

53 WALL STREET
NEW YORK 10005
(212) 483-1000
CABLE: "NUMLATUS"
TELEX: ITT 421295
WU 128103

21 AVENUE GEORGE V
75008 PARIS
261.53-48
"NUMLATUS PARIS"
TELEX: 842-650286

40 BASINGHALL STREET
LONDON EC2V 5DE
01-638-1821
"NUMLATUS LONDON EC2"
TELEX: 851-884274

SHEARMAN & STERLING

CITICORP CENTER

153 EAST 53RD STREET

NEW YORK 10022

(212) 483-1000
TELEX: 126698

GAMMON HOUSE
ROOM 1801
12 MARCOURT ROAD
HONG KONG
5-253028
"NUMLA HK"
CABLE: "NUMLATU"
TELEX: 780 833-14

POST OFFICE BOX 2948
ABU DHABI
UNITED ARAB EMIRATES
24477
CABLE: "NUMLATU"
TELEX: 949-2662AH

BUREAU 1109
IMMEUBLE MAURETANIA
PLACE DU PEROU
AGHA, ALGER, ALGERIE
63-91-79
TELEX: 836-52052SHXP

RECORDATION NO. 10585 Filed 1425

JUL 3 1979 - 2 00 PM

INTERSTATE COMMERCE COMMISSION

July 3, 1979

No. 9-1944980
Date JUL 3 1979
Fee \$ 50
ICC Washington, D. C.

H.G. Homme, Esq., Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Winchester and Western Railroad Company
Lease Financing Dated as of June 25, 1979

Dear Mr. Homme:

Pursuant to 49 U.S.C. §11303(a) and the Commission's Rules and Regulations thereunder, I enclose herewith on behalf of Winchester and Western Railroad Company for filing and recordation counterparts of the following document:

Lease of Railroad Equipment dated as of June 25, 1979, between Winchester and Western Railroad Company and Merrill Lynch Leasing Inc.

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

(1) Lessor-Owner:

Merrill Lynch Leasing Inc.
1 Liberty Plaza
165 Broadway
New York, New York 10080

(2) Lessee:

Winchester and Western Railroad Company
c/o Unimin Corporation
50 Locust Avenue
New Canaan, Connecticut 06840

Please file and record the document referred to in this letter.

David James Wray
Charles [Signature]

RECEIVED
JUL 3 1 54 PM '79
I.C.C.
FEE OPERATION

The equipment covered by the aforementioned document consists of the following:

50 Portec, Inc. 100-ton, 4000 cubic foot covered hopper cars bearing identifying numbers WW 3001 through WW 3050.

There is also enclosed a check for \$50 payable to the Interstate Commerce Commission, representing the fee for recording the Lease of Railroad Equipment.

Please stamp all counterparts of the enclosed document with your official recording stamp. You will wish to retain one copy of the instrument for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

David J. Strupp

David. J. Strupp
As Agent for Winchseter
and Western Railroad
Company

Encls.

Interstate Commerce Commission
Washington, D.C. 20423

7/2/79
7/3/79

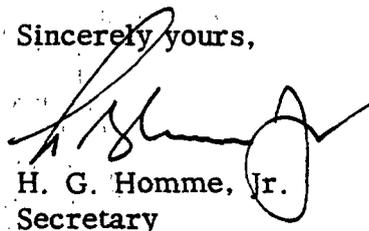
OFFICE OF THE SECRETARY

David J. Strupp
Shearman & Sterling
Citicorp Center
153 East 53rd Street
New York, N.Y. 10022

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 7/3/79 at 2:00pm, and assigned recordation number(s). 10585

Sincerely yours,



H. G. Homme, Jr.
Secretary

Enclosure(s)

SE-30
(3/79)

[Execution Copy]

10585

RECORDATION NO. Filed 1425

JUL 3 1979 - 2 00 PM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of June 25, 1979

between

WINCHESTER AND WESTERN RAILROAD COMPANY,

as Lessee

and

MERRILL LYNCH LEASING INC.,

as Lessor

LEASE OF RAILROAD EQUIPMENT dated as of June 25, 1979, between WINCHESTER AND WESTERN RAILROAD COMPANY, a Virginia corporation (the "Lessee"), and MERRILL LYNCH LEASING INC., a Delaware corporation (the "Owner").

The Owner has entered into a Purchase Agreement dated as of June 25, 1979 (the "Purchase Agreement") with ITEL Corporation, Rail Division ("ITEL"), pursuant to which the Owner has agreed to purchase and take delivery of the railroad equipment described in Schedule A hereto (the "Equipment").

The Owner, the Lessee and Unimin Corporation have entered into a Participation Agreement dated as of June 25, 1979 (the "Participation Agreement"), which provides for the purchase of the Equipment by the Owner and the lease of the Equipment to the Lessee.

The Lessee agrees to lease from the Owner all the units of the Equipment or such lesser number of Units are delivered and accepted and settled for under this Purchase Agreement) at the rentals and for the term and upon the conditions hereinafter provided (each such unit so leased being herein a "Unit").

Unimin Corporation, pursuant to a Guaranty Agreement substantially in the form of Exhibit C to the Participation Agreement (the "Guaranty Agreement"), will guarantee the obligations of the Lessee under this Lease and under the Participation Agreement.

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Owner hereby agrees to lease the Units to the Lessee upon the following terms and conditions:

SECTION 1. Net Lease. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, 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 set-offs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner, whether under this Lease or otherwise, including the Lessee's rights by subrogation hereunder or thereunder against the Owner or otherwise; nor, except as otherwise

expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or 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 Owner for any reason whatsoever.

SECTION 2. Delivery and Acceptance of Units. The Owner hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Purchase Agreement; provided, however, that such acceptance shall be in accordance with the provisions of the Purchase Agreement. Each delivery of a Unit to the Owner under the Purchase Agreement shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Owner under the Purchase Agreement. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Owner under the Purchase Agreement and itself hereunder and to execute and deliver to the Owner a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of the Purchase Agreement, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner on the date of such Certificate of Acceptance and is marked in accordance with Section 5

hereof, whereupon, except as provided in the next sentence hereof, 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 hereby represents and warrants to the Owner that no Unit shall be put into service earlier than the date of delivery to and acceptance by the Lessee or its agent as agent for the Owner hereunder.

SECTION 3. Rentals. With respect to each Unit subject to this Lease, the Lessee will pay to the Owner as (i) basic rentals 216 consecutive equal monthly payments, payable on the first day of each calendar month during the term hereof, commencing on October 1, 1979 and ending on September 1, 1997, and (ii) interim rental one payment on September 1, 1979. The 216 monthly basic rental payments shall each be in an amount equal to \$352. The interim rental payment shall be in an amount equal to the product of the Purchase Price (as defined in the Purchase Agreement) of each Unit subject to this Lease on the date of payment multiplied by .03993% for each day elapsed from and including the Closing Date (as defined in the Purchase Agreement) for such Unit to, but excluding, September 1, 1979.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays or any other day on which banking institutions in the States of New York or Connecticut are authorized or obligated to close.

The Owner irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments due the Owner provided for in this Lease by the delivery of a check or checks, drawn on the Lessee's account maintained with a commercial bank located in the States of Connecticut or New York, to the office of the Owner located at 1 Liberty Plaza, 165 Broadway, New York, New York 10080, Attention of Pamela Franza), at or prior to 11 a.m. (New York City time) on the date due, or at such other time or place as the Owner shall specify in writing to the Lessee.

SECTION 4. 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 Sections 7, 10 and 13 hereof, shall terminate

on September 1, 1997. Except for obligations of the Lessee hereunder which are specifically stated to terminate at a fixed time, the obligations of the Lessee hereunder (including, but not limited to, the obligations under Sections 3, 6, 7, 9 11, 14, 18 and 21 hereof) shall survive the expiration of the term of this Lease.

SECTION 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit and will keep and maintain, or cause to be kept or maintained plainly, distinctly, permanently and conspicuously marked on each side of the Unit, in letters not less than one inch in height, with appropriate words designated by the Owner, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Owner's title in such Unit. The Lessee will not change or permit to be changed the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Owner and duly filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Owner an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Owner's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Owner in such Units.

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; provided, however, that the Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee, so long as this Lease shall remain in effect, on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

SECTION 6. Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay or cause to be paid, and on written demand to

indemnify and hold the Owner and ITEL harmless from all fees (including, without limitation, documentation, license and registration fees), taxes (including, without limitation, income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible], stamp and minimum [imposed under Section 56 of the Internal Revenue Code of 1954, as amended] taxes), assessments, fees, levies, imposts, duties, charges or withholdings of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner, ITEL, the Lessee, the Equipment or any Unit, or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any Unit or any part thereof; the manufacture, purchase, acceptance, rejection, ownership, delivery, non-delivery, transport, maintenance, repair, sale, leasing, possession, use, operation, transfer of title, return, abandonment or other disposition thereof; the rentals, receipts or earnings arising therefrom; this Lease, the Participation Agreement, the Purchase Agreement or the Guaranty Agreement; any payment made pursuant to any such agreement, or otherwise in connection with any of the transactions contemplated by any such agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes imposed on or measured solely by the net income or excess profits of the Owner or ITEL which are payable to the United States or to the state or political subdivision thereof in which such indemnified party has its principal place of business or is incorporated or to any other state or political subdivision thereof where the Owner is subject to taxation as the result of transactions unrelated to the transactions contemplated in the Participation Agreement, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease; and (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by or on behalf of the Owner or any transfer or disposition by or on behalf of the Owner resulting from bankruptcy or other proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease, without the consent of the Lessee, unless, in each case, such transfer or disposition is in connection with a Casualty Occurrence or an Event of Default shall have occurred and be continuing; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting or

causing to be contested the same in the manner provided in the third paragraph of this Section 6. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws of the United States or of any state or local government or governmental subdivision thereof, or of any foreign country or subdivision or authority thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith by appropriate proceedings.

The amount which the Lessee shall be required to pay with respect to any Taxes indemnified against pursuant to this Section 6 shall be an amount sufficient to restore the indemnified party to the same after-tax position such indemnified party would have been in had such Taxes not been imposed.

If a claim is made against any indemnified party for any Taxes indemnified against under this Section 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, such indemnified party shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes; provided, however, that such indemnified party shall, in its sole discretion, select the forum for such contest and determine whether any such contest of the validity, applicability or amount of such Taxes shall be by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, or cause to be contested, at its own expense, the validity, applicability or amount of such Taxes in the name of such indemnified party; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such indemnified party in any such proceeding or action) without the prior written consent of such indemnified party, which consent shall not be unreasonably withheld. If such indemnified party shall determine that any such contest

shall be by paying such Taxes and seeking a refund thereof, the Lessee shall pay to such indemnified party the amount of such Taxes paid by such indemnified party. If such indemnified party shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, such indemnified party shall pay to the Lessee the amount of such refund or interest net of expenses, but only if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Lessee under this Section 6 or arising out of this Section 6, except obligations resulting from the second sentence of the first paragraph of this Section 6, the Lessee shall either make or cause to be made such report or return, or shall promptly notify or cause to be notified the Owner of such requirement and shall make or cause to be made such report or return in such manner as shall be satisfactory to the Owner. All costs and expenses (including reasonable legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

All of the obligations of the Lessee under this Section 6 shall survive and continue, notwithstanding the termination of this Lease, but only with respect to periods included in the term of this Lease. Payment due from the Lessee under this Section 6 shall be made directly to the indemnified party, except to the extent paid to a governmental agency or taxing authority. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

The Lessee shall furnish or cause to be furnished promptly, upon request, such information and data as are normally available to the Lessee and which the Owner reasonably may require to permit compliance with the requirements of any taxing authorities.

SECTION 7. Payment for Casualty Occurrences; Insurance. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause what-

soever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called "Casualty Occurrences"), during the term of this Lease, or until such Unit shall have been returned in the manner provided in Section 11 or 14 hereof, the Lessee shall promptly and fully notify or cause to be notified (after the Lessee has knowledge of such Casualty Occurrence) the Owner with respect thereto. On the rental payment date (not earlier than the first regular monthly rental payment date) next succeeding the delivery of such notice (or, in the event such rental payment date shall occur within 15 days after delivery of notice, on the following rental payment date, or, in the event the term of this Lease has already expired or will expire within 15 days after delivery of such notice, on a date within 15 days of such delivery), the Lessee shall pay or cause to be paid to the Owner 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 of such Unit as of such payment date (such rental payment date being hereinafter called the Calculation Date). Upon the making of such payment by or on behalf of the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner shall be entitled to recover possession of such Unit.

