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INTERSTATE COMMERCE COMMISSION

Lease of Railroad Equipment

Dated as of July 1, 1975

BETWEEN

FIRST NATIONAL BANK OF LOUISVILLE,

as Lessor

AND

THE DETROIT EDISON COMPANY,

as Lessee

LEASE OF RAILROAD EQUIPMENT

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THIS LEASE OF RAILROAD EQUIPMENT dated as of July 1, 1975 between First National Bank of Louisville, as Trustee (hereinafter, together with its successors and assigns, called "Lessor") under a trust agreement dated as of the date hereof (hereinafter called the "Trust Agreement") with ChemLease Worldwide, Inc. (hereinafter called "Owner"), and The Detroit Edison Company (hereinafter called "Lessee").

WITNESSETH :

(a) Lessor, Owner, Lessee, The Detroit Bank and Trust Company, as Trustee (hereinafter, together with its successors and assigns, called "Security Trustee") under the Security Agreement referred to below, the loan participants named in Appendix I thereto (hereinafter called the "Loan Participants") and American Fletcher Leasing Corporation are entering into a finance agreement dated as of the date hereof (hereinafter called the "Finance Agreement") providing for the several commitments of Owner and the Loan Participants to participate in the Purchase Price (as defined in the Purchase Agreement referred to below) of the units of new standard-gauge railroad equipment (other than any unit which shall have been excluded from the Purchase Agreement in accordance with the terms thereof), which units (hereinafter called the "Units") are more particularly described in Annex A hereto. The participations of the Loan Participants are to be evidenced by Lessor's 10½% Equipment Trust Notes (hereinafter called the "Notes") to be issued under and secured by, and to be in substantially the form set forth in, the Security Agreement.

(b) Lessor and Lessee propose to enter into a purchase agreement dated as of the date hereof (hereinafter called the "Purchase Agreement"), in substantially the form of Exhibit B to the Finance Agreement, with Ortner Freight Car Company (hereinafter called "Builder") providing for the purchase by Lessor of the Units.

(c) Lessor and Security Trustee propose to enter into a security agreement dated as of the date hereof (hereinafter called the "Security Agreement"), in substantially the form of Exhibit C to the Finance Agreement, pursuant to which Lessor will provide for the issue of the Notes and will assign its right, title and interest in and to the Units and certain of Lessor's rights in, to and under this Lease and the Purchase Agreement to Security Trustee as security for the Notes.

(d) Lessor and Security Trustee propose to enter into an assignment of lease and agreement dated as of the date hereof (hereinafter called the "Lease Assignment"), in substantially the form of Exhibit E to the Finance

Agreement, pursuant to which Lessor will assign certain of its rights in, to and under this Lease to Security Trustee as additional security for the Notes.

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by Lessee, Lessor hereby leases the Units to Lessee upon the following terms and conditions:

SECTION 1. *Net Lease.* This Lease is a net lease and Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor under this Lease or under the Finance Agreement; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the obligations of Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by Lessee hereunder shall be final, and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

SECTION 2. *Delivery and Acceptance of Units.* Lessor hereby appoints Lessee as its agent for the inspection and acceptance of, and the approval of all invoices relating to, the Units pursuant to the Purchase Agreement.

Lessor will cause each Unit to be delivered to Lessee on the Closing Date therefor (as defined in the Purchase Agreement) at the point or points within the United States of America at which such Unit is delivered to Lessor under the Purchase Agreement. Upon such delivery, Lessee will cause an employee or authorized representative of Lessee to inspect the same and if such Unit is acceptable, Lessee shall accept delivery of such Unit and execute and deliver to Lessor and Builder a certificate of acceptance (hereinafter called a "Certificate of Acceptance"), in accordance with the provisions of Section 5 of the Purchase Agreement, stating that such Unit has been inspected and accepted on behalf of Lessee and Lessor on the date of such Certificate of Acceptance and is marked in accordance with Section 5 of this Lease, whereupon such Unit shall be deemed to have been delivered to and accepted by Lessee hereunder, shall (without limiting Section 10) as between Lessor and Lessee be conclusively presumed to comply with the Specifications, requirements and standards applicable thereto pursuant to the Purchase Agreement and to be in good working order and repair without inherent vice or defect in title, condition, design, operation or fitness for use and shall thereafter be subject to all the terms and conditions of this Lease.

Notwithstanding the delivery to and acceptance by Lessee of the Units and their possession and use by Lessee hereunder, Lessor shall and does retain the full legal title to and property in all of the Units, it being expressly understood that this Lease is an agreement of lease only.

SECTION 3. Rentals. Lessee agrees to pay to Lessor, as rental for all Units subject to this Lease, 31 consecutive payments on June 30 and December 31 in each year, commencing December 31, 1975. The rental payment due on December 31, 1975 (hereinafter called the "Interim Rent") shall be in an aggregate amount equal to the sum of 0.0291667% of the Purchase Price for each Unit then subject to this Lease for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from the Closing Date for such Unit to and including the date of such payment. The next 30 semi-annual rental payments (hereinafter called the "Basic Rent") shall each be in an aggregate amount equal to the sum of 5.460% of the Purchase Price for each Unit then subject to this Lease.

The Basic Rent is subject to adjustment pursuant to Sections 7 and 17. If any of the semi-annual rental payment dates referred to above is not a

Business Day (as defined below) the semi-annual rental payment otherwise payable on such date shall be payable on the next preceding Business Day.

Lessee agrees to pay to Lessor, as supplemental rent (which shall not be deemed to be Interim Rent or Basic Rent) for each Unit becoming subject to this Lease, the amount of storage, shipping, insurance and interest charges, if any, invoiced by Builder to Lessor with respect to such Units, it being understood that such charges relate to the storing, shipping, insuring and financing of such Units by Builder prior to their delivery and settlement under the Purchase Agreement and this Lease.

All payments provided for in this Lease shall be made in immediately available funds.

The term "Business Day" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Louisville, Kentucky or Detroit, Michigan are authorized or obligated to remain closed.

So long as any of the Notes are outstanding, Lessor irrevocably instructs Lessee to make all the payments (other than payments owing to Lessor or Owner pursuant to Sections 3 (with respect to supplemental rent), 6, 7 (with respect to public liability insurance), 10 and 17, which shall be made directly to Lessor) provided for in this Lease at the principal office of Security Trustee, for the account of Lessor, in care of Security Trustee, with instructions to Security Trustee first to apply such payments to satisfy the obligations of Lessor under the Security Agreement known to Security Trustee to be due and payable on the date such payments are due and payable hereunder and second, so long as no Default or Event of Default under the Security Agreement shall have occurred and be continuing, to pay any balance promptly to Lessor at such place as Lessor shall specify in writing, unless and until Lessor shall otherwise direct Security Trustee in writing. Lessee agrees that no payments shall be made to Lessor pursuant to Sections 6, 7 (with respect to public liability insurance), 10 and 17 unless concurrently therewith Lessee shall pay to Security Trustee, for the account of Lessor, all amounts which are then due to Lessor under the other provisions of this Lease; and the making of such concurrent payment is of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the same.

Lessee agrees that it will not take any action or omit to take any action which would result in a delay or hindrance in or prohibition of the orderly flow of rental payments (or the application thereof) as contemplated by this Section 3, and further agrees that if, for any reason whatsoever, such a delay, hindrance or prohibition should occur or be threatened, Lessee will promptly use its best efforts to eliminate such delay, hindrance or prohibition.

SECTION 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the Closing Date with respect to such Unit and, subject to the provisions of Sections 7, 8, 11 and 14, shall terminate on December 31, 1990.

