

8131-<sup>B</sup>

RECORDED & INDEXED

NOV 23 1975 - 2 11 PM

INTERSTATE COMMERCE COMMISSION

---

LEASE OF RAILROAD EQUIPMENT

Dated as of November 1, 1975

between

CONSOLIDATION COAL COMPANY

and

LINCOLN NATIONAL BANK AND TRUST COMPANY,

as Trustee under a Trust Agreement  
dated as of the date hereof with  
Borg-Warner Equities Corporation

---

LEASE OF RAILROAD EQUIPMENT dated as of November 1, 1975, between CONSOLIDATION COAL COMPANY (hereinafter called the Lessee), and LINCOLN NATIONAL BANK AND TRUST COMPANY, acting as Trustee under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with Borg-Warner Equities Corporation, a Delaware corporation (said trust company so acting hereinafter called the Lessor; said corporation being hereinafter called the Beneficiary).

WHEREAS the Lessor is entering into a conditional sale agreement dated as of the date hereof with Ortner Freight Car Company, a Delaware corporation (hereinafter called the Builder), (such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS the Builder is assigning its interest in the Security Documentation to Mercantile-Safe Deposit and Trust Company, acting as agent (said company, as so acting, being hereinafter together with its successors and assigns called the Vendor) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessor, the Beneficiary, and The National Life and Accident Insurance Company (hereinafter called the Investor); and

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered, accepted and settled for under the Security Documentation (hereinafter called the Units) at the rentals and for the terms and upon the conditions hereinafter provided;

WHEREAS Continental Oil Company (hereinafter called the "Guarantor") agrees to guarantee the obligations of the Lessee under the Lease pursuant to the Guaranty Agreement dated as of the date hereof (hereinafter called the "Guaranty");

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 the Lessee, the Lessor

hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this lease or under the Security Documentation, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to any of the Units 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 the Lessee's use of all or any of the Units, the taking or requisitioning of any of the Units by condemnation or otherwise, 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 any bankruptcy, reorganization or similar proceeding against the 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 the 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, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Certificates of Lessee; Opinion of Counsel. On the Closing Date under the Security Documentation (such date being herein called the Closing Date), the Lessee will deliver to the Vendor and the Lessor:

- (a) a certificate of an officer of the Lessee

the effect that none of the units of the Equipment was placed in the service of the Lessee or otherwise was used by the Lessee prior to delivery and acceptance of such units under the Security Documentation and the Lease;

and at least five days prior to the Closing Date, the Lessee will deliver to the Vendor and the Lessor:

(b) a Certificate of an officer of the Lessee to the effect that the Lessee is not in default under the Lease or the Consent (as defined in the Participation Agreement); and

at least five days prior to the Closing Date, the Lessee will deliver to the Vendor, the Lessor and the Builder:

(c) an opinion of counsel for the Lessee dated as of the Closing Date addressed to the Lessor, the Vendor, and the Builder to the effect that:

(i) the Lease and the Consent have been duly authorized, executed and delivered and are legal and valid instruments, binding on the parties thereto and enforceable in accordance with their terms;

(ii) the Lease and the Lease Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and there have been filed and recorded such financing statements and other documents as may be necessary to perfect and protect the rights and interests of the Vendor in the Lease and the Guaranty and the payments due and to become due under the Lease and the Guaranty in accordance with the laws of the State of Indiana; no other filing or recordation is necessary for the protection of the rights of the Vendor therein or in the Equipment in any state of the United States of America or the District of Columbia;

(iii) no authorization or approval from any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia is, to the knowledge of said counsel after reasonable investigation, necessary for the execution, delivery and performance of the Guaranty, the Lease, or the Consent or, if any such authorization or approval is necessary, it has been obtained;

(iv) the Lessee is a corporation duly incorporated, validly existing, and in good standing under the laws of the State of Delaware and is duly qualified to do business and in good standing in such other jurisdictions in which the business and activities of the Lessee require such qualification;

(v) to the knowledge of such counsel after reasonable investigation, neither the execution and delivery of the Lease or the Consent nor the consummation of the transactions contemplated therein or the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the certificate of incorporation (as amended) or the by-laws (as amended) of the Lessee or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder;

(vi) to the knowledge of such counsel after reasonable investigation, neither the execution and delivery by the Lessee of the Lease or the Consent nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality presently in effect within the United States; and

(vii) no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects any property or interest therein of the Lessee, now attaches or hereafter will attach to the Equipment or in any manner affects or will affect adversely the right, title and interest of the Lessor or the Vendor therein; provided, however, that such liens may attach to the rights of the Lessee under the Lease in and to the Equipment.

§ 3. Delivery and Acceptance of Units; Closing Date. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Secur-

ity Documentation. The Lessee shall furnish the Vendor and the Lessor six days' prior written notice of the Closing Date. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documentation. As provided in the Security Documentation, each Unit is to be delivered, inspected and accepted concurrently with the settlement therefor on the Closing Date pursuant to Article 4 of the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, the Lessee shall concurrently with the settlement for such Unit pursuant to Article 4 of the Security Documentation on the Closing Date deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on such Closing Date and is marked in accordance with § 5 hereof, whereupon, except as provided in the next paragraph of this § 3, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

The Lessee covenants with the Lessor and the Builder as a third party beneficiary hereof that, in the event of the exclusion of any Unit of Equipment from the Security Documentation pursuant to the second paragraph of Article 3 thereof or the first paragraph of Article 4 thereof or the last paragraph of Article 14 thereof, the Lessee will be obligated to accept all such Units completed by the Builder and to pay the full purchase price therefor when due, all in accordance with the terms on which such Units were to be purchased by Union Electric Company from the Builder pursuant to Union Electric Company Purchase Order No. 64621 dated January 7, 1974, addressed to the Builder which incorporates by reference the Builder's Proposal No. OCN1164-7-73 (such documents being limited to Union Electric Company's order for 70 Units of railroad equipment for its Labadie plant) (such documents hereinafter called the "Purchase Order"), which Purchase Order for the above-mentioned 70 Units of railroad equipment has been assigned to the Lessor pursuant to a Purchase Order Assignment dated as of November 1, 1975. The Lessor will assign, transfer and set over to the Lessee all the right, title and interest of the Lessor in and to the Units so excluded and the Purchase Order to the extent relating thereto.