If the date upon which the making or causing to be made of such payment by the Lessee in respect of any Unit as required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit, shall pay or cause to be paid interest thereon from the end of such term to the date of such payment at the rate of 11% per annum.

The Owner hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner and no Event of Default hereunder, or event which with notice or lapse of time or both would constitute such an Event of Default, shall have

occurred and be continuing, the Lessee shall be entitled to retain 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 Owner. If any such Event of Default or event has occurred and is continuing, the Lessee shall promptly pay all such proceeds to the Owner.

The Casualty Value of each Unit as of the Calculation Date for each such Unit shall be that percentage of the Purchase Price of each Unit as is set forth in Schedule B hereto opposite such date. The aforesaid percentages have been computed without regard to recapture of the Investment Credit (as defined in Section 21 hereof). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence during the period preceding the third, fifth or seventh anniversary of the date of delivery and acceptance of such Unit shall be increased in accordance with the last paragraph of Schedule B and such additional amounts, if any, shall be included within the meaning of the term "Casualty Value" as used herein.

In the event of the requisition for use of any Unit during the term of this Lease or any renewal thereof, unless such requisition shall constitute a Casualty Occurrence, 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 at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Owner pursuant to Section 11 or 14 hereof, as the case may be, promptly upon such return rather than at the end of the term of this Lease; but the Lessee shall in all other respects comply with the provisions of said Section 11 or 14, as the case may be, with respect to such Unit. All payments received by the Owner or the Lessee from the requisitioning authority for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing; and all payments received by the Owner or the Lessee from the requisitioning authority for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Owner.

Except as hereinabove in this Section 7 provided, the Lessee shall not be released from its obligations here-

under 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 agrees that it will at all times during the term of this Lease and at its own cost and expense keep each Unit of Equipment insured against loss by fire, wind-storm and explosion and with extended coverage and against such other risks as are customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged in by the Lessee at not less than the greater of (i) the full insurable value (actual replacement value less actual physical depreciation) thereof and (ii) the Casualty Value applicable to such Unit from time to time, and will maintain general public liability insurance with respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$1,950,000 per occurrence and \$1,950,000 in the aggregate in any one year. Any such insurance may have applicable thereto deductible provisions to no greater extent than in effect for insurance coverage for equipment similar to the Equipment owned by the Lessee and in no event greater than \$25,000, in the case of public liability insurance, and \$5,000, in the case of property insurance on the Equipment, and may be carried under blanket policies maintained by the Lessee so long as such policies otherwise comply with the provisions of this Section 7. All such insurance shall cover both the interest of the Owner and the Lessee in the Equipment or, as the case may be, shall protect the Owner and the Lessee in respect of risks arising out of the condition, maintenance, use, ownership or operation of the Equipment and shall provide that losses, if any, in respect of the Equipment shall be payable to the Lessee and the Owner as their respective interests may appear; provided, however, that upon receipt by the Lessee of notice of the assignment of this Lease and the rents and other sums payable hereunder, as provided in Section 12 hereof, the Lessee shall cause the insurance on the Equipment to provide that the losses, if any, shall be payable (except as provided below) to such assignee under a standard mortgage loss payable clause, satisfactory to the Lessor and such assignee, which shall provide that the insurer thereunder waives all rights of subrogation against the Owner, the Lessee, and such assignee, that ten days' prior written notice of cancellation shall be given to such assignee and that such insurance as to the interest of such assignee therein shall not

be invalidated by any act or neglect of the Owner or the Lessee or by any foreclosure or other remedial proceedings or notices thereof relating to the Equipment or any interest therein not by any change in the title or ownership of the Equipment or any interest therein or with respect thereto, or by the use or operation of the Equipment for purposes more hazardous or in a manner more hazardous than is permitted by such policy. All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as provided in this Lease. The Lessee shall furnish the Owner with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal prior to the expiration date of the original policy or policies. All insurance provided for in this Section 7 shall be effected with insurance companies approved by the Owner, which approval shall not be unreasonably withheld.

The proceeds of any insurance received by the Owner or any assignee on account of or for any loss or casualty in respect of any Unit of Equipment shall be released to the Lessee either (i) upon a written application signed by the President, any Vice President or the Treasurer of the Lessee for the payment of, or to reimburse the Lessee for the payment of, the cost of repairing or restoring the Unit of Equipment which has been damaged (which application shall be accompanied by satisfactory evidence of such cost and of the completion of such repair or restoration), or (ii) if this Lease is terminated with respect to such Unit of Equipment promptly upon payment by the Lessee of the Casualty Value to the Owner; provided that, if the Lessee is at the time of the application in default in the payment of any other liability of the Lessee to the Owner hereunder, such proceeds shall be applied against such liability.

The Lessee shall obtain from each insurer an agreement, by endorsement or separate instrument, that such insurer will give the Owner 10 days written notice before such insurer's policy shall be materially altered or cancelled or not renewed.

SECTION 8. Reports. On or before March 31 in each year, commencing with the calendar year 1980, the Lessee will furnish or cause to be furnished to the Owner an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, the amount, description

and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or, in the case of the first such statement, since the date of this Lease (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 5 hereof have been preserved or replaced. The Owner shall have the right by its agents to inspect the Units and the Lessee's and its agent's records with respect thereto at such reasonable times as the Owner may request during the continuance of this Lease.

The Lessee agrees at its expense to prepare and deliver or cause to be prepared and delivered to the Owner within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Owner) any and all reports (other than income tax returns) to be filed by the Owner with any Federal, state or other regulatory authority by reason of the ownership by the Owner of the Units or the leasing thereof to the Lessee.

SECTION 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE OWNER DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND THE OWNER DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF 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 OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Owner and the Lessee, are to be borne by the Lessee; but the Owner 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 Owner and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner

(KFI)
AND SAFETY RAILWAYS SERVICES CORPORATION

may have against the Builder (as defined in the Purchase Agreement) or ITEL. The Owner shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (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 circumstance 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 Owner 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 Owner based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Owner, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all the laws of the jurisdiction in which its operations involving the Unit may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at no expense to the Owner; provided, however, that the Lessee may upon written notice to the Owner, in good faith, contest or cause to be contested the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the owner, adversely affect the property or rights of the Owner under this Lease.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an Addition thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted. The

term "ordinary wear and tear" for purposes of this Agreement shall mean that wear and tear which would have been suffered by units of the same type which had carried at all times, and over the same period of time, commodities of the kind ordinarily carried in the Units by the Lessee. The Lessee shall also cause the lining of the Units to be repaired or replaced so that at no time shall the base metal be exposed.

The Lessee and its affiliates, at their own cost and expense, may from time to time make such alterations, modifications and additions (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the United States Department of Transportation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called Additions) to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease; provided, however, that no such Addition shall be made if in the case of an alteration or modification the Unit cannot be readily restored to its original condition immediately prior to the time such alteration or modification was made or, in the case of an addition, the addition is not readily removable from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which the Unit would have had immediately prior to such time had such addition not been made, assuming the Unit was then in the condition required to be maintained by the terms of this Lease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Owner in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such original Part, (ii) such Part is

required to be incorporated in or installed as part of the Units pursuant to the terms of the second or third paragraph of this Section 9 or (iii) notwithstanding the provisions of the fourth paragraph of this Section 9, such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee. The term Part for the purposes of this paragraph and Section 14 hereof shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

The Lessee shall pay or cause to be paid, and shall protect, indemnify and hold the Owner and its successors, assigns, agents and servants (hereinafter called Indemnified Persons), as third party beneficiaries hereof, harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, interest, penalties, disbursements, expenses (including without limitation reasonable attorneys' fees and expenses of any Indemnified Person) relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, sublease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort or imposed by statute; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under

the control of the Owner, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation (except by the Indemnified Person seeking indemnity hereunder), of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, subleasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Owner's obligations under the Participation Agreement, except to the extent such claim arises from a negligent act or negligent omission or willful wrongdoing of the Owner. The Lessee shall not be required to indemnify any party indemnified hereunder in respect of such party's willful misconduct or gross negligence. All payments hereunder shall be made directly to the Indemnified Person. The Lessee shall be obligated under this Section 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this Section 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's reasonable request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this Section 9, the Lessee shall pay or cause to be paid to such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner each agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified

against. Upon the payment in full of, or the making of provision satisfactory to the Indemnified Person for the full payment of, any indemnities as contained in this Section 9 by the Lessee, and provided that no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this Section 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

The Lessee further agrees to indemnify, protect and hold harmless the Owner from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Owner because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right.

The indemnities contained in this Section 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Section 9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Owner therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of any payment or other obligation or a guarantee of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

SECTION 10. 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) payment of any part of the rental provided in Section 3 hereof or payment in respect of any Casualty Occurrence pursuant to Section 7 hereof or payment in respect of any termination of this Lease pursuant to Section 13 hereof shall not be made by or on behalf of the Lessee, and such failure to make payment shall continue for five days after such payment is due; or

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof; or

(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 Participation Agreement, and such default shall continue for 30 days after written notice from the Owner to the Lessee specifying the default and demanding that the same be remedied; or

(d) the Guarantor shall default in the obligations or performance of any covenant to be observed or performed by the Guarantor under the Guaranty Agreement or the Participation Agreement, and such default (other than a default in the payment of any part of the rental provided for in Section 3 hereof) shall continue for 30 days after the Guarantor shall have obtained knowledge of the same; or

(e) any representation or warranty made (i) by the Lessee herein or in the Participation Agreement or in any statement or certificate furnished to the Owner pursuant to or in connection with this Lease or the Participation Agreement is untrue in any material respect as of the date of issuance or making thereof and shall continue to be untrue, or (ii) by the Guarantor in or pursuant to or in connection with the Guaranty Agreement or in any statement or certificate furnished to the Owner pursuant to or in connection with this Lease, the Guaranty Agreement or the Participation Agreement proves untrue in any material respect as of the date of issuance or making thereof and shall continue to be untrue; or

(f) the Lessee or the Guarantor shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of itself or any of its properties or assets, (ii) be unable, or admit in writing its inability, to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law or if corporate action shall be taken by it for the purpose of effecting any of the foregoing; or any proceedings shall be commenced against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease or under the Participation Agreement or of the obligations of the Guarantor under the Guaranty or the Participation Agreement 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 or under the Participation Agreement), and such proceedings shall continue unstayed and in effect for any period of 60 days; or

(g) an event of default shall have occurred under the Lease of Railroad Equipment dated as of June 25, 1979 between the Owner, as lessor, and the Lessee, as lessee, pursuant to which an aggregate of up to approximately 180 lined covered railroad hopper cars will be leased to the Lessee (such lease herein referred to as the "Other Lease"); or

(h) default shall be made in the payment of the principal of or interest on any indebtedness of the Lessee which default results or could result in indebtedness of an aggregate principal amount in excess of \$25,000 becoming immediately due and payable, unless such default is, in the Owner's reasonable opinion, being contested in good faith and during the pendency of such contest such indebtedness shall not be required to be paid;

then, in any such case, the Owner, 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; 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 Owner 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 Owner 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 Owner, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals 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 (2) the then present value of the rentals which the Owner reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of an 8% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner shall have sustained by reason of the breach of any covenant, representation

or warranty of this Lease other than for the payment of the rental; 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 Owner reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Owner shall have sold or leased any Unit, the Owner, in lieu of collecting any amounts payable to the Owner 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 Owner and the Lessee shall pay to the Owner on the date of such sale or leasing, as the case may be, as liquidated damages for loss of a bargain and not as a penalty (i) in the case of such a sale 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, and (ii) in the case of such a leasing, an amount equal to the excess, if any, of the present value of all rental for such Unit which would otherwise have accrued hereunder from the date of termination to the end of the term of this Lease as to such Unit over the sum of (I) the then present value of all rental for such Unit required under such new lease plus (II) the then present value of the rental (if any) which the Owner reasonably estimates to be obtainable for the Unit during the period commencing on the termination of such new lease and ending on the date the term of this Lease would have terminated if it had not been terminated early due to default, each such present value to be computed in each case on the basis of an 8% per annum discount, compounded, in the case of rental which is estimated under clause II of this sentence, monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated and, in the case of rental under such new lease, periodically from the respective dates upon which such rental shall be payable thereunder.