Anything herein to the contrary notwithstanding, upon the occurrence and during the continuance of an Event of Default hereunder, all rights of Lessee under this Lease and in and to the Units are subject to the rights of Security Trustee under the Security Agreement and the Lease Assignment.

SECTION 5. *Identification Marks.* Lessee will cause each Unit to be kept numbered with an identifying number as set forth in Annex A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Leased from First National Bank of Louisville, as Lessor and Trustee, and Ownership Subject to a Security Agreement Dated as of July 1, 1975 Filed under the Interstate Commerce Act, Section 20c", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's and Security Trustee's title to and property in such Unit and the rights of Lessor under this Lease and of Security Trustee under the Security Agreement. Lessee will replace promptly any such markings which may be removed, defaced or destroyed. Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Security Trustee and Lessor and filed, recorded, registered and deposited by Lessee in all public offices where this Lease and the Security Agreement shall have been filed, recorded, registered and deposited and (ii) Lessee shall have furnished Security Trustee and Lessor an opinion of counsel for Lessee with respect thereto satisfactory to Security Trustee and Lessor.

Except as provided in the immediately preceding paragraph, Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Units may be lettered with the name or initials or other insignia customarily used by Lessee.

SECTION 6. Taxes. All payments to be made by Lessee hereunder will be free of expense to Lessor and Security Trustee for collection or other charges and will be free of expense to Lessor, Owner, Security Trustee and the Noteholders with respect to the amount of any local, state, federal or foreign taxes or certification, registration or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, shipment or delivery of, or payment for, or transfer of title to, the Units under the terms of this Lease, the Security Agreement or the Lease Assignment (all such expenses, taxes, certification, registration and license fees, assessments, charges, fines and penalties being hereinafter called "Impositions"), all of which Impositions Lessee assumes and agrees to pay on demand in addition to the other payments to be made by it provided for herein, and from and against which Lessee agrees to indemnify, protect, defend, save and keep harmless on an after-tax basis Lessor, Owner, Security Trustee and the Noteholders; *provided, however*, that Lessee's obligation to pay Impositions shall not include (a) any federal income tax payable by Owner or any Noteholder in consequence of the receipt of payments provided for herein, (b) all income taxes or franchise taxes measured by net income based on such receipts imposed on Owner by the state and city in which Owner has its principal place of business, except any such tax which is in substitution for or relieves Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided, and (c) to the extent that Owner receives credit therefor against its federal income tax liability, any foreign income tax; *provided, further*, that in no event shall Lessee be entitled to reduce the amount payable under the first paragraph of Section 3 because of withholding at the source by reason of any taxes, assessments or other governmental charges and in determining whether Owner receives credit for any foreign tax, it shall be assumed that credit is received for all other foreign taxes claimed as credits for the taxable year in question before credit is received for any foreign taxes indemnified hereunder which are claimed as credits for such year. Lessee will also pay promptly all Impositions that may be

imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon Lessor by reason of its ownership thereof or upon Security Trustee or the holders of the Notes by reason of Security Trustee's security title thereto and any Impositions upon or on account of the trust created by the Security Agreement or the transactions contemplated thereby or the instruments or agreements referred to therein or contemplated thereby, and will keep at all times all and every part of the Units free and clear of all Impositions that might in any way affect the title of Lessor in and to any Unit or its interests or rights under this Lease; *provided, however*, that Lessee shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of Lessor or the Security Trustee, adversely affect the title, interests or rights of Lessor hereunder or of Security Trustee under the Security Agreement and the Lease Assignment. If any Impositions shall have been charged or levied against Lessor, Owner, Security Trustee or the Noteholders directly and paid by Lessor, Owner, Security Trustee or the Noteholders, Lessee shall reimburse Lessor, Owner, Security Trustee or the Noteholders, as the case may be, on presentation of an invoice therefor with interest thereon at a rate equal to 3% above the prime rate charged by Chemical Bank to its most credit-worthy corporate borrowers. Lessor agrees that if, in the opinion of independent tax counsel selected by Lessor and acceptable to Lessee (and whose fees and expenses shall be paid by Lessee), a bona fide claim exists for a refund of all or a portion of any Imposition in respect of which Lessee has made payment to Lessor, Lessor shall, upon request and at the expense of Lessee, take all such legal or other appropriate action deemed reasonable by said independent counsel in order to sustain such claim. Lessor shall not be obligated to take any such legal or other appropriate action unless Lessee shall first have indemnified Lessor for all liabilities and expenses which may be entailed therein and shall have furnished Lessor with such reasonable security therefor as may be requested. Lessee shall be entitled to the proceeds of the successful prosecution of any such claim to the extent of payments or reimbursement made by Lessee pursuant to this Section 6.

In the event any reports with respect to Impositions are required to be made, Lessee will either make such reports in such manner as to show the interests of Lessor and Security Trustee in the Units or notify Lessor and

Security Trustee of such requirement and will make such reports in such manner as shall be satisfactory to Lessor and Security Trustee.

In the event that, during the continuance of this Lease, Lessee becomes liable for the payment or reimbursement of any Imposition or any interest thereon pursuant to this Section 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by Lessee. The obligations of Lessee under this Section 6 constitute a rental obligation.

SECTION 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall become worn out, lost, stolen, destroyed, irreparably damaged from any cause whatsoever or otherwise rendered or be permanently unfit for the use contemplated by Section 13, or shall be taken or requisitioned by condemnation or otherwise, except any requisition which by its express terms is for a period less than the term of this Lease or is for an indefinite period (such occurrences being hereinafter called "Casualty Occurrences"), during the term of this Lease (including any extended term) or while any Unit shall be held subject to Section 12 or 15, Lessee shall promptly and fully notify Lessor and Security Trustee with respect thereto. As between Lessee and Lessor, Lessee shall bear the risk of any Casualty Occurrence to any Unit. When any Unit shall have suffered a Casualty Occurrence, on the rental payment date next succeeding, Lessee shall (i) pay to Lessor an amount equal to the rental payment or payments in respect of such Unit or Units due and payable on such date, plus a sum equal to the Casualty Value of such Unit or Units as of the date of such payment in accordance with the schedule set out below, and (ii) deliver to Lessor and Security Trustee a certificate signed by its President or any Vice President setting forth the portion of such Casualty Value which shall equal the "Unamortized Debt Commitment" (as defined in the Security Agreement) of the Units with respect to which such Casualty Value is paid. Upon (but not prior to) the making of such payment by Lessee in respect of any Unit, the rental for such Unit shall thereafter cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction, taking or requisition of such Unit) Lessor shall be entitled to recover possession of such Unit. Lessor hereby appoints Lessee as its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof at the best price obtainable on an

"as is, where is" basis. If Lessee shall have previously paid the Casualty Value to Lessor, Lessee shall be entitled to the proceeds of such sale to the extent that such proceeds do not exceed the Casualty Value of such Unit, and shall pay any excess to Lessor.

Subject to adjustment pursuant to the provisions of Section 17, the Casualty Value of each Unit as of the rental payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

<u>Rental Payment Date</u>	<u>Percentage</u>	<u>Rental Payment Date</u>	<u>Percentage</u>
December 31, 1975 . . .	104.620%	December 31, 1983	57.624%
June 30, 1976	108.571	June 30, 1984	53.921
December 31, 1976 . . .	108.907	December 31, 1984	50.067
June 30, 1977	108.429	June 30, 1985	46.063
December 31, 1977 . . .	108.392	December 31, 1985	42.065
June 30, 1978	107.826	June 30, 1986	38.233
December 31, 1978 . . .	106.842	December 31, 1986	34.808
June 30, 1979	97.991	June 30, 1987	31.715
December 31, 1979 . . .	96.033	December 31, 1987	29.182
June 30, 1980	93.648	June 30, 1988	27.149
December 31, 1980 . . .	91.098	December 31, 1988	25.882
June 30, 1981	81.022	June 30, 1989	24.390
December 31, 1981 . . .	78.143	December 31, 1989	22.873
June 30, 1982	75.093	June 30, 1990	21.134
December 31, 1982 . . .	71.887	December 31, 1990	20.000
June 30, 1983	61.155	Thereafter	20.000

Except as hereinabove in this Section 7 provided, Lessee shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Unit.