The delivery, inspection and acceptance hereunder of any Unit of Equipment excluded from the Security Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such Unit to this Lease.

§ 4. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, (i) a first rental payment on December 1, 1975, and (ii) 60 consecutive quarterly payments payable in dollars on March 1, June 1, September 1 and December 1 of each year commencing March 1, 1976, to and including December 1, 1990. The rental payment payable on December 1, 1975, shall be in an amount equal to .0197% of the Purchase Price (as defined in the Security Documentation) of each Unit then subject to this Lease for each day elapsed from the date such Unit is settled for under the Security Documentation to December 1, 1975. The next 60 rental payments shall each be in an amount equal to 2.53% of the Purchase Price of each Unit then subject to this Lease. On December 1, 1975, and the Cut-Off Date (as defined in the Participation Agreement), the Lessee shall also pay, as additional rental hereunder, amounts equal to the amounts required by the Lessor to make the payments provided for in the last paragraph of Paragraph 2, of the Participation Agreement.

The rental payments hereinbefore set forth are subject to adjustment pursuant to §§ 11 and 18 hereof.

If any of the quarterly rental payment dates referred to above is not a business day the quarterly rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Fort Wayne, Indiana, or Baltimore, Maryland, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments (other than payments owing to the Lessor or the Beneficiary pursuant to Sections 8 [with respect to public liability insurance], 11 and 18 or payments due or becoming due after the obligations of the Lessor in respect of the Security Documentation have been fully satisfied, which payments shall be made directly to the Lessor) provided for in this Lease, including, but not limited to, the payments provided for in this § 4 and in § 8 hereof (except as otherwise provided above), at the principal office of

the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance by wire transfer of immediately available funds not later than the next business day following receipt thereof to the Lessor at such place as the Lessor shall specify in writing. The Vendor will pursuant to Paragraph 1 of the Lease Assignment (as defined in the Participation Agreement) acknowledge receipt from the Lessee of all payments made by the Lessee to the Vendor pursuant to the immediately preceding sentence. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., local time, on the date such payment is due.

§ 5. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 8, 12 and 15 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 4 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 7, 8, 11 and 16 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 6. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed, such road 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-half inch in height, the words "Ownership subject to a Security Agreement Filed under the Inter-

state Commerce Act, Section 20c", "Owned by a Bank or Trust Company under a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to such effect and to the effect that such filing and recordation will protect the interest of the Lessor and the Vendor in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state and local government or agency thereof is necessary in order to protect the interest of the Lessor and the Vendor in and to the Units in the United States of America or any state thereof. The Units may be lettered with the name or initials or other insignia customarily used by the Lessee or its affiliates or its designated assignees.

Except as provided in the immediately preceding paragraph, the 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.

§ 7. Taxes. The Lessee agrees to pay and hold harmless the Lessor and the Beneficiary from all documentation, license, registration and other fees and taxes, levies, imposts, duties, charges or withholdings of any nature whatsoever, together with any penalties, fines or interest thereon (for the purpose of this § 7 collectively called "Taxes"), imposed against the Lessor or the Beneficiary or the equipment subject to this Lease or any part thereof by any Federal, state or local Government or taxing authority in the United

States or by any foreign country or subdivision thereof, upon or with respect to, or in any way relating to or arising out of this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which Taxes the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein; providing, however, that the above does not include, (i) federal Taxes based upon, or measured by, the net income or excess profits of the Lessor or the Beneficiary; (ii) Taxes of any state or political jurisdiction which are based upon, or measured by, the net income or excess profits of the Lessor or the Beneficiary and are (A) imposed by the respective jurisdiction in which the principal office of the Beneficiary or the Lessor, as the case may be, is located, or (B) imposed by any other jurisdiction in which Lessor or the Beneficiary, as the case may be, is subject to taxes, fees or other charges to the extent such Taxes result in a reduction of the liability of the Lessor or the Beneficiary, as the case may be, for Taxes imposed by the respective jurisdiction in which the principal office of Lessor or the Beneficiary, as the case may be, is located, (iii) Taxes (if and to the extent that any person indemnified hereunder is entitled to a credit therefore against its United States Federal income taxes or is indemnified by the Lessee pursuant to Paragraph 18 of this Lease) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Lessor (in its individual capacity) and the Beneficiary other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or jurisdiction on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (iv) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Beneficiary or any transfer or disposition by the Beneficiary resulting from bankruptcy or other proceedings for the relief of creditors in which the Beneficiary is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease unless in each case an Event of Default shall have occurred and be continuing; (v) any Taxes imposed on or measured by any fees or compensation received by the Lessor in its individual capacity; and (vi) Taxes which are imposed on or measured solely by the net

income of the Lessor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this § 7; provided further that with respect to those returns, claims or acts which are not the responsibility of the Lessee, the Lessee shall not be obligated to pay for any of the above Taxes which are due to the Lessor's or Beneficiary's negligence, failure to file timely returns, failure to make proper elections, failure to claim deductions or any other acts which cause the Taxes that otherwise would not have been imposed. The Lessee will also pay promptly all Taxes which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Taxes which might in any way affect the title of the Lessor or the interest of the Beneficiary or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any Taxes of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such Taxes and the nonpayment thereof does not, in the reasonable opinion of the Lessor and the Beneficiary, adversely affect the title, property or rights of the Lessor and the Beneficiary hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof and the Lessor and the Beneficiary agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any Taxes shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefore; provided, however, that the Lessor shall have given the Lessee written notice of such Taxes prior to such payment.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this § 7, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any reports with respect to Taxes are

required to be made, the Lessee will, where permitted to do so under applicable Rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor and the Vendor in the Units as shall be satisfactory to the Lessor and Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement, and, if promptly requested by the Lessor or the Beneficiary, will prepare the same to the best of its ability within a reasonable time prior to the date such reports are to be filed.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Taxes, pursuant to this § 7, such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

The Lessee shall, whenever reasonably requested by the Lessor or the Beneficiary, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor and the Beneficiary of the Lessee's performance of its duties under this § 7. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

§ 8. Maintenance; Casualty Occurrences; Insurance.  
The Lessee agrees that, at its own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation, or taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of the Lease or for an indefinite period, but only when such indefinite period shall exceed the term of the Lease, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 16 hereof, the Lessee shall promptly and fully notify the Lessor

and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Schedule B to the Lease. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall 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 or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee 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. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale (or in the case of a requisition or taking by the United States Government which exceeds the term of the Lease, to any awards or other payments made in compensation for such requisition or taking) to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation in an amount equal to any payment made by the Builder to the Lessor in respect thereof under the Security Documentation.