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 Owner'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 Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. 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 rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Owner 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; and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Owner.

The Lessee also agrees to furnish the Owner, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default, or which with notice or lapse of time or both would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 10 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of such official's operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

SECTION 11. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 10 hereof, the Lessee shall forthwith deliver or cause to be delivered possession of the Units to the Owner and shall give or cause to be given prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Owner pursuant to this Section 11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear

and modifications, if any, permitted by this Lease excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, the Interstate Commerce Commission, and the United States Department of Transportation, if applicable, and all other applicable rules of any governmental agency or other organization with jurisdiction. The lining of each Unit returned to the Owner pursuant to this Section 11 shall be in the condition required by Section 9. For the purpose of delivering possession of any Unit or Units to the Owner as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by the Owner and there assembled,

(b) furnish and arrange for the Owner to store such Units on any lines of railroad or premises approved by the Owner until such Units have been sold, leased or otherwise disposed of by the Owner, and

(c) cause the Units to be moved to such interchange point or points as shall be designated by the Owner upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee (and the Lessee will maintain the insurance required by Section 7 of this Lease to be maintained during this period) and are of the essence of this Lease; and, upon application to any court of equity having jurisdiction in the premises, the Owner 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 permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. In the event that the Units or any thereof are sold, the Lessee shall pay to the Owner the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 11, the Lessee hereby irrevocably appoints the Owner 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 Owner, 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.

SECTION 12. Assignment; Security Interests; Possession and Use. This Lease shall be assignable in whole or in part by the Owner without the consent of the Lessee; but the Lessee shall be under no obligation to any assignee of the Owner except upon written notice of such assignment from the Owner. All of the rights of the Owner hereunder (including, but not limited to, the rights under Sections 6, 7, 10 and 21 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Owner's successors and assigns.

The Owner, without the consent of the Lessee, can create any lien, security interest or other charge or encumbrance, or any other type of preferential arrangement, in favor of any person upon or with respect to any or all of the Units; provided, however, that the rights of any such person shall in all respects be subject to the rights of the Lessee under this Lease.

So long as no Event of Default hereunder shall have occurred, the Lessee shall be entitled to the possession of the Units in accordance with the terms of this Lease but, except as permitted by the provisions of the following two paragraphs, 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 as permitted by the provisions of the following two paragraphs, other than an encumbrance created by the Owner and not the result of an Event of Default and other than resulting from claims against the Owner not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Owner or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable

opinion of the Owner, materially adversely affect the interest of the Owner in the Equipment or otherwise under this Lease. Except to the extent permitted by the provisions of the following two paragraphs, the Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the quiet use, possession and enjoyment of the Equipment; provided, however, that nothing contained in this Lease shall be deemed to prohibit the use of the Equipment by others in the usual interchange of traffic. Notwithstanding the foregoing, neither the Lessee nor any sublessee will assign any Unit to service or permit the use of any Unit involving the regular operation and maintenance thereof outside the United States of America. The Lessee agrees that it will not, without the prior written consent of the Owner, assign this Lease or any of its rights hereunder or sublease any Unit. In the case of a sublease, the Owner shall not unreasonably withhold its consent. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder, all of which shall be and remain those of a principal and not a surety.

Nothing in this Section 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which the Lessee shall have become merged or consolidated, provided that such assignees, successors or transferees shall have duly assumed the obligations of the Lessee hereunder and that they will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease and that such merger or consolidation or acquisition of properties shall not alter in any way the Lessee's obligations to the Owner hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 13. Early Termination; Renewal Options and Right of First Refusal. Upon not less than 180 days' prior written notice to the Owner and so long as no Event of Default has occurred and is continuing, the Lessee may, at its sole option and for any reason whatsoever, terminate this Lease on September 1, 1989 or on the first day of any calendar month thereafter as to all (but not less

than all) of the Equipment (the "Termination Date"), upon payment of the amounts hereinafter provided; provided, however, that simultaneously with the exercise of such option the Lessee shall also exercise the corresponding option contained in the Other Lease. Such notice shall identify the Termination Date on which payment will be made. On such Termination Date the Lessee shall pay to the Owner the basic rental installment due on such date for such Units of Equipment, plus any rentals or any other sums due on or prior to such date then remaining unpaid, plus an amount equal to the Termination Value of the Units of Equipment as of such Termination Date.

The Termination Value of each Unit of Equipment as of the Termination Date shall be that percentage of the Purchase Price of such Unit of Equipment as is set forth in Schedule C hereto opposite such date.

In the event the Owner elects to sell any Units to third parties at the expiration of the term of this Lease, the Lessee shall be given written notice of such election prior to the expiration of the term of this Lease (such date being hereinafter called the Expiration Date). In the event that the Owner shall receive, prior to 90 days after the Expiration Date, a bona fide offer in writing from another party to purchase the Units and the Owner elects to sell the Units pursuant to such offer, the Owner shall give written notice to the Lessee of such offer. Such notice shall be given to the Lessee on any date between 60 days before and 90 days after the Expiration Date and shall include the price and, if such offer was for other than solely cash, the other terms and conditions offered by the other party to the Owner. The Lessee shall have the sole right and option, for a period of 20 days from the date of delivery of such notice, to purchase the Units for cash at the price, or at the price and (after giving effect to credit standing of the Lessee at the time of exercise of such purchase right) on substantially similar terms and conditions, at which the Units are proposed to be sold. The Lessee shall exercise such purchase right by delivery to the Owner of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Owner or (ii) 45 days after the Expiration Date. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further

extended or renewed upon the same terms and conditions set forth herein from the Expiration Date or the date such notice is delivered, as the case may be, to the Owner until the date of such purchase.

SECTION 14. Return of Units upon Expiration of Term. On or prior to the termination of the term of this Lease or as soon as practicable on or after the termination of the term of this Lease and in any event not later than 90 days after the termination of the term of this Lease, the Lessee will, at its own cost and expense cause each Unit to be transported to such point as it shall designate immediately prior to such termination and arrange for the Owner to store such Unit at any such point; provided, however, that the Owner shall have the option to designate an alternative point for storage, which point shall be within a 500 mile radius of Core, Virginia. Each Unit shall be stored for a period commencing on the date of its arrival at any such point (whether designated by the Owner or the Lessee) and extending thereafter to a date not later than 120 days from the date at which at least 95% of such Units are first placed in storage pursuant to this Section 14. If the Lessee has designated the point of storage, the assembly, transportation, delivery and storage of such Unit shall be at the expense and risk of the Lessee; if the Owner has designated the point of storage, the assembly, transportation and delivery of such Unit shall be at the expense and risk of the Lessee and storage shall be at the risk of the Lessee but the expense of storage shall be divided equally between the Owner and the Lessee. During any such storage period the Lessee will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable for any injury to or the death of any person exercising, either on behalf of the Owner or any prospective purchaser or user, the rights of inspection granted under this sentence, except in the case of negligence or willful wrongdoing of the Lessee or of its employees or agents and except to the extent otherwise provided by law. The assembly, 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 Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit

returned to the Owner pursuant to this Section 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) have attached or affixed thereto any Part title to which is in the Owner pursuant to Section 9 hereof and have removed therefrom at Lessee's expense any Part or Addition title to which is in the Lessee or any other person pursuant to such Section 9 and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, the Interstate Commerce Commission and the United States Department of Transportation, if applicable, and all other applicable rules of any governmental agency or other organization with jurisdiction. The lining of each Unit returned to the Owner pursuant to this Section 14 shall be in the condition required by Section 9. If any Unit suffers a Casualty Occurrence during any storage period provided for in this Section 14, the Lessee shall pay to the Owner the Casualty Value of such Unit as determined in accordance with Section 7 hereof. All gross amounts earned in respect of any Unit shall, from and after the termination of this Lease as to such Unit, belong to and be the property of the Owner. In the event that by the 120th day after the termination of the original or any extended term of this Lease the Lessee has not, at the request of the Owner, caused at least 95% of the Units to be transported to such point or points as shall have been designated by the Owner pursuant to this Section 14, the Lessee shall pay to the Owner the per diem interchange multiplied by the number of Units equal to the difference between 95% of such Units and the number of Units previously delivered pursuant to this Section 14 (such number to be determined on each day) for each day from such 120th day to the date on which at least 95% of the Units have been so transported. If, after the termination of the storage period provided in this Section 14, any Units have not been so transported, the Lessee shall pay to the Owner the per diem interchange for each Unit not so transported for each day after the end of such storage period until such Unit or Units have been so transported.

Upon the expiration of the original term of this Lease, the Lessee will deliver to the Owner a certificate of an officer of the Lessee dated such date to the effect that (a) no Event of Default or event which with lapse of time or notice or both would constitute an Event of Default had occurred or was continuing as of such date; (b) no liens, charges, security interests or other encumbrances (except an encumbrance resulting from claims against the Owner) were,

as of such date, imposed on or with respect to any Unit, any accession thereto, or the interest of the Owner therein; (c) the Units have been returned to the Owner pursuant to this Section 14 in the same operating order, repair and condition required by the first paragraph of this Section 14 and (d) the Lessee no longer has any interest in the Units under the Lease or otherwise. The certificate described in clause (a) in the preceding sentence shall be furnished on the date of the expiration of the original term of the Lease, and the certificates described in clauses (b), (c) and (d) in the preceding sentence shall be furnished on a monthly basis, beginning on September 1, 1997, and such certificate shall cover each Unit returned during the preceding 30 calendar days and shall apply to each such Unit as of the date such Unit was returned pursuant to the provisions of the first paragraph of this Section 14.

SECTION 15. Recording. The Lessee, at its own expense, will cause this Lease and any assignment hereof to be filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303. The Lessee will, at its own expense, perform any act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Owner for the purpose of proper protection, to the Owner's satisfaction, of the Owner's interest in the Units, or for the purpose of carrying out the intention of this Lease, the Guaranty or the Purchase Agreement.

SECTION 16. Additional Opinions. The Lessee will promptly furnish to the Owner 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 Owner. This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

SECTION 17. Owner's Right To Perform for the Lessee. If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Owner incurred in connection with such performance or compliance, together with interest on such amount at the rate of 12% per annum shall be payable by the Lessee upon demand.

SECTION 20. No Recourse. No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Owner or the Lessee, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers, as such, or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

SECTION 21. Federal Income Taxes. This Lease has been entered into on the basis of an opinion to the effect described in the last paragraph of this Section 21 will be provided to the Owner; that the Owner, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including without limitation, (a) deductions for depreciation of each Unit under section 167 of the Code commencing in the year that such Unit is delivered to the Owner under the Purchase Agreement computed on the basis (i) that each Unit will have a basis under section 167(g) of the Code at least equivalent to the Purchase Price of such Unit, (ii) initially of the declining balance method, using a rate equal to 200% of the straight line rate, switching to the sum of the years-digits method authorized by sections 167(b) (2) and (3) of the Code, (iii) of the asset depreciation range and class life system permitted by section 167(m) of the Code and § 1.167(a)-11 of the Regulations, (iv) of an asset depreciation period of 12 years, (v) that the salvage value of each Unit below which each such Unit may not be depreciated is zero, after the deduction permitted by section 167(f) of the Code, and (vi) that for purposes of computing the depreciation deductions with respect to the Equipment for the calendar year 1979, the Owner will be entitled to elect and will elect the half-year convention (hereinafter called the ADR Deductions), (b) an investment credit pursuant to section 38 of the Code in the year that each Unit is delivered to the Owner under the Purchase Agreement equivalent to 10% of the Purchase Price of such Unit (hereinafter called the Investment Credit), (c) that for Federal income tax purposes all amounts includible

in the gross income of the Owner with respect to the Equipment and all deductions allowable to the Owner with respect to the Equipment will be treated as derived from, or allocable to, sources within the United States.