Lessee will carry, at its own expense, with insurers of recognized responsibility: (i) all risk loss and physical damage insurance on the Units in

amounts not less than the Casualty Value thereof from time to time determined in accordance with this Section 7, which insurance may be covered by endorsement to another insurance policy of Lessee and which may contain a \$250,000 deductible provision for any one occurrence; and (ii) comprehensive public liability and property damage insurance in respect of the Units in an amount not less than \$25,000,000 for each occurrence, which insurance may be covered by endorsement to another insurance policy of Lessee and which may contain a \$500,000 deductible provision for any one occurrence. Lessee shall cause each insurance policy obtained in satisfaction of the requirements of the preceding sentence to provide, and the insurer issuing such policy to certify to Lessor and Security Trustee, as follows:

(A) as to the insurance described in clause (i), that (1) Lessor, as owner and lessor of the Equipment, and Security Trustee are named as additional insureds as their respective interests may appear, (2) the proceeds of such insurance shall be payable, so long as the indebtedness secured by the Security Agreement shall not have been paid in full, to Security Trustee and thereafter to Lessor, (3) if the insurer cancels or materially changes such insurance for any reason whatsoever, or the same is allowed to lapse for nonpayment of premium, such cancellation, material change or lapse shall not be effective as to Lessor and Security Trustee for 30 days after receipt by Lessor and Security Trustee of notice from such insurer of such cancellation, material change or lapse and (4) in respect of the interest of Lessor and Security Trustee in such policy, the insurance shall not be invalidated by any act or neglect of Lessee, including Lessee's agents, servants, employees and any sub-lessee, contractor or subcontractor of Lessee, or any other person (other than Lessor, Security Trustee or Owner, as the case may be) and shall insure the interest of Lessor and Security Trustee regardless of any breach or violation by Lessee of any warranties, declarations or conditions contained in such policy; and

(B) as to the insurance described in clause (ii), that (1) Lessor, Owner, Security Trustee and each Noteholder (as defined in the Security Agreement) shall be named as additional insureds as their respective interests may appear, (2) all provisions of such policy, except the limits of liability, will operate in the same manner as if there were a separate policy covering each such additional insured, (3) if the insurer cancels or materially changes such insurance for any reason whatsoever, or the same is allowed to lapse for nonpayment of premium, such cancellation, material change or lapse shall not be effective as to Lessor, Owner, Security Trustee or any Noteholder for 30 days after receipt by Lessor, Owner, Security Trustee and each Noteholder, re-

spectively, of notice from such insurer of such cancellation, material change or lapse, (4) in respect of the respective interests of Lessor, Owner, Security Trustee and each Noteholder in such policy, the insurance shall not be invalidated by any act or neglect of Lessee, including Lessee's agents, servants, employees and any sublessee, contractor or subcontractor of Lessee, or any other person (other than Lessor, Owner, Security Trustee or any Noteholder, as the case may be) and shall insure Lessor, Owner, Security Trustee and each Noteholder regardless of any breach or violation of any warranties, declarations or conditions contained in such policy by Lessee or any other person (other than by Lessor, Owner, Security Trustee or any Noteholder, as the case may be) and (5) shall be primary without rights of contribution from any other insurance which is carried by Lessor, Owner, Security Trustee or any Noteholder to the extent that such other insurance provides it with contingent and/or excess liability insurance with respect to its interest as such in the Units.

Lessee shall deliver to Lessor, Owner and Security Trustee copies of each such insurance policy (or a certificate of insurance relating thereto) on or before each Closing Date with respect to the Units then being delivered and settled for and copies of each renewal policy (or a certificate or other evidence of insurance relating thereto) prior to the expiration of the original policy or preceding renewal policy, as the case may be, and Lessee shall notify Lessor, Owner and Security Trustee in writing of the status of such insurance 30 days prior to the expiration thereof in the event Lessee has not then delivered to Lessor, Owner and Security Trustee a renewal policy, or a certificate or other evidence of insurance relating thereto; and Lessee shall deliver to Lessor, Owner and Security Trustee receipts or other evidence that the premiums on all such policies have been paid.

Any net insurance proceeds resulting from insurance carried by Lessee or condemnation payments or payments in respect of Builder's warranties pursuant to Section 6(a) of the Purchase Agreement (hereinafter called "Purchase Agreement Payments") received by Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by Lessee to Lessor in respect of Casualty Occurrences pursuant to this Section 7. If Lessor shall receive any such net insurance proceeds, condemnation payments or Purchase Agreement Payments after Lessee shall have made payments pursuant to this Section 7 without deduction for such net insurance proceeds, condemnation payments or Purchase Agreement Payments, Lessor shall pay such net insurance proceeds, condemnation payments or Purchase Agreement Payments to Lessee up to an amount

equal to the Casualty Value with respect to a Unit paid by Lessee unless an Event of Default or other event (hereinafter called a "Default") which, with notice, demand and/or lapse of time, would constitute such an Event of Default shall have occurred and be continuing, in which case the amount otherwise payable to Lessee may be retained by Lessor and applied to discharge the liabilities of Lessee under Section 11. The balance of such net insurance proceeds, condemnation payments or Purchase Agreement Payments shall remain the property of Lessor.

All net insurance proceeds or Purchase Agreement Payments received by Lessor or Lessee with respect to a Unit not suffering a Casualty Occurrence shall be applied in payment of the cost of repairing the damage to such Unit or conforming such Unit to the Specifications, requirements and standards applicable thereto pursuant to the Purchase Agreement, but no such insurance proceeds shall be paid to Lessee as provided below until Lessor and Security Trustee shall have received a certificate signed by an authorized officer of Lessee to the effect that such damage has been fully repaired or that such Unit then complies with such Specifications, requirements and standards, as the case may be. Any net insurance proceeds remaining after the completion of such repairs shall be paid to Lessee unless an Event of Default or Default shall have occurred and be continuing, in which case the amount otherwise payable to Lessee may be retained by Lessor and applied to discharge the liabilities of Lessee under Section 11. Any Purchase Agreement Payments determined to be remaining after the completion of such repairs or conforming work shall remain the property of Lessor.

Any condemnation payments received with respect to a Unit not suffering a Casualty Occurrence shall be the property of Lessor.

SECTION 8. *Voluntary Termination.* Unless an Event of Default or Default shall have occurred and be continuing hereunder, Lessee shall be entitled, at its option, upon at least 180 days' prior written notice to Lessor and Security Trustee, to terminate this Lease if Lessee shall have made a good faith determination that all (but not less than all) of the Units have become obsolete or economically unserviceable to Lessee's operations, which notice shall be accompanied by a certified copy of resolutions adopted by the Board of Directors of Lessee making such determination and a written statement of the President or a Vice President of Lessee setting forth a summary of the basis for such determination; *provided, however*, that such termination shall become effective only on a rental payment date (herein-

after in this Section 8 called the "Termination Date") and in no event prior to December 31, 1985; and *provided further*, that such termination shall not take effect unless Lessee shall have fully complied with the succeeding paragraphs of this Section 8.