Subject to adjustment pursuant to the provisions of § 18 hereof, the Casualty Value of each Unit as of the 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 Schedule B hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 16 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, namely, an amount equal to 20% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the

Lessee 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. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use by the United States Government (hereinafter called the Government) of any Unit during the term of this Lease or any renewal thereof all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 13 or § 16 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 13 or § 16, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall, to the extent of the Casualty Value theretofore paid by the Lessee, be paid over to, or retained by the Lessee, and any such amounts paid in excess of such Casualty Value shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 8 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability

insurance, in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it and the benefit thereof shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the Conditional Sale Indebtedness, if any, evidenced by the Security Documentation shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear; provided, however, that the Lessee shall not be obligated to maintain property insurance for the Equipment in an amount in excess of the Casualty Value of the Equipment as of the next succeeding rental payment date; and provided, further, that if the Lessee does not customarily insure similar equipment owned by it, the Lessee shall not be obligated to insure the Equipment subject to this Lease. If the Lessor shall receive any insurance proceeds, condemnation payments or amounts in settlement for damaged or destroyed cars in accordance with the Interchange Rules of the Association of American Railroads (hereinafter called AAR Recoveries) in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds, condemnation payments or AAR Recoveries to the Lessee to reimburse the Lessee for the loss of use of such Unit; provided, however, that any AAR Recoveries or condemnation payments shall be paid to or retained by Lessor to the extent they are in excess of the Casualty Value. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 9. Representations and Warranties. The Lessee represents and warrants as follows:

(a) The Lessee has not directly or indirectly offered or sold any of the Conditional Sale Indebtedness, as defined in the Security Documentation, or other securities to, solicited offers to buy any of the Conditional Sale Indebtedness or other securities from, or otherwise approached or negotiated in respect of the purchase or sale or other disposition of any of the Conditional Sale Indebtedness or other securities with, any person so as to bring the sale of the Conditional Sale Indebtedness within the provisions of Section 5 of the Securities Act of 1933, as amended. The Lessee will not offer any conditional sale indebtedness or other securities to, or solicit any offer to buy any thereof from any other person or approach or negoti-

ate with any other person in respect thereof, so as to bring the sale of the Conditional Sale Indebtedness within the provisions of Section 5 of said Securities Act.

(b) No authorization or approval from any governmental or public body or authority of the United States of America or of any State thereof or the District of Columbia is necessary for the execution, delivery and performance by the Lessee of the Lease, the Consent or the Guaranty; or if any such authorization or approval is necessary, it has been obtained.

(c) The Lessee has furnished to the Beneficiary and the Investor balance sheets of the Guarantor as of December 31, 1973 and 1974, and related statements of income and retained earnings for the years then ending and for the six-month period ending June 30, 1975. Such financial statements are in accordance with the books and records of the Guarantor and have been prepared in accordance with generally accepted accounting principles. These statements have been prepared on a consistent basis throughout the period covered thereby. The financial statements present fairly the financial condition of the Guarantor at such dates and the results of its operations for such periods.

(d) The Equipment will be used in interstate commerce, and the Lessee so covenants with the Lessor and with the Investor as third party beneficiary.

The Lessor represents and warrants as follows:

(a) The Lessor is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Indiana.

(b) The Lessor has the corporate power, authority and legal right to carry on its business as now conducted, and is duly authorized and empowered to execute and deliver the Trust Agreement, the Guaranty, the Lease, the Conditional Sale Agreement, the Lease Assignment and the Consent, and to fulfill and comply with the terms, conditions and provisions hereof and thereof.

(c) The Trust Agreement, the Guaranty, the Lease, the Conditional Sale Agreement, the Lease Assignment and the Consent have been duly authorized, and have been, or will be on or before the Closing Date, duly

executed and delivered and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute or will then constitute valid, legal and binding agreements, enforceable in accordance with their terms.

§ 10. Reports. On or before January 31 in each year, commencing with the calendar year 1976, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of the commencement of this Lease in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating as at the preceding December 31 that, in the case of all Units then leased hereunder and covered by the Security Documentation, the numbers and markings required by § 16 hereof and by the Security Documentation have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records, if any, with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

The Lessee will furnish to the Lessor, the Vendor, the Beneficiary and the Investor (i) within 45 days after the end of each of the first three quarterly fiscal periods of the Guarantor, statements of income and surplus of the Guarantor and its consolidated subsidiaries as of the close of such periods, in comparative form with the corresponding fiscal period in the preceding fiscal year, in reasonable detail and certified by any Vice President or the Treasurer of the Guarantor, (ii) within 90 days after the close of each of the fiscal years of the Guarantor, balance sheets of the Guarantor and its consolidated subsidiaries as of the close of such fiscal years, together with the related statements of income and surplus and source and application of funds for such fiscal years, in comparative form with the preceding fiscal year, all in reasonable detail and certified by a recognized national firm of independent public accountants, such certification including their certificates and accompanying comments, (iii) within 90 days after the close of the fiscal year of the Lessee, a certificate of

the Lessee, signed by a principal financial officer, to the effect that the signer has reviewed the relevant terms of this Lease, and has made, or caused to be made under his supervision, a review of the transactions and condition of the Lessee during the preceding fiscal year, and that such review has not disclosed the existence during such period, nor does the signer have knowledge of the existence, as at the date of such certificate, of any condition or event which constitutes a default, an Event of Default or event of default or which, after notice or lapse of time or both, would constitute such a default, an Event of Default or event of default or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Lessee has taken or is taking or proposes to take with respect thereto, (iv) promptly upon the filing of the same, the annual reports of the Guarantor under the Securities Exchange Act of 1934, and (v) from time to time such other information as the Lessor may reasonably request. The Lessee will furnish the Lessor from time to time on request such information as the Lessee or the Lessor may be required to furnish to any person pursuant to the Security Documentation.

§ 11. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 2 and 3 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the follow-

ing: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part of any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, 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 the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee.