The Lessee represents and warrants that (i) all of the Units constitute property the entire Purchase Price of which qualifies for the Investment Credit under section 38 of the Code; (ii) at the time the Owner becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code and at the time the Owner becomes the owner of the Units, the Units will not have been used or placed in service 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 Owner; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; (iv) at all times during the term of this Lease the Owner will be entitled to treat, for Federal income tax purposes, all expenses, losses and other deductions relating to the Units (including the ADR Deductions) as being derived from, or allocable to, sources within the United States; and (v) the Lessee will use its best efforts to maintain or cause to be maintained sufficient records to verify for each year the period of time in such year during which each Unit is physically located within the United States and the period of time, if any, in such year during which each Unit is physically located outside of the United States and will supply or cause to be supplied such records to the Owner within 90 days after receipt of a written demand therefor.

The Lessee understands that the Owner intends (a) to claim on its Federal income tax returns the Investment Credit and the ADR Deductions and (b) to treat on its Federal income tax returns the income and deductions with respect to the Equipment as derived from, or allocable to, sources within the United States.

If, for Federal income tax purposes, as a result of (i) any inaccuracy in fact or in law of any representation or warranty contained in the second paragraph of this Section 21 or (ii) any actions or omissions by the Lessee, (a) the Owner shall not be entitled to, or shall suffer a disallowance or recapture of or shall lose the benefit of all

or any portion of the Investment Credit or the ADR Deductions or (b) any item of income or deduction with respect to the Equipment shall not be treated as derived from, or allocable to, sources within the United States (any such event described in clause (a) or (b) of this paragraph being hereinafter called a "Loss"), then the Lessee after receiving written notice from the Owner of such Loss together with a certificate of an officer of the Owner setting forth in reasonable detail the computations and methods used in calculating such Loss and the amount or amounts of the payments required to be made pursuant to this paragraph (such notice and certificate being hereinafter collectively called the "Net Return Notice"), shall within 30 days of receipt of the Net Return Notice, pay to the Owner in lump sum the amount required to provide the Owner with its contemplated after tax rate of return and after-tax cash flow. To the extent any Loss results in a later benefit to the Owner which has not been taken into account in determining the lump sum payment, payment will be made to the Lessee at the time such benefit is realized; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this paragraph in respect of a Loss less (y) the amount of all prior payments by the Owner to the Lessee hereunder, and the amount by which such payment would exceed such amounts shall reduce pro tanto any subsequent obligation of the Lessee to make any payments to the Owner pursuant to this paragraph. The adjustments required to be made pursuant to this paragraph shall be made by the Owner and shall be computed using the same method and the same assumptions as were utilized by the Owner in originally evaluating the transaction except for the assumption that has resulted in such adjustment.

Any late payment by any party hereto of any of its obligations under this Section 21 shall result in the obligation on the part of such party promptly to pay an amount equal to interest at the rate per annum equal to 12% per annum on the overdue payment.

Notwithstanding anything to the contrary set forth hereinabove, no amount shall be payable as an indemnity hereunder in respect of any Loss to the extent such Loss is the result of any of the following:

(i) a voluntary transfer or voluntary disposition (whether prior to, during or after the term of this Lease, but not including a transfer or disposition as a result of a Casualty Occurrence) of any Units or of the interest of the Owner in any Units or the rentals under this Lease, or any transfer or disposition of any Units or of the interest of the Owner in any Units or the rentals under this Lease, whether voluntary or involuntary, which results from bankruptcy or other proceedings for the relief of debtors in which the Owner is the debtor, unless, in each case, such transfer or disposition is made (A) as a direct result of an Event of Default, as defined in Section 10 of this Lease, which has occurred and is continuing; (B) in connection with any alteration, modification or addition to any Unit; or (C) with the consent of the Lessee;

(ii) the failure of the Owner to claim in a timely manner the Investment Credit, the ADR Deductions (including making all appropriate elections under the applicable Income Tax Regulations), 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 Equipment as derived from, or allocable to, sources within the United States, unless independent counsel selected by the Owner and approved by the Lessee, such approval not to be unreasonably withheld, shall determine that there is no reasonable basis to make such claim;

(iii) the failure of the Owner to have sufficient liability for Federal income tax against which to credit Investment Credit or foreign tax credit or sufficient income to benefit from the ADR Deductions;

(iv) any residual sharing, guarantee agreement or other voluntary act of the Owner (either individually or in concert with others) which is not included in the foregoing clauses and which is not required or contemplated by the Purchase Agreement, the Participation Agreement, this Lease, the Guaranty or any other document contemplated by any of the foregoing or entered into in connection therewith;

(v) a change in the form or type of organization or the taxable status of the Owner or any successor or transferee of the Owner; or

(vi) a Casualty Occurrence with respect to a Unit, if the Owner shall have received all amounts required to be paid in respect of such Casualty Occurrence under this Lease.

If at the conclusion of an audit the Owner receives a preliminary or "30-day-letter" from the Internal Revenue Service proposing an adjustment in any item claimed in accordance with the second paragraph of this Section 21 on a tax return or refund claim of the Owner, the Owner shall promptly notify the Lessee of the proposed adjustment and, upon receipt within 20 days after Lessee's receipt of such notice of a written request to do so from the Lessee, the Owner shall promptly request from the independent tax counsel selected by the Owner and approved by the Lessee, which approval shall not be unreasonably withheld (hereinafter called the Owner's Tax Counsel), its opinion whether there is a reasonable possibility of a favorable determination in the event such proposed adjustment is contested. If the opinion is to the effect that there is such a reasonable possibility, the Owner shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Owner in its discretion. Upon the conclusion of such administrative proceedings, if any, the Owner shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, upon receipt within 30 days thereafter of a written request to do so from the Lessee, the Owner shall promptly request the Owner's Tax Counsel for their opinion whether there is a reasonable possibility of a favorable determination in the event such final adjustment is contested. If the opinion is to the effect that there is such a reasonable possibility, the Owner shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Owner to appeal the decision of such a court or of an intermediate appellate court, the Owner shall promptly request the Owner's Tax Counsel for their opinion whether there is a reasonable possibility of a favorable determination in the event such decision is appealed. If the opinion is to the effect that there is such a reasonable possibility, the Owner shall appeal such decision. The Owner, in its discretion, shall determine the initial and any appellate court and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Owner shall not be required to take

any action as set forth in this paragraph unless and until the Lessee shall have agreed to indemnify the Owner in a manner satisfactory to the Owner for any liability, loss or expense which the Owner may incur as a result of taking such action and shall have agreed to pay the Owner on demand all out-of-pocket costs and expenses, including without limitation attorneys' fees and expenses, incurred by the Owner in connection with taking such action. In the event that the Owner pays the tax resulting from a proposed adjustment and proceeds to seek a refund thereof, the Lessee agrees to pay the Owner an amount equal to interest at the rate per annum currently charged by the Internal Revenue Service on deficiencies on the amount of tax in question from the date of payment of such tax to the date of final determination of such adjustment, such amount to be payable in equal installments within each calendar year on the dates on which rental for such period is payable under this Lease. Upon receipt by the Owner of a refund of any tax paid by it in respect of which the Lessee had paid an amount equal to interest at the rate provided in the preceding sentence while such tax payment was contested by the Owner, an amount equal to the aggregate amount of such interest shall be paid by the Owner to the Lessee forthwith. Upon completion of the actions set forth in this paragraph, the Lessee's liability with respect to its required indemnity under this Section 21 shall become fixed and determinable.

For purposes of this Section 21, the term "Owner" shall include any affiliated group, within the meaning of section 1504 of the Code, of which the Owner is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

If at any time prior to the disposition of a Unit in a taxable transaction, the Owner is required to include in its gross income an amount in respect of any improvement or addition to such Unit made by the Lessee which is not readily removable from such unit without causing material damage to such Unit (such improvements, modifications or additions being hereinafter called "Improvements"), then the Lessee shall pay to the Owner, as an indemnity, such amount or amounts which, after deduction of all fees, taxes and other charges required to be paid by the Owner in respect of the receipt of such amounts, shall be equal to the sum of the additional Federal, state and local income taxes payable by the Owner from time to time as a result of such Improvements plus the amount of any interest, penalties or additions to tax payable as a result of any such Improvements. If as a

result of any such Improvements the aggregate Federal, state and local income taxes paid by the Owner for any taxable year shall be less than the amount of such taxes which would have been payable by the Owner had no such Improvements been made, then the Owner shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Owner as a result of such payment; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this paragraph in respect of any Improvements less (y) the amount of all prior payments by the Owner to the Lessee hereunder, and the amount by which such payment would exceed such amount shall reduce pro tanto any subsequent obligation of the Lessee to make any payments to the Owner pursuant to the first sentence of this paragraph. For purposes of computing any amounts payable to the Owner and any amounts payable to the Lessee pursuant to this paragraph, the statutory rate of Federal, state or local income tax, as the case may be, shall be used. The amount payable to the Owner pursuant to this paragraph shall be paid within 30 days after receipt of the written demand therefor from the Owner (but not prior to payment by the Owner of the additional taxes which become due as a result of the said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Lessee from the Owner pursuant to this paragraph shall be paid within 30 days after the Owner realizes any such savings in its income taxes or additional tax benefits, as the case may be.

The Lessee agrees that, within 90 days after the close of any calendar year (or in the event that the Owner gives the Lessee written notice that its taxable year closes on a date specified therein other than December 31, within 90 days after said date) in which the Lessee has made Improvements, the Lessee will give written notice thereof to the Owner, describing such Improvements in reasonable detail and specifying the cost thereof with respect to each Unit of Equipment.

In the event that any indemnity payments are required to be made by the Lessee pursuant to any paragraph of this Section 21, the damages and amounts set forth in Section 10 of this Lease and the applicable Casualty Value and Termination Value percentages set forth in Schedule B to this Lease shall be appropriately adjusted by the Owner.

The adjustments required to be made pursuant to this paragraph shall be made by the Owner and shall be computed using the same method and the same assumptions, including, without limitation, tax rates, as were utilized by the Owner in originally evaluating this transaction except for the assumption that has resulted in such adjustment. In connection therewith, the Owner shall provide the Lessee with a certificate of an officer of the Owner setting forth in reasonable detail the figures and methods used in making such calculations. In the case of any such adjustments in the damages and amounts set forth in Section 10 of this Lease and the applicable Casualty Value and Termination Value percentages set forth in Schedule B to this Lease, if any payment of such damages, amounts, Casualty Values or Termination Values shall have been made prior to the adjustments made pursuant to this paragraph, (a) the Lessee shall pay to the Owner the excess amount which would have been payable on the due date of such payment by reason of the adjustments pursuant to this paragraph or (b) the Owner shall pay to the Lessee the amount of such payments in excess of the amount of such payments which would have been payable by reason of the adjustments pursuant to this paragraph. The Lessee's and the Owner's agreements to pay any sums which may become payable pursuant to this Section 21 shall survive the expiration or other termination of this Lease.

SECTION 22. Severability; Effect and Modification of Lease; Third Party Beneficiaries. 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 Owner and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto, except the Participation Agreement and the Guaranty Agreement. 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 Owner and the Lessee.

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the permitted successors and assigns of a party, each of which shall be deemed to be a third party beneficiary hereof) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

SECTION 23. Execution. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

SECTION 24. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303.

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

WINCHESTER AND WESTERN
RAILROAD COMPANY

[CORPORATE SEAL]

By *Kevin F. Crawford*
Title: TREASURER

Attest:

Mary Jane Lively

MERRILL LYNCH LEASING INC.