During the period from the giving of such notice to the Termination Date, Lessee, as agent for Lessor, shall use its best efforts to obtain bids for the purchase of all the Units on an "as is, where is" basis, and Lessee shall certify to Lessor in writing the amount of each bid received and the name and address of the person (who shall not be Lessee or an Affiliate (as defined in the Security Agreement) of Lessee) submitting such bid. On the Termination Date, Lessor shall, without recourse or warranty (including, but not limited to, warranties relating to title), sell all the Units for cash to whosoever shall have submitted the highest bid therefor (including Owner) prior to the Termination Date, and thereupon Lessee shall cause to be delivered the Units to Lessor in accordance with the terms of Section 15. If the sale of all the Units shall not occur on the Termination Date, Lessee shall not cause such delivery of the Units to Lessor; and this Lease shall continue in full force and effect. Lessor shall be under no duty to (but may) solicit bids, to inquire into the efforts of Lessee to obtain bids or otherwise to take any action in connection with any such sale other than as expressly provided in this Section 8.

The total sale price realized at any such sale of the Units shall be retained by Lessor, and concurrently therewith Lessee shall pay to Lessor the excess, if any, of (i) the Casualty Value of the Units computed as of the Termination Date over (ii) the proceeds of such sale less all expenses incurred by Lessor in connection with such sale or with the collection or distribution of such payment. Lessee shall also be obligated to pay Lessor any and all rentals and other sums due hereunder with respect to the Units up to and including the Termination Date. In the event of such sale and compliance by Lessee with all the provisions of this Section 8, the obligations of Lessee to pay rental hereunder on all rental payment dates commencing after the Termination Date shall terminate.

SECTION 9. Reports. On or before March 31 in each year, commencing with the year 1976, Lessee will furnish to Lessor, Owner and Security Trustee an accurate statement (a) setting forth as at the preceding December 31 the quantity, description and road numbers of all Units then leased hereunder and covered by the Security Agreement, the quantity,

description and road numbers of all Units that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year and such other information regarding the condition and state of repair of the Units as Lessor or Security Trustee may reasonably request and (b) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the numbers and markings required by Section 5 have been preserved or replaced. Lessor and Security Trustee shall have the right, by their respective agents, to inspect the Units and Lessee's records with respect thereto at such reasonable times as Lessor or Security Trustee, as the case may be, may request during the term of this Lease.

As soon as available and in any event within 90 days after the end of each of its fiscal years, Lessee will deliver to Lessor, Owner and Security Trustee a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of Lessee stating that a review of the activities of Lessee during such fiscal year has been made under his supervision with a view to determining whether Lessee has kept, observed, performed and fulfilled all of its covenants and obligations under this Lease and that, to the best of his knowledge, Lessee during such fiscal year has kept, observed, performed and fulfilled each and every covenant and obligation contained herein, or if there shall exist a Default or an Event of Default under this Lease specifying such Default or Event of Default and the nature and status thereof.

SECTION 10. *Disclaimer of Warranties; Compliance with Laws and Rules, Maintenance; Indemnification.* LESSOR LEASES THE UNITS, AS IS, IN WHATEVER CONDITION THEY MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY EITHER LESSOR OR OWNER, EACH EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY OF THE UNITS INCLUDING BUT NOT LIMITED TO THEIR VALUE, CONDITION, DESIGN OR OPERATION, (B) LESSOR'S TITLE THERETO, (C) LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (D) THE DESIGN OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR (E) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT

ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE. Lessor hereby irrevocably appoints and constitutes Lessee as its agent and attorney-in-fact, so long as there shall exist no Default or Event of Default hereunder, to assert and enforce from time to time, in the name and for the account of Lessor, Security Trustee and/or Lessee, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor or Security Trustee may have against Builder under the provisions of Section 6 of the Purchase Agreement; *provided, however*, that Lessee will not consent to the settlement of, or compromise or waive, any claims thereunder without the written consent of Lessor and Security Trustee. Lessee's execution of this Lease shall be conclusive evidence as between Lessee and Lessor that the Units are in all of the foregoing respects satisfactory to Lessee, and Lessee will not assert any claim of any nature whatsoever against Lessor based on any of the foregoing matters.

Lessee agrees, for the benefit of Lessor and Security Trustee, to comply in all respects with all laws (including, without limitation, laws with respect to the use, maintenance and operation of each Unit) of the jurisdictions in which operations involving the Units may extend, with the interchange rules of the Association of American Railroads, with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units and with all provisions of the insurance policies carried by Lessee pursuant to Section 7; and in the event that such laws or rules require any alteration, replacement or repair of or to any part of any Unit, Lessee will conform therewith at its own expense; *provided, however*, that Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor or Security Trustee, adversely affect the property or rights of Lessor or Security Trustee under this Lease or under the Security Agreement.

Lessee shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Units. Lessee, at its own cost and expense, shall maintain and service, and, so long as there shall exist no Default or Event of Default hereunder, enforce Builder's warranties with respect to, each of the Units so as to keep it in the same operating condition, order, repair and appearance as it was when it first became subject to this Lease, ordinary wear and tear excepted, assuming such Unit at that time

complied fully with the Specifications, requirements and standards applicable thereto pursuant to the Purchase Agreement; and at all times during the term hereof such Unit shall be suitable for use in interchange. Lessee, at its own cost and expense and within a reasonable period of time, shall also replace all parts of any Unit that may have become worn out, lost, destroyed or otherwise rendered permanently unfit for use with appropriate replacement parts, which shall be free and clear from any mortgage, lien, charge or encumbrance (except for those created by this Lease, the Security Agreement and the Lease Assignment); *provided, however*, that Lessee shall not affix or install any accessories or devices on any Unit or make any additions or improvements to any Unit not readily removable without causing material damage to the Units, and all such accessories, devices, additions or improvements shall remain the property of Lessee and shall, at Lessee's expense, be removed at the termination of this Lease.

Lessee agrees to indemnify, protect and hold harmless Lessor, Owner, Security Trustee, the Noteholders and the Trust Estate from and against all losses, damages, injuries, liabilities, claims (including claims for negligence or strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of (i) the entering into or the performance of the Finance Agreement, the Trust Agreement, the Purchase Agreement, the Security Agreement, this Lease or the Lease Assignment, the ownership of any Unit, the ordering, construction, acquisition, use, operation, condition (whether defects are latent or discoverable by Lessor or Lessee), maintenance, repair, replacement, purchase, delivery, rejection, lease, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage, sale or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 15, (ii) any loss or damage to the Units, ordinary wear and tear excepted, (iii) any act or omission of Lessee when acting as agent or attorney-in-fact for Lessor hereunder, (iv) any failure of Lessee to comply with the second paragraph of this Section 10 or (v) any claims for patent infringement. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

Lessee agrees to prepare, deliver to Lessor for execution within a reasonable time prior to the required date of filing and file (or, to the extent per-

missible, to prepare for and file on behalf of Lessor directly) any and all reports (other than income tax returns) to be filed by Lessor with any federal, state or other regulatory authority by reason of the ownership by Lessor of the Units or the leasing thereof to Lessee.