Except as otherwise provided in the next preceding paragraph, any and all additions to any Unit and any and all

parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documentation) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless, except with respect to Taxes as defined in and governed by § 7 hereof, the Lessor, the Beneficiary and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under the Security Documentation, the Participation Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 16 of this Lease or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation. 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 expiration or termination of the term of this Lease; provided, however, that, so long as no Event of Default (or other event which after lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing, the indemnities arising out of this paragraph shall not be so payable (i) in respect of a Unit arising from acts or events which occur after each Unit has been delivered to the Lessor in accordance with § 16 hereof; (ii) to any party otherwise to be indemnified hereunder resulting from the willful misconduct or gross negligence of such person; (iii) in connection with selling, leasing, disposing of, or attempting to sell, lease or dispose of any Unit (other than in the course of exercising remedies provided in § 12 and § 13 hereof) to any person after the expiration of the Lease Term with respect thereto; (iv) in connection with liabilities arising from the transfer by the Beneficiary of its beneficial interest in such Unit or by the Vendor of any interest in the Security Documentation,

as the case may be; or (v) in respect of Federal Income Tax benefits except as provided in § 18 hereof.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 12. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in §§ 4, 8 (except as otherwise provided in § 18(a) hereof) or 15 hereof, and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall 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), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

E. an event of default set forth in Article 15 of the Security Documentation shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

F. breach of any of the covenants of or default in any of the obligatory provisions of the Guaranty; or

G. any representation or warranty made by the Lessee herein or in the Consent, or any representation or warranty made by the Guarantor in the Guaranty, or by either the Lessee or the Guarantor in any other agreement, statement or certificate furnished to the Lessor, the Beneficiary or the Vendor in connection with this Lease or the transaction contemplated hereby, proves untrue in any material respect as of the date of issuance or making thereof;

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

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the 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 the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon

the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the 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 the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 5.94% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated plus (B) an amount which, shall give the Beneficiary at least the same after-tax yield and aggregate reportable earnings computed on an after-tax basis on its investment in the beneficial ownership of the Units as it would have received if it had been entitled to utilization of all or such portion of the Investment Credit (as hereinafter defined) ADR Deduction and the Interest Deduction (as such deductions are defined in § 18(a) hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, war-

ranties and covenants made by the Lessee in § 18(a) or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default, such amount to be determined in the manner set forth in §18(a) hereof to reach a Final Determination (as therein defined), plus such sum as will pay or reimburse the Beneficiary for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The 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 not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise 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.

In the event that the Lessee shall have knowledge of an Event of Default under the Lease or an event of default under the Security Documentation, such party shall give prompt telephonic notice (confirmed in writing) thereof to the Vendor, the Lessor and the Beneficiary.

§ 13. Return of Units Upon Default. If this Lease shall terminate pursuant to § 12 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner place such Units upon such storage tracks as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any reasonable place on the tracks of the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense

and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the 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 upon reasonable notice. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .0281% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 13, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 14. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 7, 8, 11, 12 and 18 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Beneficiary and the Lessor's assigns, including the Vendor; the fact that specific references are made to the Vendor in certain provisions hereof shall not be construed to limit the rights of the Vendor assigned to it by the Lessor pursuant to any assignment of the Lease.

So long as the Lessee shall not be in default

under this Lease and no event of default shall exist under the Security Documentation, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the 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 by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the Security Documentation, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon trackage owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from railroads so using any of the Units.

Nothing in this § 14 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of

Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Consent (as defined in the Security Documentation)) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

Without limiting the provisions of the foregoing, it is contemplated that the Lessee shall receive insofar as applicable law and regulations allow all mileage allowance rentals and/or other compensation (hereinafter referred to as "Mileage") payable by carriers by reason of use of the Units and if for any reason the Lessor shall receive any Mileage then (unless an Event of Default shall have occurred and be continuing in which event such Mileage or portion thereof shall be retained by the Lessor until such Event of Default shall no longer be continuing), the Lessor shall remit such Mileage to the Lessee promptly after the Lessee shall furnish to the Lessor, at the Lessee's expense, either (i) a ruling of the Interstate Commerce Commission to the effect that the remittance thereof to the Lessee will not constitute a rebate within the meaning of 49 U.S.C. Section 41, as amended, or (ii) an opinion of counsel to such effect.

§ 15. Purchase and Renewal Options. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than nine months prior to the end of the original term or the first extended term of this Lease, as the case may be, (i) elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for an additional two-year period commencing on the scheduled expiration of the original term or any extended term of this Lease, as the case may be, provided that the Lessee may not so elect to extend the term of this Lease for more than two such additional two-year periods, at a "Fair Market Rental" payable in quarterly payments on March 1, June 1, September 1 and December 1 in each year of such extended term or (ii) elect to purchase all, but not fewer than all, the Units then covered by this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of the original or extended term of this Lease, as the case may be.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental 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 rental. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees

not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

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-user (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. If on or before nine months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by the procedure set forth in the next preceding paragraph for the determination of Fair Market Rental.

Upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units, from the terms and scope of this Lease and to transfer to the Lessee such title to such Units as the Lessor derived from the Builder free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 16. Return of Units upon Expiration of Term.  
The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 30 days and transport the same, at any time within such 30-day period, to any reasonable place on the tracks of the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense

and risk of the Lessee. It is understood and agreed that at the end of said 30-day period, all such expense and risk shall revert to Lessor. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, upon reasonable notice to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 16 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, and/or the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .0281% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 17. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the

purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded as hereinabove set forth prior to the delivery and acceptance hereunder of any Unit.

§ 18(a). Federal Income Taxes. It is the intent of the parties to the lease that it will be a true lease for all Federal, state, city and local income taxes or for franchise taxes measured by net income, and that this Lease does not convey to the Lessee any right, title or interest in the Units except as lessee and that, for all United States income tax purpose (and to the extent applicable for state and local tax purposes), the Beneficiary, as owner of the Units, shall 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 (herein called the Code) to an owner of property, including those sole tax attributes for the loss of which the Beneficiary is indemnified under this § 18(a) which are, the depreciation deduction with respect to the Units authorized under Section 167 of the Code based on the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25 in accordance with Section 167(m) of the Code employing the double declining balance method of depreciation, switching to the sum-of-the-years-digits method when most beneficial to the Beneficiary utilizing the half-year convention as provided in Reg. Sec. 1.167(a)-11(c)(2)(iii) and taking into account an estimated gross salvage value of 20% of the Purchase Price of the Units which will be reduced by 10% of the Purchase Price as provided in Section 167(f) of the Code (such deduction being herein called the ADR Deduction) and deductions with respect to interest payable under the Security Documentation pursuant to section 163 of the Code (such deduction being herein called the Interest Deduction), the 10% investment credit in 1975 (herein called the Investment Credit) with respect to the Purchase Price of the Units pursuant to Section 38 and related sections of the Code for "new section 38 property".