[CORPORATE SEAL]

By _____
Title:

Attest:

Authorized Officer

SCHEDULE A TO LEASE

(KEL)

Type	Builder's Plant	Quantity	Lessee's Identification Numbers (Both Inclusive)	Estimated	Estimated	Estimated Time and Place of Delivery
				Unit	Total	
				Base Price	Base Price	
100-ton 4000 cubic foot covered Hopper cars	Winder, Georgia	50	WW 3001 thru WW 3045 3050 Inclusive	\$43,025	\$1,936,225 \$2,151,250	July 1979, at Winder, Georgia

SCHEDULE B
to
Lease of
Railroad Equipment

CASUALTY VALUE

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>
Interim		46	87.24%	95	79.26%
July	96.56%	47	87.19	96	78.97
Interim		48	87.13	97	78.70
August	97.69	49	87.08	98	78.42
1	90.13	50	87.01	99	78.14
2	90.35	51	86.94	100	77.85
3	90.58	52	86.87	101	77.55
4	84.58	53	86.79	102	77.25
5	84.75	54	86.71	103	76.95
6	84.92	55	86.62	104	76.64
7	85.09	56	86.52	105	76.33
8	85.25	57	86.42	106	76.01
9	85.41	58	86.32	107	75.70
10	85.56	59	86.21	108	75.38
11	85.70	60	86.10	109	75.05
12	85.83	61	85.98	110	74.72
13	85.96	62	85.86	111	74.39
14	86.09	63	85.73	112	74.05
15	86.21	64	85.60	113	73.71
16	86.32	65	85.47	114	73.37
17	86.43	66	85.32	115	73.02
18	86.53	67	85.18	116	72.66
19	86.62	68	85.03	117	72.30
20	86.72	69	84.87	118	71.94
21	86.80	70	84.71	119	71.58
22	86.88	71	84.55	120	71.21
23	86.96	72	84.38	121	70.84
24	87.03	73	84.20	122	70.47
25	87.09	74	84.03	123	70.09
26	87.15	75	83.84	124	69.71
27	87.20	76	83.66	125	69.33
28	87.25	77	83.46	126	68.94
29	87.29	78	83.27	127	68.54
30	87.33	79	83.06	128	68.15
31	87.36	80	82.86	129	67.75
32	87.39	81	82.65	130	67.34
33	87.42	82	82.43	131	66.94
34	87.43	83	82.22	132	66.53
35	87.44	84	81.99	133	66.12
36	87.45	85	81.77	134	65.71
37	87.46	86	81.54	135	65.29
38	87.45	87	81.30	136	64.87
39	87.44	88	81.06	137	64.45
40	87.43	89	80.82	138	64.02
41	87.41	90	80.57	139	63.58
42	87.38	91	80.31	140	63.14
43	87.35	92	80.05	141	62.71
44	87.32	93	79.79	142	62.26
45	87.28	94	79.52	143	61.82

CASUALTY VALUE

(continued)

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>
144	61.38%	169	49.25%	194	35.13%
145	60.93	170	48.73	195	34.52
146	60.48	171	48.20	196	33.91
147	60.03	172	47.67	197	33.29
148	59.56	173	47.14	198	32.67
149	59.11	174	46.60	199	32.04
150	58.64	175	46.06	200	31.41
151	58.17	176	45.51	201	30.78
152	57.70	177	44.96	202	30.14
153	57.22	178	44.41	203	29.50
154	56.74	179	43.86	204	28.86
155	56.27	180	43.30	205	28.20
156	55.79	181	42.74	206	27.56
157	55.30	182	42.18	207	26.90
158	54.82	183	41.61	208	26.24
159	54.33	184	41.04	209	25.58
160	53.83	185	40.47	210	24.91
161	53.34	186	39.89	211	24.23
162	52.84	187	39.31	212	23.55
163	52.34	188	38.71	213	22.87
164	51.82	189	38.13	214	22.16
165	51.32	190	37.53	215	21.49
166	50.80	191	36.94	216	20.79
167	50.29	192	36.34	217	0
168	49.77	193	35.74		

The foregoing percentages have been calculated without regard to recapture of the Investment Credit. Consequently, the above Casualty Values shall each be increased by an amount equal to the sum of pre-tax equivalents of the Investment Credit lost to each Beneficiary computed in accordance with the marginal federal, state and local income tax rate of each Beneficiary at the date of payment of such Casualty Value. Promptly upon receipt of the notice of Casualty Occurrence, the Lessor, after obtaining the information required from the Beneficiaries, shall notify the Lessee and the Vendor of the applicable marginal tax rates and such other information as may be required to compute the increase in Casualty Value pursuant to the preceding sentence.

Schedule C
to
Lease of
Railroad Equipment

TERMINATION VALUES

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>
120	71.21%	169	49.25%
121	70.84	170	48.73
122	70.47	171	48.20
123	70.09	172	47.67
124	69.71	173	47.14
125	69.33	174	46.60
126	68.94	175	46.06
127	68.54	176	45.51
128	68.15	177	44.96
129	67.75	178	44.41
130	67.34	179	43.86
131	66.94	180	43.30
132	66.53	181	42.74
133	66.12	182	42.18
134	65.71	183	41.61
135	65.29	184	41.04
136	64.87	185	40.47
137	64.45	186	39.89
138	64.02	187	39.31
139	63.58	188	38.71
140	63.14	189	38.13
141	62.71	190	37.53
142	62.26	191	36.94
143	61.82	192	36.34
144	61.38	193	35.74
145	60.93	194	35.13
146	60.48	195	34.52
147	60.03	196	33.91
148	59.56	197	33.29
149	59.11	198	32.67
150	58.64	199	32.04
151	58.17	200	31.41
152	57.70	201	30.78
153	57.22	202	30.14
154	56.74	203	29.50
155	56.27	204	28.86
156	55.79	205	28.20
157	55.30	206	27.56
158	54.82	207	26.90
159	54.33	208	26.24
160	53.83	209	25.58
161	53.34	210	24.91
162	52.84	211	24.23
163	52.34	212	23.55
164	51.82	213	22.87
165	51.32	214	22.18
166	50.80	215	21.49
167	50.29	216	20.79
168	49.77	217	0

LEASE OF RAILROAD EQUIPMENT

Dated as of June 25, 1979

between

WINCHESTER AND WESTERN RAILROAD COMPANY,

as Lessee

and

MERRILL LYNCH LEASING INC.,

as Lessor

LEASE OF RAILROAD EQUIPMENT dated as of June 25, 1979, between WINCHESTER AND WESTERN RAILROAD COMPANY, a Virginia corporation (the "Lessee"), and MERRILL LYNCH LEASING INC., a Delaware corporation (the "Owner").

The Owner has entered into a Purchase Agreement dated as of June 25, 1979 (the "Purchase Agreement") with ITEL Corporation, Rail Division ("ITEL"), pursuant to which the Owner has agreed to purchase and take delivery of the railroad equipment described in Schedule A hereto (the "Equipment").

The Owner, the Lessee and Unimin Corporation have entered into a Participation Agreement dated as of June 25, 1979 (the "Participation Agreement"), which provides for the purchase of the Equipment by the Owner and the lease of the Equipment to the Lessee.

The Lessee agrees to lease from the Owner all the units of the Equipment or such lesser number of Units are delivered and accepted and settled for under this Purchase Agreement) at the rentals and for the term and upon the conditions hereinafter provided (each such unit so leased being herein a "Unit").

Unimin Corporation, pursuant to a Guaranty Agreement substantially in the form of Exhibit C to the Participation Agreement (the "Guaranty Agreement"), will guarantee the obligations of the Lessee under this Lease and under the Participation Agreement.

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Owner hereby agrees to lease the Units to the Lessee upon the following terms and conditions:

SECTION 1. Net Lease. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, 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 set-offs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner, whether under this Lease or otherwise, including the Lessee's rights by subrogation hereunder or thereunder against the Owner or otherwise; nor, except as otherwise

expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or 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 Owner for any reason whatsoever.

SECTION 2. Delivery and Acceptance of Units. The Owner hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Purchase Agreement; provided, however, that such acceptance shall be in accordance with the provisions of the Purchase Agreement. Each delivery of a Unit to the Owner under the Purchase Agreement shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Owner under the Purchase Agreement. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Owner under the Purchase Agreement and itself hereunder and to execute and deliver to the Owner a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of the Purchase Agreement, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner on the date of such Certificate of Acceptance and is marked in accordance with Section 5

hereof, whereupon, except as provided in the next sentence hereof, 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 hereby represents and warrants to the Owner that no Unit shall be put into service earlier than the date of delivery to and acceptance by the Lessee or its agent as agent for the Owner hereunder.

SECTION 3. Rentals. With respect to each Unit subject to this Lease, the Lessee will pay to the Owner as (i) basic rentals 216 consecutive equal monthly payments, payable on the first day of each calendar month during the term hereof, commencing on October 1, 1979 and ending on September 1, 1997, and (ii) interim rental one payment on September 1, 1979. The 216 monthly basic rental payments shall each be in an amount equal to \$352. The interim rental payment shall be in an amount equal to the product of the Purchase Price (as defined in the Purchase Agreement) of each Unit subject to this Lease on the date of payment multiplied by .03993% for each day elapsed from and including the Closing Date (as defined in the Purchase Agreement) for such Unit to, but excluding, September 1, 1979.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays or any other day on which banking institutions in the States of New York or Connecticut are authorized or obligated to close.

The Owner irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments due the Owner provided for in this Lease by the delivery of a check or checks, drawn on the Lessee's account maintained with a commercial bank located in the States of Connecticut or New York, to the office of the Owner located at 1 Liberty Plaza, 165 Broadway, New York, New York 10080, Attention of Pamela Franza), at or prior to 11 a.m. (New York City time) on the date due, or at such other time or place as the Owner shall specify in writing to the Lessee.

SECTION 4. 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 Sections 7, 10 and 13 hereof, shall terminate

on September 1, 1997. Except for obligations of the Lessee hereunder which are specifically stated to terminate at a fixed time, the obligations of the Lessee hereunder (including, but not limited to, the obligations under Sections 3, 6, 7, 9 11, 14, 18 and 21 hereof) shall survive the expiration of the term of this Lease.

SECTION 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit and will keep and maintain, or cause to be kept or maintained plainly, distinctly, permanently and conspicuously marked on each side of the Unit, in letters not less than one inch in height, with appropriate words designated by the Owner, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Owner's title in such Unit. The Lessee will not change or permit to be changed the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Owner and duly filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Owner an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Owner's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Owner in such Units.

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; provided, however, that the Lessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee, so long as this Lease shall remain in effect, on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

SECTION 6. Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay or cause to be paid, and on written demand to

indemnify and hold the Owner and ITEL harmless from all fees (including, without limitation, documentation, license and registration fees), taxes (including, without limitation, income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible], stamp and minimum [imposed under Section 56 of the Internal Revenue Code of 1954, as amended] taxes), assessments, fees, levies, imposts, duties, charges or withholdings of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner, ITEL, the Lessee, the Equipment or any Unit, or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any Unit or any part thereof; the manufacture, purchase, acceptance, rejection, ownership, delivery, non-delivery, transport, maintenance, repair, sale, leasing, possession, use, operation, transfer of title, return, abandonment or other disposition thereof; the rentals, receipts or earnings arising therefrom; this Lease, the Participation Agreement, the Purchase Agreement or the Guaranty Agreement; any payment made pursuant to any such agreement, or otherwise in connection with any of the transactions contemplated by any such agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes imposed on or measured solely by the net income or excess profits of the Owner or ITEL which are payable to the United States or to the state or political subdivision thereof in which such indemnified party has its principal place of business or is incorporated or to any other state or political subdivision thereof where the Owner is subject to taxation as the result of transactions unrelated to the transactions contemplated in the Participation Agreement, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease; and (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by or on behalf of the Owner or any transfer or disposition by or on behalf of the Owner resulting from bankruptcy or other proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease, without the consent of the Lessee, unless, in each case, such transfer or disposition is in connection with a Casualty Occurrence or an Event of Default shall have occurred and be continuing; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting or

causing to be contested the same in the manner provided in the third paragraph of this Section 6. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws of the United States or of any state or local government or governmental subdivision thereof, or of any foreign country or subdivision or authority thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith by appropriate proceedings.

The amount which the Lessee shall be required to pay with respect to any Taxes indemnified against pursuant to this Section 6 shall be an amount sufficient to restore the indemnified party to the same after-tax position such indemnified party would have been in had such Taxes not been imposed.