SECTION 11. *Default.* If during the continuance of this Lease one or more of the following events (each such event being hereinafter sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any part of the rent provided in Section 3, and such default shall continue for 10 Business Days;

(B) Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof, or shall fail to cause the appropriate Uniform Commercial Code financing and continuation statements to be filed as contemplated by Section 16;

(C) Lessee shall fail to maintain insurance in accordance with Section 7 or shall fail to maintain the Units substantially in accordance with Section 10, and such default shall continue for 30 days after written notice from Lessor to Lessee, Security Trustee and Owner specifying such default and demanding that the same be remedied;

(D) default shall be made in the observance or performance of the covenants and agreements on the part of Lessee contained in the second and third paragraphs of Section 10 arising solely from the inability of Lessee to comply therewith because of the proviso contained in the third paragraph of Section 10, and such default shall continue for 60 days after written notice from Lessor to Lessee, Security Trustee and Owner specifying such default and demanding that the same be remedied;

(E) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein, and such default shall continue for 30 days after written notice from Lessor to Lessee, Security Trustee and Owner specifying such default and demanding that the same be remedied;

(F) any proceedings shall be commenced by or against Lessee for any relief under any bankruptcy or insolvency law, or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition or extension, and, if such proceedings have been commenced against Lessee, such proceedings shall not have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue) within 60 days after such proceedings shall have been commenced, or Lessee shall make a general assignment for the benefit

of creditors or shall admit in writing its inability to pay its debts generally as they become due;

(G) an Event of Default shall occur and be continuing under the Security Agreement (other than clause (c) of Section 8.01 thereof);

(H) any representation or warranty made by Lessee in the Finance Agreement or this Lease shall prove to be false or misleading in any material respect as of the date made;

(I) default shall be made in the observance or performance of any covenant or agreement on the part of Lessee contained in the Finance Agreement, and such default shall continue for 30 days after written notice from Lessor to Lessee, Security Trustee and Owner specifying such default and demanding that the same be remedied;

(J) default by Lessee shall occur in respect of any evidence of indebtedness of Lessee or evidence of indebtedness of others guaranteed by Lessee or under any agreement under which any such evidence of indebtedness may be issued, or under any covenant, provision or condition contained in the charter, articles of incorporation or similar instrument of Lessee, or under any other material agreement or any material lease of real or personal property to which Lessee is a party, and such default shall continue for more than the period of grace, if any, therein specified or 30 days, whichever is less; or

(K) final judgment for the payment of money in excess of \$250,000 shall be rendered against Lessee and the same shall remain undischarged for a period of 30 days during which execution shall not be effectively stayed;

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

(1) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including net after-tax losses of federal and state income tax benefits to which Lessor would otherwise be entitled as a result of owning the Units and leasing the same to Lessee under this Lease; or

(2) by notice in writing to Lessee terminate this Lease, whereupon all rights of Lessee to the possession and use of the Units shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon Lessor may, by its agents, enter upon the premises of Lessee or any other premises where any of the Units may be located and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purposes whatsoever; but Lessor shall, never-

theless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from Lessee (a) as damages for loss of the bargain and not as a penalty, whichever of the following sums, with respect to each Unit then subject to this Lease, Lessor, in its sole discretion, shall specify by written notice to Lessee: (x) an amount equal to the excess, if any, of the Casualty Value for such Unit, computed as of the rental payment date immediately preceding the Event of Default specified in such notice, over the Fair Market Rental (computed as provided in Section 14) of such Unit for the remainder of the term of this Lease after discounting such Fair Market Rental semi-annually to present value as of such preceding rental payment date at the rate of 11% per annum or (y) an amount equal to the excess, if any, of the Casualty Value for such Unit as of such preceding rental payment date over the Fair Market Value (computed as provided in Section 14) of such Unit as of such preceding rental payment date and (b) any damages and expenses, including reasonable attorneys' fees, in addition thereto which Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental.

It is expressly understood and agreed that upon the occurrence of any of the defaults or conditions described in clauses (A) through (K), both inclusive, of the first paragraph of this Section 11, and prior to the time that such default or condition shall constitute an Event of Default hereunder, either Lessor or Owner may make such payment or perform such other act as will cure such default or condition, and the amount of all payments by Lessor or Owner on behalf of Lessee, plus the amount of all reasonable expenses incurred in connection therewith, together with interest thereon at the rate of 15% per annum or the maximum rate permitted by law, whichever is lower, from the date of expenditure to the date of reimbursement, shall constitute additional rental payable hereunder from Lessee to Lessor on demand. The option of Lessor or Owner to cure a default described in clause (A) shall be limited to two full Basic Rent payments.

The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might

limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by Lessee or on its behalf.

The failure of Lessor to exercise any of the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The foregoing provisions of this Section 11 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

SECTION 12. *Return of Units upon Default.* If this Lease shall terminate pursuant to Section 11, Lessee shall forthwith deliver possession of the Units to Lessor and shall:

(a) forthwith place such Units upon such storage tracks as Lessor reasonably may designate until such Units have been sold, leased or otherwise disposed of by Lessor; and

(b) cause the same to be delivered to any carrier for shipment directed by Lessor.

The Units shall be returned in the condition in which they are required to be maintained by Lessee under Section 10, shall be maintained by Lessee, at its own cost and expense, in such condition during the period of storage provided for in this Section 12 and shall be insured by Lessee, at its own cost and expense, during such period of storage in accordance with Section 7; and at the time of such return and during such period of storage shall be kept free and clear of all liens, charges, security interests and encumbrances in accordance with Section 13. The assembling, delivery, storage and transporting of the Units as in this Section 12 provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the same. During any storage period, Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligations of Lessee under the foregoing provisions of this Section 12, Lessee hereby irrevocably appoints Lessor as

the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Unit to Lessor, to demand and take possession of such Unit in the name and on behalf of Lessee from whosoever shall be in possession of such Unit at the time.

SECTION 13. *Assignment; Possession and Use; Liens.* Lessor, or any assignee of Lessor, may at any time, without notice to or consent by Lessee, sell, assign, transfer, mortgage or otherwise encumber its interest under this Lease or in the Units, subject to the terms of this Lease and the rights of Lessee hereunder, and, upon receipt of written notice of any such assignment, Lessee shall recognize such assignment subject to the rights of Lessee against Lessor hereunder. No assignment or reassignment shall release Lessor from its obligations to Lessee under this Lease. Lessor agrees to deliver to Lessee a copy of each agreement evidencing any such sale, assignment, transfer, mortgage or other encumbrance, or the portion thereof which effects compliance with the provisions of this Section 13, as soon as practicable after the execution and delivery thereof. All the rights of Lessor hereunder (including, but not limited to, the rights under Sections 6, 7, 8, 11 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively), but only to the extent assigned. Whenever the term "Lessor" is used in this Lease, it shall apply and refer to Lessor and Owner and each such assignee of Lessor and, where the context so requires (including, but not limited to, certain of the provisions of Sections 6, 7, 10, 11 and 17), shall refer only to Owner. The term "Owner" as used herein shall include any member of any affiliated group of corporations which includes Owner and which files a consolidated federal income tax return.

So long as there shall exist no Default or Event of Default under this Lease, Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Agreement, but, without the prior written consent of Lessor, Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by or liabilities in favor of any person which, if unpaid, might diminish the amount of rents due and payable under Section 3 or might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by Lessor or Security Trustee or resulting from claims

against Lessor or Security Trustee not related to the ownership of the Units) on or with respect to any Unit, or the interest of Lessor, Security Trustee or Lessee therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises; *provided, however*, that Lessee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of Lessor or Security Trustee, adversely affect the title of Lessor in or to the Units or otherwise adversely affect its rights or the rights of Security Trustee under this Lease, the Security Agreement or the Lease Assignment; *provided further*, that this covenant will not be breached by reason of the existence of liens for taxes, assessments or governmental charges or levies, in each case so long as not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent; and *provided further* that, prior to the occurrence of an Event of Default hereunder, if Lessee shall fail to pay any such claim or shall not contest the same, as above provided, Lessor may pay the same on behalf of Lessee, in which case Lessee shall reimburse Lessor for the amount expended on demand, together with interest thereon at the rate of 15% per annum or the maximum rate permitted by law, whichever is lower, from the date of expenditure to the date of reimbursement. Lessee shall not, without the prior written consent of Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted or contemplated by the provisions of the two immediately succeeding paragraphs.

