vice President of The Bank of California, N.A., appeared before me and subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Jack L. Liban  
Notary Public

(SEAL)



SCHEDULE I

OCCURRENCES FOR PAYOUT OF LOAN

The Loan shall be paid in one installment upon satisfaction of the conditions precedent set forth in Section 1.3 of this Agreement and receipt of disbursement instructions from Borrower.

SCHEDULE II

DEFINED TERMS

As used in the Loan and Security Agreement to which this Schedule II is attached, the following terms shall have the respective meanings indicated:

1. Management Agreement. That certain Management Agreement dated as of the date hereof between Borrower and Brae-Lease, Inc..

2. Loan Documents: This Agreement, the Note, the Lease, Lessee's Consent to Assignment, all financing statements, and the Management Agreement.

EXHIBIT A TO FINANCING STATEMENT

6. This Financing Statement covers the following types (or items) of property. Any and all right, title, and interest which Debtor now has or may hereafter have under, pursuant to, or in connection with, that certain Rail Car Lease and Service Contract (the "Lease") dated as of May 10, 1978, between Debtor as lessor and Celanese Plastics Company, a Division of Celanese Corporation as lessee, together with any and all renewals, extensions, amendments, modifications, and supplements thereto or thereof including, but not limited to: (i) all rental payments due and to become due under the Lease; (ii) all other claims and rights of Debtor under the Lease including, without limitation, any and all rights of Debtor in and to the Equipment subject to the Lease are all contractual obligations, damages, rights to exercise any elections or remedy and to give any notice or otherwise act thereunder; (iii) full power and authority to demand, receive, enforce, collect, or receipt for any and all of the foregoing, to endorse or execute any checks or other instruments or orders, to file any claims, all in the name of Debtor or otherwise, and to take any action which Secured Party may deem necessary or advisable in connection with any of the foregoing; and (iv) any proceeds of any of the foregoing.

EXHIBIT B

NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE FEDERAL SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES ACT AND MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED, ASSIGNED, PLEDGED, OR OTHERWISE DISPOSED OF UNLESS IT IS FIRST REGISTERED UNDER SUCH ACTS OR TRANSFERRED IN A TRANSACTION EXEMPT FROM SUCH REGISTRATION AND ALL RULES AND REGULATIONS RELATING TO THE SALE, TRANSFER, ASSIGNMENT, PLEDGE, OR OTHER DISPOSITION THEREUNDER HAVE BEEN COMPLIED WITH.

SECURED PROMISSORY NOTE

\$775,517.00

\_\_\_\_\_, 1978

San Francisco, California

FOR VALUE RECEIVED, the undersigned, Thomas B. Garber individually ("Maker"), hereby promises to pay to the order of The Bank of California, a National Banking Association ("Payee"), the principal sum of Seven Hundred Seventy-Five Thousand Five Hundred Seventeen Dollars (\$775,517.00), together with interest on the unpaid principal balance from day to day remaining at the rate of ten and three-quarters percent (10.75%) per annum from the date hereof, calculated on the basis of actual days over a three hundred sixty (360) day year and a thirty (30) day month.

Accrued interest on this Note shall be payable monthly on the last business day of each month. The principal balance and any accrued but unpaid interest thereon shall be due and payable the date which is ninety (90) days from the date of this Note.

Maker shall be entitled to prepay the principal of this Note from time to time and at any time, in whole or in part, without premium or penalty.

All past due payments of interest and principal on this Note shall bear interest at ten and three-quarters percent (10.75%) per annum or the highest lawful rate, whichever is greater, accruing from the date upon which such payment is due.

This Note has been executed and delivered pursuant to the terms of that certain Loan and Security Agreement between Maker and Payee dated \_\_\_\_\_, and is held subject to all terms of that Agreement, which terms are incorporated herein by reference.

Both the principal of and interest on this Note are payable in lawful money of the United States of America at the principal office of Payee, 400 California Street, P. O. Box 45000, San Francisco County, San Francisco, California 94145, or at such other address as the holder hereof may from time to time designate to Maker in accordance with the notice provisions of the Loan and Security Agreement.

Subject to all applicable laws, this Note is negotiable and assignable by the Payee and shall be valid and enforceable in accordance with its terms by the assignee or transferee upon proper execution of endorsement and notice to Maker in accordance with the notice provisions of the Loan and Security Agreement.

If this Note is placed in the hands of an attorney for collection, Maker agrees to pay the reasonable attorneys' fees of the holder hereof.

Maker and each surety, endorser, guarantor, and other party ever liable for payment of any sums of money payable on this Note, jointly and severally, waive presentment and demand for payment, protest, and notice of protest and non-payment, and agree that their liability on this Note shall not be affected by a renewal or extension in the time of payment hereof, by an indulgence, or by any releases, or changes, regardless of the number of such renewals, extensions, indulgences, releases, or changes.

IN WITNESS WHEREOF, Maker has executed this Note on the day and year first above written.

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Thomas B. Garber