If a claim is made against any indemnified party for any Taxes indemnified against under this Section 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, such indemnified party shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes; provided, however, that such indemnified party shall, in its sole discretion, select the forum for such contest and determine whether any such contest of the validity, applicability or amount of such Taxes shall be by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, or cause to be contested, at its own expense, the validity, applicability or amount of such Taxes in the name of such indemnified party; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such indemnified party in any such proceeding or action) without the prior written consent of such indemnified party, which consent shall not be unreasonably withheld. If such indemnified party shall determine that any such contest

shall be by paying such Taxes and seeking a refund thereof, the Lessee shall pay to such indemnified party the amount of such Taxes paid by such indemnified party. If such indemnified party shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, such indemnified party shall pay to the Lessee the amount of such refund or interest net of expenses, but only if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Lessee under this Section 6 or arising out of this Section 6, except obligations resulting from the second sentence of the first paragraph of this Section 6, the Lessee shall either make or cause to be made such report or return, or shall promptly notify or cause to be notified the Owner of such requirement and shall make or cause to be made such report or return in such manner as shall be satisfactory to the Owner. All costs and expenses (including reasonable legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

All of the obligations of the Lessee under this Section 6 shall survive and continue, notwithstanding the termination of this Lease, but only with respect to periods included in the term of this Lease. Payment due from the Lessee under this Section 6 shall be made directly to the indemnified party, except to the extent paid to a governmental agency or taxing authority. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

The Lessee shall furnish or cause to be furnished promptly, upon request, such information and data as are normally available to the Lessee and which the Owner reasonably may require to permit compliance with the requirements of any taxing authorities.

SECTION 7. Payment for Casualty Occurrences; Insurance. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause what-

soever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called "Casualty Occurrences"), during the term of this Lease, or until such Unit shall have been returned in the manner provided in Section 11 or 14 hereof, the Lessee shall promptly and fully notify or cause to be notified (after the Lessee has knowledge of such Casualty Occurrence) the Owner with respect thereto. On the rental payment date (not earlier than the first regular monthly rental payment date) next succeeding the delivery of such notice (or, in the event such rental payment date shall occur within 15 days after delivery of notice, on the following rental payment date, or, in the event the term of this Lease has already expired or will expire within 15 days after delivery of such notice, on a date within 15 days of such delivery), the Lessee shall pay or cause to be paid to the Owner 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 of such Unit as of such payment date (such rental payment date being hereinafter called the Calculation Date). Upon the making of such payment by or on behalf of the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner shall be entitled to recover possession of such Unit.

If the date upon which the making or causing to be made of such payment by the Lessee in respect of any Unit as required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit, shall pay or cause to be paid interest thereon from the end of such term to the date of such payment at the rate of 11% per annum.

The Owner hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner and no Event of Default hereunder, or event which with notice or lapse of time or both would constitute such an Event of Default, shall have

occurred and be continuing, the Lessee shall be entitled to retain 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 Owner. If any such Event of Default or event has occurred and is continuing, the Lessee shall promptly pay all such proceeds to the Owner.

The Casualty Value of each Unit as of the Calculation Date for each such Unit shall be that percentage of the Purchase Price of each Unit as is set forth in Schedule B hereto opposite such date. The aforesaid percentages have been computed without regard to recapture of the Investment Credit (as defined in Section 21 hereof). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence during the period preceding the third, fifth or seventh anniversary of the date of delivery and acceptance of such Unit shall be increased in accordance with the last paragraph of Schedule B and such additional amounts, if any, shall be included within the meaning of the term "Casualty Value" as used herein.

In the event of the requisition for use of any Unit during the term of this Lease or any renewal thereof, unless such requisition shall constitute a Casualty Occurrence, 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 at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Owner pursuant to Section 11 or 14 hereof, as the case may be, promptly upon such return rather than at the end of the term of this Lease; but the Lessee shall in all other respects comply with the provisions of said Section 11 or 14, as the case may be, with respect to such Unit. All payments received by the Owner or the Lessee from the requisitioning authority for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing; and all payments received by the Owner or the Lessee from the requisitioning authority for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Owner.

Except as hereinabove in this Section 7 provided, the Lessee shall not be released from its obligations here-

under 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 agrees that it will at all times during the term of this Lease and at its own cost and expense keep each Unit of Equipment insured against loss by fire, wind-storm and explosion and with extended coverage and against such other risks as are customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged in by the Lessee at not less than the greater of (i) the full insurable value (actual replacement value less actual physical depreciation) thereof and (ii) the Casualty Value applicable to such Unit from time to time, and will maintain general public liability insurance with respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$1,950,000 per occurrence and \$1,950,000 in the aggregate in any one year. Any such insurance may have applicable thereto deductible provisions to no greater extent than in effect for insurance coverage for equipment similar to the Equipment owned by the Lessee and in no event greater than \$25,000, in the case of public liability insurance, and \$5,000, in the case of property insurance on the Equipment, and may be carried under blanket policies maintained by the Lessee so long as such policies otherwise comply with the provisions of this Section 7. All such insurance shall cover both the interest of the Owner and the Lessee in the Equipment or, as the case may be, shall protect the Owner and the Lessee in respect of risks arising out of the condition, maintenance, use, ownership or operation of the Equipment and shall provide that losses, if any, in respect of the Equipment shall be payable to the Lessee and the Owner as their respective interests may appear; provided, however, that upon receipt by the Lessee of notice of the assignment of this Lease and the rents and other sums payable hereunder, as provided in Section 12 hereof, the Lessee shall cause the insurance on the Equipment to provide that the losses, if any, shall be payable (except as provided below) to such assignee under a standard mortgage loss payable clause, satisfactory to the Lessor and such assignee, which shall provide that the insurer thereunder waives all rights of subrogation against the Owner, the Lessee, and such assignee, that ten days' prior written notice of cancellation shall be given to such assignee and that such insurance as to the interest of such assignee therein shall not

be invalidated by any act or neglect of the Owner or the Lessee or by any foreclosure or other remedial proceedings or notices thereof relating to the Equipment or any interest therein not by any change in the title or ownership of the Equipment or any interest therein or with respect thereto, or by the use or operation of the Equipment for purposes more hazardous or in a manner more hazardous than is permitted by such policy. All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as provided in this Lease. The Lessee shall furnish the Owner with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal prior to the expiration date of the original policy or policies. All insurance provided for in this Section 7 shall be effected with insurance companies approved by the Owner, which approval shall not be unreasonably withheld.

The proceeds of any insurance received by the Owner or any assignee on account of or for any loss or casualty in respect of any Unit of Equipment shall be released to the Lessee either (i) upon a written application signed by the President, any Vice President or the Treasurer of the Lessee for the payment of, or to reimburse the Lessee for the payment of, the cost of repairing or restoring the Unit of Equipment which has been damaged (which application shall be accompanied by satisfactory evidence of such cost and of the completion of such repair or restoration), or (ii) if this Lease is terminated with respect to such Unit of Equipment promptly upon payment by the Lessee of the Casualty Value to the Owner; provided that, if the Lessee is at the time of the application in default in the payment of any other liability of the Lessee to the Owner hereunder, such proceeds shall be applied against such liability.

The Lessee shall obtain from each insurer an agreement, by endorsement or separate instrument, that such insurer will give the Owner 10 days written notice before such insurer's policy shall be materially altered or cancelled or not renewed.

SECTION 8. Reports. On or before March 31 in each year, commencing with the calendar year 1980, the Lessee will furnish or cause to be furnished to the Owner an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, the amount, description

and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or, in the case of the first such statement, since the date of this Lease (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 5 hereof have been preserved or replaced. The Owner shall have the right by its agents to inspect the Units and the Lessee's and its agent's records with respect thereto at such reasonable times as the Owner may request during the continuance of this Lease.

The Lessee agrees at its expense to prepare and deliver or cause to be prepared and delivered to the Owner within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Owner) any and all reports (other than income tax returns) to be filed by the Owner with any Federal, state or other regulatory authority by reason of the ownership by the Owner of the Units or the leasing thereof to the Lessee.

SECTION 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE OWNER DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND THE OWNER DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF 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 OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Owner and the Lessee, are to be borne by the Lessee; but the Owner 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 Owner and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner

Safety Railway Services Corporation 

may have against the Builder (as defined in the Purchase Agreement), or ITEL. The Owner shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (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 circumstance 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 Owner 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 Owner based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Owner, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all the laws of the jurisdiction in which its operations involving the Unit may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at no expense to the Owner; provided, however, that the Lessee may upon written notice to the Owner, in good faith, contest or cause to be contested the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the owner, adversely affect the property or rights of the Owner under this Lease.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an Addition thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted. The

term "ordinary wear and tear" for purposes of this Agreement shall mean that wear and tear which would have been suffered by units of the same type which had carried at all times, and over the same period of time, commodities of the kind ordinarily carried in the Units by the Lessee. The Lessee shall also cause the lining of the Units to be repaired or replaced so that at no time shall the base metal be exposed.

The Lessee and its affiliates, at their own cost and expense, may from time to time make such alterations, modifications and additions (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the United States Department of Transportation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called Additions) to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease; provided, however, that no such Addition shall be made if in the case of an alteration or modification the Unit cannot be readily restored to its original condition immediately prior to the time such alteration or modification was made or, in the case of an addition, the addition is not readily removable from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which the Unit would have had immediately prior to such time had such addition not been made, assuming the Unit was then in the condition required to be maintained by the terms of this Lease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Owner in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such original Part, (ii) such Part is

required to be incorporated in or installed as part of the Units pursuant to the terms of the second or third paragraph of this Section 9 or (iii) notwithstanding the provisions of the fourth paragraph of this Section 9, such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee. The term Part for the purposes of this paragraph and Section 14 hereof shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

The Lessee shall pay or cause to be paid, and shall protect, indemnify and hold the Owner and its successors, assigns, agents and servants (hereinafter called Indemnified Persons), as third party beneficiaries hereof, harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, interest, penalties, disbursements, expenses (including without limitation reasonable attorneys' fees and expenses of any Indemnified Person) relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, sublease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort or imposed by statute; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under

the control of the Owner, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation (except by the Indemnified Person seeking indemnity hereunder), of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, subleasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Owner's obligations under the Participation Agreement, except to the extent such claim arises from a negligent act or negligent omission or willful wrongdoing of the Owner. The Lessee shall not be required to indemnify any party indemnified hereunder in respect of such party's willful misconduct or gross negligence. All payments hereunder shall be made directly to the Indemnified Person. The Lessee shall be obligated under this Section 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this Section 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's reasonable request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this Section 9, the Lessee shall pay or cause to be paid to such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner each agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified

against. Upon the payment in full of, or the making of provision satisfactory to the Indemnified Person for the full payment of, any indemnities as contained in this Section 9 by the Lessee, and provided that no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this Section 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

The Lessee further agrees to indemnify, protect and hold harmless the Owner from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Owner because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right.

The indemnities contained in this Section 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Section 9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Owner therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of any payment or other obligation or a guarantee of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

SECTION 10. 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) payment of any part of the rental provided in Section 3 hereof or payment in respect of any Casualty Occurrence pursuant to Section 7 hereof or payment in respect of any termination of this Lease pursuant to Section 13 hereof shall not be made by or on behalf of the Lessee, and such failure to make payment shall continue for five days after such payment is due; or

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof; or

(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 Participation Agreement, and such default shall continue for 30 days after written notice from the Owner to the Lessee specifying the default and demanding that the same be remedied; or

(d) the Guarantor shall default in the obligations or performance of any covenant to be observed or performed by the Guarantor under the Guaranty Agreement or the Participation Agreement, and such default (other than a default in the payment of any part of the rental provided for in Section 3 hereof) shall continue for 30 days after the Guarantor shall have obtained knowledge of the same; or

(e) any representation or warranty made (i) by the Lessee herein or in the Participation Agreement or in any statement or certificate furnished to the Owner pursuant to or in connection with this Lease or the Participation Agreement is untrue in any material respect as of the date of issuance or making thereof and shall continue to be untrue, or (ii) by the Guarantor in or pursuant to or in connection with the Guaranty Agreement or in any statement or certificate furnished to the Owner pursuant to or in connection with this Lease, the Guaranty Agreement or the Participation Agreement proves untrue in any material respect as of the date of issuance or making thereof and shall continue to be untrue; or

(f) the Lessee or the Guarantor shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of itself or any of its properties or assets, (ii) be unable, or admit in writing its inability, to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law or if corporate action shall be taken by it for the purpose of effecting any of the foregoing; or any proceedings shall be commenced against the Lessee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease or under the Participation Agreement or of the obligations of the Guarantor under the Guaranty or the Participation Agreement 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 or under the Participation Agreement), and such proceedings shall continue unstayed and in effect for any period of 60 days; or

(g) an event of default shall have occurred under the Lease of Railroad Equipment dated as of June 25, 1979 between the Owner, as lessor, and the Lessee, as lessee, pursuant to which an aggregate of up to approximately 180 lined covered railroad hopper cars will be leased to the Lessee (such lease herein referred to as the "Other Lease"); or

(h) default shall be made in the payment of the principal of or interest on any indebtedness of the Lessee which default results or could result in indebtedness of an aggregate principal amount in excess of \$25,000 becoming immediately due and payable, unless such default is, in the Owner's reasonable opinion, being contested in good faith and during the pendency of such contest such indebtedness shall not be required to be paid;

then, in any such case, the Owner, 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; 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 Owner 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 Owner 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 Owner, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals 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 (2) the then present value of the rentals which the Owner reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of an 8% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner shall have sustained by reason of the breach of any covenant, representation

or warranty of this Lease other than for the payment of the rental; 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 Owner reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Owner shall have sold or leased any Unit, the Owner, in lieu of collecting any amounts payable to the Owner 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 Owner and the Lessee shall pay to the Owner on the date of such sale or leasing, as the case may be, as liquidated damages for loss of a bargain and not as a penalty (i) in the case of such a sale 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, and (ii) in the case of such a leasing, an amount equal to the excess, if any, of the present value of all rental for such Unit which would otherwise have accrued hereunder from the date of termination to the end of the term of this Lease as to such Unit over the sum of (I) the then present value of all rental for such Unit required under such new lease plus (II) the then present value of the rental (if any) which the Owner reasonably estimates to be obtainable for the Unit during the period commencing on the termination of such new lease and ending on the date the term of this Lease would have terminated if it had not been terminated early due to default, each such present value to be computed in each case on the basis of an 8% per annum discount, compounded, in the case of rental which is estimated under clause II of this sentence, monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated and, in the case of rental under such new lease, periodically from the respective dates upon which such rental shall be payable thereunder.