The 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 the Beneficiary over the amount specified to be payable under this Lease on the dates due hereunder, except as specifically provided in this Lease, and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Beneficiary such records as will enable the Beneficiary to determine the extent to which it is entitled to the benefit of the Investment Credit, the ADR Deduction and the Interest Deduction with respect to the Units.

The Lessee represents and warrants that:

(x) for the period prior to the Lessor's receipt of a favorable ruling from the Internal Revenue Service, to the effect that the Lease is a true lease, the Lessor is the owner of the Units and has the right to claim the ADR Deduction (without regard for the applicable gross salvage value) and the Interest Deduction, all the Units constitute property the full Purchase Price of which qualifies for the Investment Tax Credit under Section 50 of the Code and the Lessor is entitled to claim the Investment Tax Credit with respect to the full Purchase Price of all the Units (hereinafter called the Ruling), for Federal income tax purposes, (i) at the time the Beneficiary becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Sections 46 and 48 of the Code and 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(c)(2) of the Code from commencing with the Beneficiary; (ii) all amounts includible in the gross income of the Beneficiary with respect to the Units and all deductions allowable to the Beneficiary with respect to the Units will be treated as derived from or allocable to, sources within the United States; (iii) each Unit will at all times constitute "section 38 property" within the meaning of Section 48(a) of the Code; and

(y) the Lessee will not at any time during the term of this Lease use or fail to use any Unit in such a way (i) as to cause any amounts includible in the gross income of the Beneficiary for Federal income tax purposes with respect to the Units to be treated as derived from or allocable to, sources outside of the United States or (ii) as to disqualify it as "section 38 property" within the meaning of Section 48(a) of the Code and the Lessee will maintain sufficient records to verify such use, which records will be furnished to the Beneficiary within 30 days after receipt of a written demand therefor.

If (i) for any reason (including the inaccuracy of the representations and warranties set forth in subparagraphs (x) and (y) of the preceding paragraph or any act or omission of the Lessee or the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee in connection with any application for the Ruling of the Internal Revenue Service or otherwise) prior to the receipt of the ruling by the Lessor or (ii) subsequent to receipt of the Ruling by the Lessor by reason of the inaccuracy of the certificate delivered pursuant to § 2(a) hereof or the representations and warranties set forth in subparagraph (y) of the preceding paragraph or any act or omission of the Lessee where such act or omission is deemed by the Internal Revenue Service to be the cause of a Loss (as hereinafter defined) (including, but not limited to, the failure of the Lessee to furnish the notice to the Lessor contemplated by the penultimate paragraph of § 18(b), or any inaccuracy in such notice) or by reason or any statement in any letter or document furnished to the Internal Revenue Service by the Lessee in connection with any application for the Ruling being deemed by the Internal Revenue Service to be inaccurate, the Beneficiary shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture all or any portion of the ADR Deduction, the Investment Credit or the Interest Deduction with respect to all or part of any Unit or if for Federal income tax purposes any item of income, loss or deduction with respect to any Unit is treated as derived from or allocable to, sources without the United States under the Code (any such loss, disallowance, recapture or treatment being hereinafter called a Loss), then Lessee shall pay to Lessor, as additional rent, an indemnity calculated in accordance with the following procedures and payable at the times specified below; provided, however, that such rental rate shall not be so increased if the Beneficiary shall have suffered such Loss with respect to all or part

of such Unit as a result of:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 8 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor or the Beneficiary or any transfer or disposition by the Beneficiary or any transfer or disposition by the Beneficiary resulting from bankruptcy or other proceedings for the relief of debtors in which the Beneficiary is the debtor, whether voluntary or involuntary, of any interest in such Unit or in the rentals under the Lease (other than pursuant to the assignment of this Lease to the Vendor) unless in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Beneficiary to claim in a timely manner the Investment Credit, the ADR Deductions (including making all appropriate elections under the applicable Income Tax Regulations), the Interest Deductions or any foreign tax credit or to make a timely election, if permitted by the Code, to treat income and deductions with respect to the Unit as derived from or allocable to, sources within the United States;

(iv) the failure of the Beneficiary to have sufficient liability for Federal income tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deductions or the Interest Deductions, as applicable;

(v) the failure of the Beneficiary to specify, if required by the applicable Income Tax Regulations relating to the election of ADR Deductions, gross salvage value for each Unit of not more than twenty percent of the Purchase Price of such Unit, the failure of the Beneficiary to make an election pursuant to Section 167(f) of the Code to reduce the amount of such gross salvage value by the amount, if any, by which such gross salvage is in excess of ten percent, or the failure of the Beneficiary to establish that the property, if any, in the vintage account which includes such Unit (but not including, however, such Unit itself) is expected to be retired, sold or otherwise disposed of by the Beneficiary at a time when the amount of the

estimated gross salvage value is not more than twenty percent of the original cost or other basis thereof;

(vi) the possession by the Beneficiary at the time the Units are first placed in service or use by the Lessee of a contractual right (within the meaning of Section 4(3) of Rev. Proc. 75-21, 1975-18 IRS 15 and except as provided in Section 4(1)(A) thereof) to cause any party to purchase the Units; the renegotiation by the Beneficiary of the Conditional Sale Agreement if the effect of such renegotiation is to reduce during the term of this Lease (as defined in § 5 hereof) the Beneficiary's investment in the Units below the minimum allowed under Section 4(1)(B) of such Rev. Proc. 75-21; or the failure of the Beneficiary to demonstrate that it expects to receive a profit from the leasing of the Units, apart from the value of or benefits obtained from the tax deductions, allowances credits and other tax attributes arising from such leasing, within the meaning of Section 4(6) of such Rev. Proc. 75-21;

(vii) any amendment to, or change in, the Code or regulations thereunder or the publication of a Revenue Procedure or Revenue Ruling after the delivery to the Lessor under the Conditional Sale Agreement of the Unit to which such Loss relates.