So long as there shall exist no Default or Event of Default under this Lease, Lessee may, with the written consent of Lessor (which consent shall not unreasonably be withheld), and upon the giving of notice to Security Trustee, sublease the Units to any person for use in unit trains if, in any such case, such sublease has been authorized in writing by all federal and state regulatory commissions and agencies having jurisdiction, if any, and is otherwise lawful, and if a copy of each such authorization shall have been delivered to Lessor and Security Trustee, but Lessee shall not be relieved of any of its obligations hereunder by reason of any such sublease, and any such sublease shall expressly provide that the rights of sublessee thereunder are subject in all respects to the rights of Lessor and Security Trustee hereunder and under the Security Agreement and that the Units shall not be used contrary to clause (ii) of the next paragraph.

So long as there shall exist no Default or Event of Default under this Lease, Lessee shall be entitled to the possession of the Units and to the use of the Units in unit trains to haul coal to any station owned or used by Lessee, but only upon and subject to all the terms and conditions of this Lease and the Security Agreement; *provided, however*, that (i) Lessee shall in all events use the Units in a careful and proper manner consistent with the use contemplated by the manufacturer thereof and solely in the business of Lessee and (ii) Lessee shall not assign or permit the assignment of any Unit to service involving the operation or maintenance thereof outside the continental United States of America (excluding Alaska).

SECTION 14. *Renewal Options.* Provided this Lease has not been earlier terminated and there exists no Default or Event of Default hereunder, Lessee may by written notice delivered to Lessor not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all of such Units then covered by this Lease for an additional three-year period commencing on the scheduled expiration of the original term or such extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond December 31, 2005. In the event that the term of this Lease is extended pursuant to the preceding sentence, Lessee shall pay rentals at the "Fair Market Rental" (as hereinafter defined) of such Units in semi-annual payments in arrears on June 30 and December 31 in each year of such extended term; and all of the other terms of this Lease shall be applicable during any extended term, except that the Casualty Values of the Units shall be calculated by taking into consideration the then Fair Market Value of the Units (both at the beginning and end of the extended term), Lessor's then after-tax yield requirements and the then prevailing interest rates, but in no event, however, shall such Casualty Values be less than 20% of the Purchase Price of the Units.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer (other than a lessee currently in possession or a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in

possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, Lessor and Lessee are unable to agree upon a determination of the Fair Market Value or the Fair Market Rental, as the case may be, of the relevant Units, such value or rental shall be determined in accordance with the foregoing definitions by a qualified independent Appraiser. The term "Appraiser" shall mean such independent appraiser as Lessor may select with the approval of Lessee, or, failing such approved selection, a panel of three independent Appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to Lessor and Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the Appraiser shall be borne by Lessee.

SECTION 15. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the original or any extended term of this Lease, Lessee will, at its own cost and expense, at the request of Lessor, deliver such Units to Lessor upon such storage tracks as Lessor may reasonably designate, or, in the absence of such designation, as Lessee may select, and store such Units on such tracks for a period not exceeding three months and cause the same to be delivered, at any time within such three-month period, to any reasonable place directed by Lessor. The Units shall be returned in the condition in which they are required to be maintained by Lessee under Section 10, shall be maintained by Lessee, at its own cost and expense, in such condition during the period of storage provided for in this Section 15 and shall be insured by Lessee, at its own cost and expense, during such period of storage in accordance with Section 7; and at the time of such return and during such period of storage shall be kept free and clear of all liens, charges, security interests and encumbrances in accordance with Section 13. The movement and storage of such Units shall be at the expense and risk of Lessee; and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, Lessee shall pay Lessor the Casualty Value thereof set forth in Section 7. During any such storage period, Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Units, may inspect the

same; *provided, however*, that Lessee shall not be liable, except in the case of negligence of Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of Lessor or any prospective purchaser, the right of inspection granted under this sentence. The assembling, delivery, storage, maintenance and transporting of the Units as in this Section 15 provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the same. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence, it may deliver written notice to such effect to Lessee and Lessee shall thereupon assume and hold Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. Lessor shall execute and deliver to Lessee, or to Lessee's assignee or nominee, with respect to any Unit so abandoned a bill of sale (without representations or warranties except that such Unit is free and clear of all liens, charges, security interests and other encumbrances by or in favor of any person claiming by, through or under Lessor other than the liens, charges, security interests and other encumbrances which Lessee is obligated to discharge hereunder) for such Unit, and such other documents as may be required to release such Unit from the terms and scope of this Lease and to transfer title thereto to Lessee, or such assignee or nominee, in such form as may reasonably be requested by Lessee, all at Lessee's expense. Lessee shall have no liability to Lessor in respect of any Unit so abandoned by Lessor; *provided, however*, that this sentence shall not in any way relieve Lessee of its obligations pursuant to Section 7 to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect or during the storage period provided for in this Section 15.

SECTION 16. Recording. Lessee, at its own expense, will cause this Lease, the Lease Assignment and the Security Agreement, and any amendments or supplements hereto or thereto, and any further assignments hereof and thereof, to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act, and Lessee will undertake the filing, registering, depositing and recording required of Lessor under the Security Agreement and will from time to time do and perform any other act and will execute, acknowledge (or cause to be executed and acknowledged by the proper parties, as the case may be), deliver, file, register, deposit and record (and will re-file, re-register, re-deposit or re-record whenever required) any and

all further instruments, including Uniform Commercial Code financing and continuation statements, required by law or reasonably requested by Lessor or Security Trustee (Lessor agreeing to execute and acknowledge any such financing and continuation statements upon the reasonable request by Lessee or Security Trustee) for the purpose of proper protection, to their satisfaction, of Lessor's and Security Trustee's respective interests in the Units, or for the purpose of carrying out the intention of and their respective rights under the Purchase Agreement, this Lease, the Lease Assignment and the Security Agreement; and Lessee will promptly furnish to Lessor and Security Trustee evidence of all such filing, registering, depositing and recording and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor and Security Trustee. This Lease, the Lease Assignment and the Security Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

SECTION 17. *Federal Income Taxes.* This Lease and the Security Agreement have been entered into on the assumptions that (A) Owner, as the beneficial owner of the Units, will be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the "Code"), to an owner of property, including, without limitation, (1) the maximum depreciation deduction with respect to the Units authorized under Section 167 of the Code (hereinafter called the "ADR Deduction") (a) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 72-10, 1972-1 C.B. 721, for property in Asset Guideline Class No. 00.25, in accordance with the Class Life Asset Depreciation Range System described in Section 167(m) of the Code and the Treasury Regulations promulgated thereunder as in effect on the date hereof, (b) employing initially the 200% declining-balance method of depreciation with a change, not requiring the consent of the Commissioner of Internal Revenue, to the sum of the years-digits method of depreciation when most beneficial to Lessor, (c) including in the basis of the Units the entire Purchase Price thereof and all other items properly includable under Section 1012 of the Code (hereinafter called the "Basis") and (d) taking into account a salvage value, after the reduction allowed by Section 167(f) of the Code, of 10% of the Basis of the Units; (2) deductions with respect to interest payable under the Security Agreement pursuant to Section 163 of the Code (hereinafter called the "Interest Deduction"); and (3) the 10% investment credit with respect to 100% of the

Basis of the Units (hereinafter called the "Investment Credit") pursuant to Section 38 and related sections of the Code; and (B) all amounts includable in gross income by Lessor or Owner with respect to this Lease will be treated as income from sources within the United States.