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 Owner'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 Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. 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 rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Owner 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; and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Owner.

The Lessee also agrees to furnish the Owner, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default, or which with notice or lapse of time or both would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 10 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of such official's operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

SECTION 11. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 10 hereof, the Lessee shall forthwith deliver or cause to be delivered possession of the Units to the Owner and shall give or cause to be given prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Owner pursuant to this Section 11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear

and modifications, if any, permitted by this Lease excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, the Interstate Commerce Commission, and the United States Department of Transportation, if applicable, and all other applicable rules of any governmental agency or other organization with jurisdiction. The lining of each Unit returned to the Owner pursuant to this Section 11 shall be in the condition required by Section 9. For the purpose of delivering possession of any Unit or Units to the Owner as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by the Owner and there assembled,

(b) furnish and arrange for the Owner to store such Units on any lines of railroad or premises approved by the Owner until such Units have been sold, leased or otherwise disposed of by the Owner, and

(c) cause the Units to be moved to such interchange point or points as shall be designated by the Owner upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee (and the Lessee will maintain the insurance required by Section 7 of this Lease to be maintained during this period) and are of the essence of this Lease; and, upon application to any court of equity having jurisdiction in the premises, the Owner 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 permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. In the event that the Units or any thereof are sold, the Lessee shall pay to the Owner the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 11, the Lessee hereby irrevocably appoints the Owner 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 Owner, 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.

SECTION 12. Assignment; Security Interests; Possession and Use. This Lease shall be assignable in whole or in part by the Owner without the consent of the Lessee; but the Lessee shall be under no obligation to any assignee of the Owner except upon written notice of such assignment from the Owner. All of the rights of the Owner hereunder (including, but not limited to, the rights under Sections 6, 7, 10 and 21 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Owner's successors and assigns.

The Owner, without the consent of the Lessee, can create any lien, security interest or other charge or encumbrance, or any other type of preferential arrangement, in favor of any person upon or with respect to any or all of the Units; provided, however, that the rights of any such person shall in all respects be subject to the rights of the Lessee under this Lease.

So long as no Event of Default hereunder shall have occurred, the Lessee shall be entitled to the possession of the Units in accordance with the terms of this Lease but, except as permitted by the provisions of the following two paragraphs, 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 as permitted by the provisions of the following two paragraphs, other than an encumbrance created by the Owner and not the result of an Event of Default and other than resulting from claims against the Owner not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Owner or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable

opinion of the Owner, materially adversely affect the interest of the Owner in the Equipment or otherwise under this Lease. Except to the extent permitted by the provisions of the following two paragraphs, the Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the quiet use, possession and enjoyment of the Equipment; provided, however, that nothing contained in this Lease shall be deemed to prohibit the use of the Equipment by others in the usual interchange of traffic. Notwithstanding the foregoing, neither the Lessee nor any sublessee will assign any Unit to service or permit the use of any Unit involving the regular operation and maintenance thereof outside the United States of America. The Lessee agrees that it will not, without the prior written consent of the Owner, assign this Lease or any of its rights hereunder or sublease any Unit. In the case of a sublease, the Owner shall not unreasonably withhold its consent. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder, all of which shall be and remain those of a principal and not a surety.

Nothing in this Section 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which the Lessee shall have become merged or consolidated, provided that such assignees, successors or transferees shall have duly assumed the obligations of the Lessee hereunder and that they will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease and that such merger or consolidation or acquisition of properties shall not alter in any way the Lessee's obligations to the Owner hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 13. Early Termination; Renewal Options and Right of First Refusal. Upon not less than 180 days' prior written notice to the Owner and so long as no Event of Default has occurred and is continuing, the Lessee may, at its sole option and for any reason whatsoever, terminate this Lease on September 1, 1989 or on the first day of any calendar month thereafter as to all (but not less

than all) of the Equipment (the "Termination Date"), upon payment of the amounts hereinafter provided; provided, however, that simultaneously with the exercise of such option the Lessee shall also exercise the corresponding option contained in the Other Lease. Such notice shall identify the Termination Date on which payment will be made. On such Termination Date the Lessee shall pay to the Owner the basic rental installment due on such date for such Units of Equipment, plus any rentals or any other sums due on or prior to such date then remaining unpaid, plus an amount equal to the Termination Value of the Units of Equipment as of such Termination Date.

The Termination Value of each Unit of Equipment as of the Termination Date shall be that percentage of the Purchase Price of such Unit of Equipment as is set forth in Schedule C hereto opposite such date.

In the event the Owner elects to sell any Units to third parties at the expiration of the term of this Lease, the Lessee shall be given written notice of such election prior to the expiration of the term of this Lease (such date being hereinafter called the Expiration Date). In the event that the Owner shall receive, prior to 90 days after the Expiration Date, a bona fide offer in writing from another party to purchase the Units and the Owner elects to sell the Units pursuant to such offer, the Owner shall give written notice to the Lessee of such offer. Such notice shall be given to the Lessee on any date between 60 days before and 90 days after the Expiration Date and shall include the price and, if such offer was for other than solely cash, the other terms and conditions offered by the other party to the Owner. The Lessee shall have the sole right and option, for a period of 20 days from the date of delivery of such notice, to purchase the Units for cash at the price, or at the price and (after giving effect to credit standing of the Lessee at the time of exercise of such purchase right) on substantially similar terms and conditions, at which the Units are proposed to be sold. The Lessee shall exercise such purchase right by delivery to the Owner of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Owner or (ii) 45 days after the Expiration Date. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further

extended or renewed upon the same terms and conditions set forth herein from the Expiration Date or the date such notice is delivered, as the case may be, to the Owner until the date of such purchase.

SECTION 14. Return of Units upon Expiration of Term. On or prior to the termination of the term of this Lease or as soon as practicable on or after the termination of the term of this Lease and in any event not later than 90 days after the termination of the term of this Lease, the Lessee will, at its own cost and expense cause each Unit to be transported to such point as it shall designate immediately prior to such termination and arrange for the Owner to store such Unit at any such point; provided, however, that the Owner shall have the option to designate an alternative point for storage, which point shall be within a 500 mile radius of Core, Virginia. Each Unit shall be stored for a period commencing on the date of its arrival at any such point (whether designated by the Owner or the Lessee) and extending thereafter to a date not later than 120 days from the date at which at least 95% of such Units are first placed in storage pursuant to this Section 14. If the Lessee has designated the point of storage, the assembly, transportation, delivery and storage of such Unit shall be at the expense and risk of the Lessee; if the Owner has designated the point of storage, the assembly, transportation and delivery of such Unit shall be at the expense and risk of the Lessee and storage shall be at the risk of the Lessee but the expense of storage shall be divided equally between the Owner and the Lessee. During any such storage period the Lessee will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable for any injury to or the death of any person exercising, either on behalf of the Owner or any prospective purchaser or user, the rights of inspection granted under this sentence, except in the case of negligence or willful wrongdoing of the Lessee or of its employees or agents and except to the extent otherwise provided by law. The assembly, 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 Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit

returned to the Owner pursuant to this Section 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) have attached or affixed thereto any Part title to which is in the Owner pursuant to Section 9 hereof and have removed therefrom at Lessee's expense any Part or Addition title to which is in the Lessee or any other person pursuant to such Section 9 and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, the Interstate Commerce Commission and the United States Department of Transportation, if applicable, and all other applicable rules of any governmental agency or other organization with jurisdiction. The lining of each Unit returned to the Owner pursuant to this Section 14 shall be in the condition required by Section 9. If any Unit suffers a Casualty Occurrence during any storage period provided for in this Section 14, the Lessee shall pay to the Owner the Casualty Value of such Unit as determined in accordance with Section 7 hereof. All gross amounts earned in respect of any Unit shall, from and after the termination of this Lease as to such Unit, belong to and be the property of the Owner. In the event that by the 120th day after the termination of the original or any extended term of this Lease the Lessee has not, at the request of the Owner, caused at least 95% of the Units to be transported to such point or points as shall have been designated by the Owner pursuant to this Section 14, the Lessee shall pay to the Owner the per diem interchange multiplied by the number of Units equal to the difference between 95% of such Units and the number of Units previously delivered pursuant to this Section 14 (such number to be determined on each day) for each day from such 120th day to the date on which at least 95% of the Units have been so transported. If, after the termination of the storage period provided in this Section 14, any Units have not been so transported, the Lessee shall pay to the Owner the per diem interchange for each Unit not so transported for each day after the end of such storage period until such Unit or Units have been so transported.

Upon the expiration of the original term of this Lease, the Lessee will deliver to the Owner a certificate of an officer of the Lessee dated such date to the effect that (a) no Event of Default or event which with lapse of time or notice or both would constitute an Event of Default had occurred or was continuing as of such date; (b) no liens, charges, security interests or other encumbrances (except an encumbrance resulting from claims against the Owner) were,

as of such date, imposed on or with respect to any Unit, any accession thereto, or the interest of the Owner therein; (c) the Units have been returned to the Owner pursuant to this Section 14 in the same operating order, repair and condition required by the first paragraph of this Section 14 and (d) the Lessee no longer has any interest in the Units under the Lease or otherwise. The certificate described in clause (a) in the preceding sentence shall be furnished on the date of the expiration of the original term of the Lease, and the certificates described in clauses (b), (c) and (d) in the preceding sentence shall be furnished on a monthly basis, beginning on September 1, 1997, and such certificate shall cover each Unit returned during the preceding 30 calendar days and shall apply to each such Unit as of the date such Unit was returned pursuant to the provisions of the first paragraph of this Section 14.

SECTION 15. Recording. The Lessee, at its own expense, will cause this Lease and any assignment hereof to be filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303. The Lessee will, at its own expense, perform any act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Owner for the purpose of proper protection, to the Owner's satisfaction, of the Owner's interest in the Units, or for the purpose of carrying out the intention of this Lease, the Guaranty or the Purchase Agreement.

SECTION 16. Additional Opinions. The Lessee will promptly furnish to the Owner 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 Owner. This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

SECTION 17. Owner's Right To Perform for the Lessee. If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Owner incurred in connection with such performance or compliance, together with interest on such amount at the rate of 12% per annum shall be payable by the Lessee upon demand.

SECTION 18. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any non-payment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to interest at a rate of 12% per annum on 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.

SECTION 19. Notices. All notices and other communications provided for hereunder shall be in writing (including telegraphic communication) and, as to each party hereto, mailed or telegraphed or delivered to such party, addressed to such party at its address specified below, or as to each party at such other address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this Section. All such notices and other communications shall, when mailed or telegraphed, respectively, be effective when deposited in the mails or delivered to the telegraph company, respectively, addressed as aforesaid.