The indemnity payable pursuant to § 18(a) shall consist of (1) an amount payable on each rental payment date during the Term following a Final Determination (as that term is defined below) which (when taken together with the lump sum payment hereinafter described and taking into account the amount, if any, of any interest and penalty assessed against the Beneficiary by reason of any determination) will give the Beneficiary at least the same after-tax yield and aggregate reportable earnings, computed on an after-tax basis, on its investment in the beneficial ownership of the Units as it would have received had there been no Loss and (2) a lump sum payable on the rental payment date next following a Final Determination in an amount equal to the difference between (i) the aggregate amount of rental payments which would have been paid from the commencement of the Lease term to and including the rental payment date preceding such Final Determination had additional rent in the amount calculated pursuant to clause (1) above been payable from the commencement of the Lease term and (ii) the aggregate amount of rental payments actually paid over the same period.

Lessor agrees to give Lessee prompt notice of the pendency of any proposed Determination which may have the result as aforesaid, and to cause the Beneficiary to take such action in connection with contesting such proposed Determination as Lessee shall request from time to time; provided, however, that (i) within 30 days after notice by Lessor to Lessee of such proposed Determination, Lessee shall request in writing that such proposed Determination be contested; (ii) the Beneficiary, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such claim and may, at its sole option, either pay (in which event Lessee shall advance to the Beneficiary the funds required to be paid) the tax claimed and sue for a refund in the appropriate United States District Court and/or the United States Court of Claims, as the Beneficiary shall elect, or contest such claim in the Tax Court of the United States; (iii) prior to taking such action, Lessee shall have furnished Lessor and the Beneficiary with an opinion of independent tax counsel satisfactory to Lessor and the Beneficiary to the effect that a meritorious defense exists to such proposed Determination; and (iv) Lessee shall have indemnified the Beneficiary in a manner satisfactory to the Beneficiary for any liability or loss which the Beneficiary may incur as a result of contesting such claim and shall have agreed to pay the Beneficiary on demand all costs and expenses which Lessor may incur in connection with contesting such claim, including, without limitation (A) reasonable attorneys' and accountants' fees and disbursements and (B) the amount of any interest or penalty which may ultimately be payable to the United States Government as the result of contesting such proposed Determination, and Lessee shall have furnished reasonable security for such indemnification as may be requested. In the case of any such proposed Determination by the Internal Revenue Service referred to above, Lessor agrees promptly to notify Lessee in writing of such proposed Determination and agrees that the Beneficiary will not make payment of the tax claimed for at least 30 days after the giving of such notice and agrees to give to Lessee any relevant information relating to such proposed Determination which may be particularly within the knowledge of Lessor or the Beneficiary and shall otherwise cooperate with Lessee in good faith in order effectively to contest any such proposed Determination.

In the event of a Determination for federal income tax purposes, at the earliest possible date thereafter, but not later than 30 days prior to the next rental payment date

occurring more than 30 days later, Lessor shall determine the indemnity payable in their opinion by Lessee pursuant to this § 18(a) and shall submit in writing to Lessee the amounts so determined, together with such supporting schedules, calculations and other data as Lessor deems appropriate. If Lessee agrees with the Beneficiary's calculations, Lessee shall notify Lessor of such agreement in writing within 10 days after receipt of Lessor's above-mentioned calculation and supporting schedules, and a Final Determination shall be deemed to have occurred upon the giving of such notice by Lessee. If Lessee disagrees with Lessor's above-mentioned calculation, then Lessee shall determine what it believes to be the indemnity payable pursuant to this § 18(a) and shall submit in writing such calculation, together with similar supporting materials, to Lessor and the Beneficiary within such 10-day period. If within 10 days after receipt by Lessor and the Beneficiary of Lessee's calculation and schedules, the Lessor, the Beneficiary and the Lessee shall agree in writing as to such indemnity, then such agreement shall constitute a Final Determination and shall be deemed to have occurred as of the date of such agreement. However, if Lessor, the Beneficiary and Lessee cannot agree as to such indemnity, then such determinations of Lessor and Lessee, together with whatever supporting schedules, calculations and other data Arthur Anderson & Co. deems relevant to calculate the amount of the indemnity shall be submitted to the accounting firm of Arthur Anderson & Co. who shall within 10 days after such submission make an independent calculation as to such indemnity, which shall be final and binding upon the parties hereto, and shall notify Lessor and Lessee promptly thereof and Final Determination shall be deemed to have occurred upon the receipt of such notice by Lessee. Lessee shall pay any fees payable to, or expenses of Arthur Anderson & Co. incurred in connection with the foregoing. If Lessee has advanced funds to the Beneficiary in order to enable the Beneficiary to pay a proposed calculation, any amounts payable by Lessee to the Beneficiary as a result of a Final Determination shall first be applied against the obligation of the Beneficiary to repay such advance. Any refund shall, to the extent it exceeds the lump sum additional rent, be paid to Lessee and any excess of the amount advanced to pay the proposed calculation over the lump sum additional rent shall be repaid by the Beneficiary solely by reducing or eliminating the periodic additional rent until fully repaid.

For the purposes of this § 18(a), a Determination

for Federal income tax purposes shall be deemed to occur when any one of the following events happens: (i) Lessor, the Beneficiary and Lessee shall have entered into a written agreement with respect to the matters contemplated by § 18(a); (ii) a deficiency is proposed by the Internal Revenue Service and Lessee does not request the Beneficiary to contest said deficiency as hereinbefore provided; or (iii) a Determination shall have been made within the meaning of § 1313(a)(1), (2) or (3) of the Code.

In the event the rental rates shall be increased as hereinbefore provided, the Casualty Values set forth in § 8 hereof and the damages and amounts set forth in subparagraph (b) of § 12 hereof shall be adjusted accordingly as agreed by the Beneficiary and the Lessee.