Lessee agrees that neither it nor any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by Lessor or Owner, and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Owner to determine whether it is entitled (A) to the full benefit of the ADR Deduction, the Interest Deduction and the Investment Credit with respect to the Units and (B) to treat amounts includable in gross income with respect to this Lease as income from sources within the United States.

Lessee represents and warrants that (i) all the Units constitute property the entire Basis of which qualifies for the 10% Investment Credit under Section 50 of the Code; (ii) at the time Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code, and at the time Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(e)(2) of the Code from commencing with Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code; (iv) none of the Units will be "used predominantly outside the United States" within the meaning of Section 48(a)(2) of the Code; and (v) all items includable in gross income by Lessor or Owner with respect to this Lease are entitled to treatment as income from sources within the United States.

If (A) for any reason whatsoever (other than for the reasons set forth below) all or any part of the ADR Deduction, the Interest Deduction or the Investment Credit with respect to any Unit shall be unavailable in computing each of the items of income, gain, loss, deduction or credit of Owner or (B) Lessor or Owner shall not be entitled to treat all amounts includable in gross income with respect to this Lease as income from sources

within the United States for any taxable year (or portion thereof) during which this Lease is in effect as the result of the location of any Unit outside the United States, then the Basic Rent applicable to such Unit set forth in Section 3 shall, on the next succeeding Basic Rent payment date after written notice to Lessee by Lessor of such fact, be increased by such amount as shall be required, in the reasonable opinion of Owner, to cause Owner's net after-tax total cash flow and net after-tax rate of return to be at least the same as such net after-tax total cash flow and net after-tax rate of return would have been had the ADR Deduction, the Interest Deduction and the Investment Credit been wholly available and had Lessor and Owner been entitled to treat all amounts includable in gross income with respect to this Lease as income from sources within the United States; *provided, however,* that Basic Rent shall not be so increased to the extent that the ADR Deduction, the Interest Deduction or the Investment Credit with respect to such Unit is unavailable as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit if Lessee shall have paid to Lessor the amounts stipulated pursuant to Section 7;

(ii) a voluntary transfer by Lessor of legal title to such Unit, a voluntary disposition by Lessor of any interest in such Unit or a voluntary reduction by Lessor of its interest in the rentals from such Unit under this Lease (except pursuant to an assignment of this Lease to the Security Trustee) unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of Owner to claim the ADR Deduction, the Interest Deduction or the Investment Credit on its income tax return for the appropriate year, unless Owner shall have received an opinion of independent tax counsel to the effect that Owner is not entitled to claim the ADR Deduction, the Interest Deduction or the Investment Credit;
or

(iv) the failure of Owner to have sufficient liability for federal income tax against which to credit the Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction.

The recomputation of the Basic Rent payable by Lessee pursuant to this paragraph will be based (i) on the same assumptions used by Owner in originally evaluating this transaction, including the assumptions that any taxable income generated by this transaction is subject to tax at an effective rate of 54.686% and that any net loss generated by this transaction is a tax benefit against taxes imposed at an effective rate of 54.686% and (ii) in de-

termining the extent to which Owner receives credit for any foreign tax against its federal income tax liability, on the further assumption that credit is received for all other foreign taxes claimed as credits for the taxable year in question before credit is received for any foreign taxes indemnified under this Lease which are claimed as credits for such year.

In the event a claim shall be made against Lessor or Owner which, if successful, would result in payment by Lessee of increased Basic Rent pursuant to the immediately preceding paragraph, and if, in the opinion of Lessor's or Lessee's independent tax counsel (hereinafter called "Counsel"), a bona fide defense to such claim exists, Lessor shall, upon request and at the expense of Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such defense; *provided, however*, that Lessor shall not be obligated to take any such legal or other appropriate action unless Lessee shall first have indemnified Lessor for all liabilities and expenses that may be entailed therein and shall have furnished Lessor such reasonable security therefor as may be requested. Lessor may, at its option, take such action prior to making payment of any tax, interest or penalty with respect to such claim (hereinafter called a "Tax Payment") or may make such Tax Payment and then sue for a refund. If Lessor takes such action prior to making such Tax Payment, such increased Basic Rent need not be paid by Lessee while such action is pending. In such case, if the final determination shall be adverse to Lessor, the increased Basic Rent shall be computed by Lessor as of the date of such final determination and Lessee shall commence payment thereof on the Basic Rent payment date next succeeding such final determination and, on or before such Basic Rent payment date, Lessee shall pay to Lessor as additional rental an amount which, when reduced by any increase in Lessor's or Owner's income tax liability or liabilities resulting from Lessor's receipt of such additional rental, will equal the amount of all interest and penalty paid by Lessor or Owner in respect of such final determination, together with interest thereon from the date such payment is made by Lessor or Owner to the date Lessee reimburses Lessor therefor at a rate equal to 3% above the prime rate charged by Chemical Bank to its most creditworthy corporate borrowers as in effect on the date of such final determination. If Lessor or Owner makes such Tax Payment and then sues for a refund, such increased Basic Rent shall commence to be payable by Lessee on the first Basic Rent payment date after such Tax Payment is made and, on or before such Basic Rent payment date, Lessee shall pay to Lessor as additional rental an amount which, when reduced by

the increase in Lessor's or Owner's income tax liability or liabilities resulting from Lessor's receipt of such additional rental, will equal the amount of all interest and penalty paid by Lessor or Owner included in such Tax Payment. In such case, if the final determination shall be in favor of Lessor (A) the Basic Rent payable by Lessee to Lessor shall be adjusted by such amount as shall be required, in the reasonable opinion of Owner, and pursuant to the assumptions set forth in the last sentence of the immediately preceding paragraph, to cause Owner's net after-tax total cash flow and net after-tax rate of return to be at least the same as such net after-tax total cash flow and net after-tax rate of return would have been if such Tax Payment had not been made (or such adjustment shall be made proportionately if the final determination is partly in favor of and partly adverse to Lessor) and such adjusted Basic Rent shall be payable by Lessee on the Basic Rent payment date next succeeding such final determination and thereafter, and (B) Lessor shall pay to Lessee an amount which, when reduced by the tax benefit to Lessor resulting from the payment of such amount, will equal the amount of any penalty or interest refunded to Lessor as a result of such final determination and any interest on such refunded penalty and interest paid to Lessor by the government, promptly upon receipt thereof.

In the event that Lessee shall pay all or any portion of any installment of Basic Rent prior to the date upon which such payment is herein required to be made, Lessee shall pay to Lessor an amount which, after deduction of all taxes and other charges in respect of the receipt of such amount under the laws of any federal, state or local governmental or taxing authority in the United States or under the laws of any foreign country or subdivision of any taxing authority thereof, shall be equal to the excess of (A) the taxes and other charges payable by Lessor and Owner as a result of the receipt of such installment of Basic Rent over (B) the taxes and other charges that would have been payable by Lessor and Owner had such installment of Basic Rent been paid by Lessee on the date upon which such payment is herein required to be made.

In the event the Basic Rent shall be adjusted as hereinbefore provided, the Casualty Values set forth in Section 7 shall be adjusted accordingly.

Lessor and Owner are entitled, but are not required, to request a ruling from the Internal Revenue Service (hereinafter called the "Ruling") to the effect, among other things, that this Lease is a true lease, that Lessor is the owner of the Units and that Owner has the right to claim the ADR Deduc-

tion, the Interest Deduction and the Investment Credit. Lessee will furnish such documents, records and representations, including, but not limited to, evidence of the useful life and residual value of the Units sufficient to support the matters claimed in any request for the Ruling, as shall be deemed necessary and appropriate for such request by Lessor. Lessee shall join in such request.

Lessee's and Lessor's agreements to pay any sums which may become payable pursuant to this Section 17 shall survive the expiration or other termination of this Lease.