As long as any portion of the Conditional Sale Indebtedness (as defined in the Security Documentation) is outstanding, any increase in rentals and adjustments in Casualty Values, as aforesaid, or other payments to be made by the Lessee pursuant to this § 18(a) or § 18(b), or payments owing to the Lessor or the Beneficiary pursuant to § 8 (with respect to public liability insurance) or § 11 (all such payments hereinafter called Indemnity Payments) shall be obligations of the Lessee unsecured by any interest in the Units. Default in payment of any Indemnity Payment shall not constitute an Event of Default hereunder, but, in case of default in payment of any Indemnity Payment, the Lessor may proceed to recover the amount provided as liquidated damages for failure to make the payments required to be made by Lessee pursuant to § 18(a) or § 18(b) in accordance with the provisions of clause (x)(B) of paragraph (b) of § 12 hereof.

The Beneficiary, at its sole expense, will apply for and diligently seek the Ruling. The Lessee will join in any request for such Ruling, which request must be mutually satisfactory to the Beneficiary and the Lessee, and 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 matter claimed in such requests) as shall be reasonably requested as necessary and appropriate for such request by the Beneficiary.

For purposes of this § 18(a), the term "Beneficiary" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Beneficiary is a member, if consolidated returns are filed for such affiliated group

for Federal income tax purposes.

§ 18(b). Capital Expenditures. In the event and to the extent that the cost of any improvement and/or addition (hereinafter called Capital Expenditures) to a Unit made by the Lessee, under and pursuant to the terms of this Lease or otherwise, is required to be included in the gross income of the Beneficiary for Federal income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the rentals for the Units set forth in § 4 hereof shall, in the manner provided below, be increased to such amount or amounts as will, after taking into account any present or future tax benefits that the Beneficiary may reasonably be anticipated to derive from its additional investment in the Units by reason of said inclusion (including without limitation any current deductions, future depreciation deductions and investment tax credit), give the Beneficiary at least the same after-tax yield and aggregate reportable earnings, computed on an after-tax basis, on its investment in the beneficial ownership of the Units as it would have received if the cost of such Capital Expenditures had not been includible in the Beneficiary's gross income.

In determining the present or future tax benefits to be taken into account by the Beneficiary in establishing the rental increase required hereby, the Beneficiary shall for all Federal income tax returns filed following the receipt of Lessee's notice pursuant to the penultimate paragraph of this § 18(b) in regard to the matter set forth in such notice be deemed to have attempted to maximize such benefits and hence minimize the increase in rents by making such elections (including where advantageous the applicable asset guideline repair allowance and accelerated depreciation, if then permitted) and utilizing such conventions and accounting methods as will further such objectives, but only to the extent that said elections, conventions and accounting methods are not inconsistent with the intent of the parties expressed in the first paragraph of § 18(a).

In the event the cost of a Capital Expenditure made by the Lessee shall be required to be included in the gross income of the Beneficiary for Federal income tax purposes, at the earliest possible date thereafter, but not later than 30 days prior to the next rental payment date occurring more than 30 days later, Lessor shall determine the indemnity payable in their opinion by Lessee pursuant to this § 18(b) and shall submit in writing to Lessee the amounts so determined, together with such supporting schedules, calculations and other data as Lessor shall deem appropriate. If the Lessee

agrees with the Lessor's calculations, Lessee shall notify Lessor of such agreement in writing 10 days after receipt of Lessor's above-mentioned determination and shall pay to the Lessor the additional rent therein indicated. If Lessee disagrees with Lessor's above-mentioned determination, then Lessee shall determine what it believes to be the indemnity payable pursuant to this § 18(b) and shall submit in writing such determination, together with similar supporting materials, to the Lessor and the Beneficiary within such 10-day period. If within 10 days after receipt by Lessor and the Beneficiary of Lessee's determination and schedules, the Lessor, the Beneficiary and Lessee shall agree in writing as to such indemnity, the Lessee shall pay the additional rent agreed upon. However, if Lessor, the Beneficiary and Lessee cannot agree as to such indemnity, then such determinations of Lessor and Lessee, together with whatever supporting schedules, calculations and other data Arthur Anderson & Co. deems relevant to calculate the amount of the indemnity shall be submitted to the accounting firm of Arthur Anderson & Co. which shall within 10 days after such submission make an independent determination as to such indemnity, which shall be final and binding upon the parties hereto and shall notify Lessor and Lessee promptly thereof and the Lessee shall pay to the Lessor the additional rental so determined. Lessee shall pay any fees payable to, or expenses of Arthur Anderson & Co., incurred in connection with the foregoing. The Lessee shall pay to the Lessor as additional rent the indemnity hereinabove determined on the next rental payment date following the final determination of the amount of such indemnity due.

For purposes of this § 18(b) the cost of Capital Expenditures made by the Lessee shall be deemed to be "required to be included in the gross income of the Beneficiary for Federal income tax purposes" if such inclusion is required by (i) any private ruling letter issued to the Beneficiary by the Internal Revenue Service that has not been revoked or otherwise rendered inapplicable at the time the cost of said Capital Expenditures is incurred; (ii) any provision of the Code or the applicable regulation enacted or adopted after the date of this Lease; or (iii) any published revenue ruling or revenue procedure of the Internal Revenue Service issued after the date of this Lease which has not been held invalid by a court having ultimate appellate jurisdiction over the Federal income tax liability of the Beneficiary.

The Beneficiary agrees that it will, upon the writ-

ten request and at the sole expense of the Lessee (A) seek a modification of any private ruling letter described in (i) of the preceding paragraph to eliminate the requirement that the cost of Capital Expenditures be included in the Beneficiary's gross income and (B) contest (including the prosecution of any allowable appeals) the inclusion of the cost of Capital Expenditures in its gross income if such inclusion is required pursuant to (ii) or (iii) of the preceding paragraph in such forum as it, in its sole judgment but with due regard to the Lessee's advice, shall select; provided, however, that the Beneficiary shall not be required to contest such inclusion unless it has received an opinion from independent counsel selected by the Lessee and acceptable to the Beneficiary that there is a reasonable basis for contesting such inclusion and the Lessee has advanced to the Beneficiary such sums as the Lessor may reasonably deem necessary to pay the costs of such contest.

It is further agreed that the Lessee may claim a deduction for Federal income tax purposes, as additional rent or otherwise, with respect to any cost of Capital Expenditures which are required to be included in the gross income of the Beneficiary for Federal income tax purposes.

The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Beneficiary gives the Lessee written notice that the Beneficiary's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Capital Expenditures which are required to be included in the gross income of the Beneficiary for Federal income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Beneficiary describing such Capital Expenditures in reasonable detail and specifying the cost thereof with respect to each Unit.