SECTION 18. *Interest on Overdue Rentals.* Anything herein to the contrary notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of Lessee promptly to pay, to the extent legally enforceable, an amount equal to 15% per annum or the maximum rate permitted by law, whichever is lower, of the overdue rentals and other obligations for the period of time during which they are overdue. Such interest shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 19. *Notices.* Any notice hereunder to any of the persons designated below shall be deemed to have been properly served if delivered personally at, or if mailed, certified mail postage prepaid, to, the following specified addresses:

- (a) To Lessor, P.O. Box 1019, Louisville, Kentucky 40201, Attention of Corporate Trust Department, with a copy to Owner;
- (b) To Lessee, 2000 Second Avenue, Detroit, Michigan 48226, Attention of Corporate Secretary;
- (c) To Owner, 20 Pine Street, New York, New York 10015, Attention of Manager, Leveraged Leasing;

or to such other address as may have been furnished in writing by any of the foregoing persons to the other persons named above.

SECTION 20. *Payment of Expenses.* Lessee agrees to pay the expenses assumed by it in the Finance Agreement.

SECTION 21. *Severability; Effect of Lease; Interpretations.* Any provision of this Lease prohibited or unenforceable by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining pro-

visions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by Lessee to the full extent permitted by law, to the end that this Lease shall be enforced as written.

This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto.

All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease. All references herein to Sections, paragraphs, clauses and other subdivisions refer to the designated Sections, paragraphs, clauses and other subdivisions of this Lease; and the words "herein", "hereof", "hereunder" and words of similar import refer to this Lease as a whole and not to any particular Section, paragraph, clause or other subdivision hereof.

SECTION 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Michigan; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording, registering or depositing, if any, of this Lease and the Lease Assignment as shall be conferred by the laws of the several jurisdictions in which this Lease or the Lease Assignment shall be filed, recorded, registered or deposited.

SECTION 23. *Further Assurances.* Lessee agrees that at any time and from time to time, after the execution and delivery of this Lease, it shall, upon request of Lessor, execute and deliver such further documents and do such further acts and things as Lessor may reasonably request in order fully to effect the purposes of this Lease, including, but not limited to, any and all information necessary to enable Lessor to properly complete and file any and all state or political subdivision thereof income tax returns in connection herewith.

SECTION 24. *Modification, Waiver and Consent.* Any modification or waiver of any provision of this Lease, or any consent to any departure by Lessee therefrom, including any sublease of the Units, shall not be

effective in any event unless the same is in writing and signed by Lessee and Lessor, and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given. Any notice to or demand on Lessee in any event not specifically required of Lessor hereunder shall not entitle Lessee to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder.

Anything herein or in the Security Agreement to the contrary notwithstanding, Lessee shall not agree to any reduction in the Basic Rent or any delay in the time of payment thereof without the express written approval of Owner.

SECTION 25. *Binding Effect.* This Lease shall be binding upon and shall inure to the benefit of the respective successors and assigns of Lessee and Lessor.

SECTION 26. *Use of Units Beyond Lease Term.* If Lessor permits the use of any Unit beyond the term of lease with respect thereto, the obligations of Lessee hereunder shall continue; *provided, however,* that such permissive use shall not be construed as a renewal of such term of lease nor as a waiver of any right or continuation of any obligation of Lessor hereunder, and Lessor may take possession of such Unit at any time upon demand.

SECTION 27. *Limitation of Liability.* It is expressly understood and agreed by and between Lessor and Lessee that this Lease is executed by First National Bank of Louisville, not individually or personally but solely as Trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Trustee (and First National Bank of Louisville hereby warrants that it possesses full power and authority to enter into and perform this Lease); it is further understood and agreed that, except as otherwise expressly provided herein or in the Finance Agreement and except in the case of gross negligence or wilful misconduct of Lessor for which Lessor alone shall be liable, nothing herein contained shall be construed as creating any liability on First National Bank of Louisville individually or personally or Owner to perform any covenant contained herein, all such liability being expressly waived by Lessee; and so far as First National Bank of Louisville or Owner is concerned, Lessee shall look solely to the Estate (as defined in the Trust Agreement, but excluding payments due to Owner Trustee or Owner under Sections 6, 7 (with respect to public liability insurance), 10 and 17) for the performance of the obligations of Lessor herein.

SECTION 28. *Rights, Remedies and Powers.* Each and every right, remedy and power granted to Lessor hereunder shall not be exclusive but shall be cumulative and in addition to any other right, remedy or power herein specifically granted or now or hereafter existing in equity, at law, by virtue of statute or otherwise and may be exercised by Lessor from time to time concurrently or independently and as often and in such order as Lessor may deem expedient. Any failure or delay on the part of Lessor in exercising any such right, remedy or power, or abandonment or discontinuance of steps to enforce the same, shall not operate as a waiver thereof or affect Lessor's right thereafter to exercise the same, and any single or partial exercise of any such right, remedy or power shall not preclude any other or further exercise thereof or the exercise of any other right, remedy or power. In the event Lessor shall have proceeded to enforce any such right, remedy or power and such proceeding shall have been determined adversely to Lessor, then in such event Lessee and Lessor shall be restored to their former positions and the rights, remedies and powers of Lessor shall continue as if no such proceeding had been taken.

SECTION 29. *Execution.* This Lease may be executed in any number of counterparts, but the counterpart delivered to Security Trustee shall be deemed to be the original counterpart. Although this Lease is dated as of July 1, 1975 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Lease to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

FIRST NATIONAL BANK OF LOUISVILLE,
OWNER TRUSTEE, *as Lessor*

(CORPORATE SEAL)

By *Benjamin W. Walker*
Vice President and Trust Officer

Attest:

C. H. Foye
Trust Officer

THE DETROIT EDISON COMPANY,
as Lessee

(CORPORATE SEAL)

By *J. L. Brown*
Senior Executive
Vice President—Finance

Attest:

Frank M. Heise
Secretary

COMMONWEALTH OF KENTUCKY }
COUNTY OF JEFFERSON } ss

On this 7th day of October, 1975, before me personally appeared DENNIS W. WEIHE . . . , to me personally known, who, being by me duly sworn, says that he is a Vice President and Trust Officer of First National Bank of Louisville, that one of the seals affixed to the foregoing instrument is the corporate seal of said association and that said instrument was signed and sealed on behalf of said association by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Roman D. Casady
Notary Public

(NOTARIAL SEAL)

My Commission Expires July 11, 1978

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss

On this 17th day of October, 1975, before me personally appeared E. L. GROVE, JR., to me personally known, who, being by me duly sworn, says that he is the Senior Executive Vice President—Finance of The Detroit Edison Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lillian J. H. Gennell
Notary Public

(NOTARIAL SEAL)

LILLIAN J. H. GENNELL
Notary Public, Wayne County, Mich.

My Commission Expires My Commission Expires 4-25-77

Annex A
Lease of Railroad Equipment

DESCRIPTION OF UNITS
ORTNER FREIGHT CAR COMPANY, Builder

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Estimated Purchase Price per Unit</u>	<u>Estimated Total Purchase Price</u>
125 Ton (5000 cubic feet) aluminum bodied, steel underframe high side rotary dump gondola cars (double rotary couplers)	72	Odd Consecutively Numbered Cars in the Series DEEX 4001-4143	\$45,236	\$3,256,992
125 Ton (5000 cubic feet) aluminum bodied, steel underframe high side rotary dump gondola cars (double fixed couplers)	70	Even Consecutively Numbered Cars in the Series DEEX 4002-4140	45,000	3,150,000
Total				<u><u>\$6,406,992</u></u>