For purposes of this § 18(b) the term "Beneficiary" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Beneficiary is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

§ 19. Interest on Overdue Rentals. Anything to the contrary herein notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to

the extent legally enforceable, an amount equal to 10-3/4% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 20. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at 116 East Berry Street, Fort Wayne, Indiana 46802, with a copy to the Beneficiary at One IBM Plaza, Chicago, Illinois 60611, Attention of Vice President--Leasing Division.

(b) if to the Lessee, at Suite 3300, One Oliver Plaza, Pittsburgh, Pennsylvania 15222, Attention of Vice President--Finance.

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at P. O. Box 2258, 2 Hopkins Plaza, Baltimore, Maryland 21203, attention of Corporate Trust Department.

§ 21. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 22. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Assignment hereof to the

Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, 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.

§ 23. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§ 24. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, covenants, undertakings and agreements by Lincoln National Bank and Trust Company or for the purpose or with the intention of binding said trust company personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by said trust company solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said trust company or the Beneficiary or on account of any representation, covenant, undertaking or agreement of the Lessor, either express or implied, all such personal liability, if any, being expressly waived and released by the Lessee.

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

CONSOLIDATION COAL COMPANY,

by

Virgil J. Massaro  
Vice President

[Corporate Seal]

Attest:

J. J. [Signature]  
Assistant Secretary

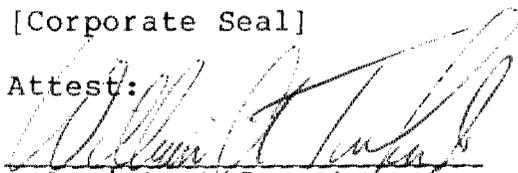
LINCOLN NATIONAL BANK AND TRUST  
COMPANY,

by

  
\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

  
\_\_\_\_\_  
Assistant Secretary  
TRUST OFFICER

STATE OF PENNSYLVANIA, )  
 ) SS.:  
COUNTY OF ALLEGHENY, )

On this *24th* day of *November* 1975, before me personally appeared *Richard J. Nassaro*, to me personally known, who, being by me duly sworn, says that he is *Vice President* of CONSOLIDATION COAL COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, 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.

*Victoria L. Lewis*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

VICTORIA L. LEWIS, Notary Public  
Pittsburgh, Allegheny County, Pa.  
My Commission Expires  
January 13, 1978

STATE OF INDIANA, )  
 ) SS.:  
COUNTY OF ALLEN, )

On this *26th* day of *Nov*, 1975, before me personally appeared *Roy W. Kern*, to me personally known, who, being by me duly sworn, says that he is *Vice President* of LINCOLN NATIONAL BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said trust company, that said instrument was signed and sealed on behalf of said trust company 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 trust company.

*Patricia L. Volmerding*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires *5-3-78*

SCHEDULE A TO LEASE

| <u>Type</u>        | <u>Quantity</u> | <u>Road Numbers</u>                             |
|--------------------|-----------------|---|
| 100-ton Hopper Car | 70              | GUEx 75226<br>through and<br>including<br>75295 |

SCHEDULE B TO LEASE

| <u>Rental Payment Date</u> | <u>Percentage of<br/>Purchase Price</u> |
|----------------------------|---|
| December 1, 1975           | 107.4068                                |
| March 1, 1976              | 109.495                                 |
| June 1, 1976               | 112.166                                 |
| September 1, 1976          | 114.151                                 |
| December 1, 1976           | 115.652                                 |
| March 1, 1977              | 111.333                                 |
| June 1, 1977               | 112.534                                 |
| September 1, 1977          | 113.853                                 |
| December 1, 1977           | 115.239                                 |
| March 1, 1978              | 110.521                                 |
| June 1, 1978               | 111.970                                 |
| September 1, 1978          | 113.392                                 |
| December 1, 1978           | 114.722                                 |
| March 1, 1979              | 110.278                                 |
| June 1, 1979               | 105.008                                 |
| September 1, 1979          | 106.051                                 |
| December 1, 1979           | 107.005                                 |
| March 1, 1980              | 102.558                                 |
| June 1, 1980               | 103.323                                 |
| September 1, 1980          | 103.997                                 |
| December 1, 1980           | 104.585                                 |
| March 1, 1981              | 100.185                                 |
| June 1, 1981               | 94.176                                  |
| September 1, 1981          | 94.495                                  |
| December 1, 1981           | 94.732                                  |
| March 1, 1982              | 90.434                                  |
| June 1, 1982               | 90.488                                  |
| September 1, 1982          | 90.468                                  |
| December 1, 1982           | 90.371                                  |
| March 1, 1983              | 86.241                                  |
| June 1, 1983               | 79.556                                  |
| September 1, 1983          | 79.218                                  |
| December 1, 1983           | 78.808                                  |
| March 1, 1984              | 74.905                                  |
| June 1, 1984               | 74.323                                  |
| September 1, 1984          | 73.685                                  |
| December 1, 1984           | 72.980                                  |
| March 1, 1985              | 69.318                                  |
| June 1, 1985               | 68.444                                  |
| September 1, 1985          | 67.523                                  |
| December 1, 1985           | 66.539                                  |

| <u>Rental Payment Date</u> | <u>Percentage of<br/>Purchase Price</u> |
|----------------------------|---|
| March 1, 1986              | 63.107%                                 |
| June 1, 1986               | 61.959                                  |
| September 1, 1986          | 60.772                                  |
| December 1, 1986           | 59.527                                  |
| March 1, 1987              | 56.312                                  |
| June 1, 1987               | 54.908                                  |
| September 1, 1987          | 53.473                                  |
| December 1, 1987           | 51.985                                  |
| March 1, 1988              | 48.975                                  |
| June 1, 1988               | 47.334                                  |
| September 1, 1988          | 45.670                                  |
| December 1, 1988           | 43.958                                  |
| March 1, 1989              | 41.140                                  |
| June 1, 1989               | 39.280                                  |
| September 1, 1989          | 37.394                                  |
| December 1, 1989           | 35.454                                  |
| March 1, 1990              | 32.823                                  |
| June 1, 1990               | 30.737                                  |
| September 1, 1990          | 28.614                                  |
| December 1, 1990           | 25.000                                  |