To the Lessee: Winchester and Western
Railroad Company
c/o UNIMIN Corporation
50 Locust Avenue
New Canaan, Connecticut 06840
Attention: Mr. Kevin Crawford
Treasurer

To the Owner: Merrill Lynch Leasing Inc.
1 Liberty Plaza
165 Broadway
New York, New York 10080
Attention: John C. Murphy
Vice President

SECTION 20. No Recourse. No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Owner or the Lessee, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers, as such, or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

SECTION 21. Federal Income Taxes. This Lease has been entered into on the basis of an opinion to the effect described in the last paragraph of this Section 21 will be provided to the Owner; that the Owner, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including without limitation, (a) deductions for depreciation of each Unit under section 167 of the Code commencing in the year that such Unit is delivered to the Owner under the Purchase Agreement computed on the basis (i) that each Unit will have a basis under section 167(g) of the Code at least equivalent to the Purchase Price of such Unit, (ii) initially of the declining balance method, using a rate equal to 200% of the straight line rate, switching to the sum of the years-digits method authorized by sections 167(b) (2) and (3) of the Code, (iii) of the asset depreciation range and class life system permitted by section 167(m) of the Code and § 1.167(a)-11 of the Regulations, (iv) of an asset depreciation period of 12 years, (v) that the salvage value of each Unit below which each such Unit may not be depreciated is zero, after the deduction permitted by section 167(f) of the Code, and (vi) that for purposes of computing the depreciation deductions with respect to the Equipment for the calendar year 1979, the Owner will be entitled to elect and will elect the half-year convention (hereinafter called the ADR Deductions), (b) an investment credit pursuant to section 38 of the Code in the year that each Unit is delivered to the Owner under the Purchase Agreement equivalent to 10% of the Purchase Price of such Unit (hereinafter called the Investment Credit), (c) that for Federal income tax purposes all amounts includible

in the gross income of the Owner with respect to the Equipment and all deductions allowable to the Owner with respect to the Equipment will be treated as derived from, or allocable to, sources within the United States.

The Lessee represents and warrants that (i) all of the Units constitute property the entire Purchase Price of which qualifies for the Investment Credit under section 38 of the Code; (ii) at the time the Owner becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code and at the time the Owner becomes the owner of the Units, the Units will not have been used or placed in service 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 Owner; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; (iv) at all times during the term of this Lease the Owner will be entitled to treat, for Federal income tax purposes, all expenses, losses and other deductions relating to the Units (including the ADR Deductions) as being derived from, or allocable to, sources within the United States; and (v) the Lessee will use its best efforts to maintain or cause to be maintained sufficient records to verify for each year the period of time in such year during which each Unit is physically located within the United States and the period of time, if any, in such year during which each Unit is physically located outside of the United States and will supply or cause to be supplied such records to the Owner within 90 days after receipt of a written demand therefor.

The Lessee understands that the Owner intends (a) to claim on its Federal income tax returns the Investment Credit and the ADR Deductions and (b) to treat on its Federal income tax returns the income and deductions with respect to the Equipment as derived from, or allocable to, sources within the United States.

If, for Federal income tax purposes, as a result of (i) any inaccuracy in fact or in law of any representation or warranty contained in the second paragraph of this Section 21 or (ii) any actions or omissions by the Lessee, (a) the Owner shall not be entitled to, or shall suffer a disallowance or recapture of or shall lose the benefit of all

or any portion of the Investment Credit or the ADR Deductions or (b) any item of income or deduction with respect to the Equipment shall not be treated as derived from, or allocable to, sources within the United States (any such event described in clause (a) or (b) of this paragraph being hereinafter called a "Loss"), then the Lessee after receiving written notice from the Owner of such Loss together with a certificate of an officer of the Owner setting forth in reasonable detail the computations and methods used in calculating such Loss and the amount or amounts of the payments required to be made pursuant to this paragraph (such notice and certificate being hereinafter collectively called the "Net Return Notice"), shall within 30 days of receipt of the Net Return Notice, pay to the Owner in lump sum the amount required to provide the Owner with its contemplated after tax rate of return and after-tax cash flow. To the extent any Loss results in a later benefit to the Owner which has not been taken into account in determining the lump sum payment, payment will be made to the Lessee at the time such benefit is realized; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this paragraph in respect of a Loss less (y) the amount of all prior payments by the Owner to the Lessee hereunder, and the amount by which such payment would exceed such amounts shall reduce pro tanto any subsequent obligation of the Lessee to make any payments to the Owner pursuant to this paragraph. The adjustments required to be made pursuant to this paragraph shall be made by the Owner and shall be computed using the same method and the same assumptions as were utilized by the Owner in originally evaluating the transaction except for the assumption that has resulted in such adjustment.

Any late payment by any party hereto of any of its obligations under this Section 21 shall result in the obligation on the part of such party promptly to pay an amount equal to interest at the rate per annum equal to 12% per annum on the overdue payment.

Notwithstanding anything to the contrary set forth hereinabove, no amount shall be payable as an indemnity hereunder in respect of any Loss to the extent such Loss is the result of any of the following:

(i) a voluntary transfer or voluntary disposition (whether prior to, during or after the term of this Lease, but not including a transfer or disposition as a result of a Casualty Occurrence) of any Units or of the interest of the Owner in any Units or the rentals under this Lease, or any transfer or disposition of any Units or of the interest of the Owner in any Units or the rentals under this Lease, whether voluntary or involuntary, which results from bankruptcy or other proceedings for the relief of debtors in which the Owner is the debtor, unless, in each case, such transfer or disposition is made (A) as a direct result of an Event of Default, as defined in Section 10 of this Lease, which has occurred and is continuing; (B) in connection with any alteration, modification or addition to any Unit; or (C) with the consent of the Lessee;

(ii) the failure of the Owner to claim in a timely manner the Investment Credit, the ADR Deductions (including making all appropriate elections under the applicable Income Tax Regulations), 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 Equipment as derived from, or allocable to, sources within the United States, unless independent counsel selected by the Owner and approved by the Lessee, such approval not to be unreasonably withheld, shall determine that there is no reasonable basis to make such claim;

(iii) the failure of the Owner to have sufficient liability for Federal income tax against which to credit Investment Credit or foreign tax credit or sufficient income to benefit from the ADR Deductions;

(iv) any residual sharing, guarantee agreement or other voluntary act of the Owner (either individually or in concert with others) which is not included in the foregoing clauses and which is not required or contemplated by the Purchase Agreement, the Participation Agreement, this Lease, the Guaranty or any other document contemplated by any of the foregoing or entered into in connection therewith;

(v) a change in the form or type of organization or the taxable status of the Owner or any successor or transferee of the Owner; or

(vi) a Casualty Occurrence with respect to a Unit, if the Owner shall have received all amounts required to be paid in respect of such Casualty Occurrence under this Lease.

If at the conclusion of an audit the Owner receives a preliminary or "30-day-letter" from the Internal Revenue Service proposing an adjustment in any item claimed in accordance with the second paragraph of this Section 21 on a tax return or refund claim of the Owner, the Owner shall promptly notify the Lessee of the proposed adjustment and, upon receipt within 20 days after Lessee's receipt of such notice of a written request to do so from the Lessee, the Owner shall promptly request from the independent tax counsel selected by the Owner and approved by the Lessee, which approval shall not be unreasonably withheld (hereinafter called the Owner's Tax Counsel), its opinion whether there is a reasonable possibility of a favorable determination in the event such proposed adjustment is contested. If the opinion is to the effect that there is such a reasonable possibility, the Owner shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Owner in its discretion. Upon the conclusion of such administrative proceedings, if any, the Owner shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, upon receipt within 30 days thereafter of a written request to do so from the Lessee, the Owner shall promptly request the Owner's Tax Counsel for their opinion whether there is a reasonable possibility of a favorable determination in the event such final adjustment is contested. If the opinion is to the effect that there is such a reasonable possibility, the Owner shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Owner to appeal the decision of such a court or of an intermediate appellate court, the Owner shall promptly request the Owner's Tax Counsel for their opinion whether there is a reasonable possibility of a favorable determination in the event such decision is appealed. If the opinion is to the effect that there is such a reasonable possibility, the Owner shall appeal such decision. The Owner, in its discretion, shall determine the initial and any appellate court and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Owner shall not be required to take

any action as set forth in this paragraph unless and until the Lessee shall have agreed to indemnify the Owner in a manner satisfactory to the Owner for any liability, loss or expense which the Owner may incur as a result of taking such action and shall have agreed to pay the Owner on demand all out-of-pocket costs and expenses, including without limitation attorneys' fees and expenses, incurred by the Owner in connection with taking such action. In the event that the Owner pays the tax resulting from a proposed adjustment and proceeds to seek a refund thereof, the Lessee agrees to pay the Owner an amount equal to interest at the rate per annum currently charged by the Internal Revenue Service on deficiencies on the amount of tax in question from the date of payment of such tax to the date of final determination of such adjustment, such amount to be payable in equal installments within each calendar year on the dates on which rental for such period is payable under this Lease. Upon receipt by the Owner of a refund of any tax paid by it in respect of which the Lessee had paid an amount equal to interest at the rate provided in the preceding sentence while such tax payment was contested by the Owner, an amount equal to the aggregate amount of such interest shall be paid by the Owner to the Lessee forthwith. Upon completion of the actions set forth in this paragraph, the Lessee's liability with respect to its required indemnity under this Section 21 shall become fixed and determinable.

For purposes of this Section 21, the term "Owner" shall include any affiliated group, within the meaning of section 1504 of the Code, of which the Owner is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

If at any time prior to the disposition of a Unit in a taxable transaction, the Owner is required to include in its gross income an amount in respect of any improvement or addition to such Unit made by the Lessee which is not readily removable from such unit without causing material damage to such Unit (such improvements, modifications or additions being hereinafter called "Improvements"), then the Lessee shall pay to the Owner, as an indemnity, such amount or amounts which, after deduction of all fees, taxes and other charges required to be paid by the Owner in respect of the receipt of such amounts, shall be equal to the sum of the additional Federal, state and local income taxes payable by the Owner from time to time as a result of such Improvements plus the amount of any interest, penalties or additions to tax payable as a result of any such Improvements. If as a

result of any such Improvements the aggregate Federal, state and local income taxes paid by the Owner for any taxable year shall be less than the amount of such taxes which would have been payable by the Owner had no such Improvements been made, then the Owner shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Owner as a result of such payment; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this paragraph in respect of any Improvements less (y) the amount of all prior payments by the Owner to the Lessee hereunder, and the amount by which such payment would exceed such amount shall reduce pro tanto any subsequent obligation of the Lessee to make any payments to the Owner pursuant to the first sentence of this paragraph. For purposes of computing any amounts payable to the Owner and any amounts payable to the Lessee pursuant to this paragraph, the statutory rate of Federal, state or local income tax, as the case may be, shall be used. The amount payable to the Owner pursuant to this paragraph shall be paid within 30 days after receipt of the written demand therefor from the Owner (but not prior to payment by the Owner of the additional taxes which become due as a result of the said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Lessee from the Owner pursuant to this paragraph shall be paid within 30 days after the Owner realizes any such savings in its income taxes or additional tax benefits, as the case may be.

The Lessee agrees that, within 90 days after the close of any calendar year (or in the event that the Owner gives the Lessee written notice that its taxable year closes on a date specified therein other than December 31, within 90 days after said date) in which the Lessee has made Improvements, the Lessee will give written notice thereof to the Owner, describing such Improvements in reasonable detail and specifying the cost thereof with respect to each Unit of Equipment.

In the event that any indemnity payments are required to be made by the Lessee pursuant to any paragraph of this Section 21, the damages and amounts set forth in Section 10 of this Lease and the applicable Casualty Value and Termination Value percentages set forth in Schedule B to this Lease shall be appropriately adjusted by the Owner.

The adjustments required to be made pursuant to this paragraph shall be made by the Owner and shall be computed using the same method and the same assumptions, including, without limitation, tax rates, as were utilized by the Owner in originally evaluating this transaction except for the assumption that has resulted in such adjustment. In connection therewith, the Owner shall provide the Lessee with a certificate of an officer of the Owner setting forth in reasonable detail the figures and methods used in making such calculations. In the case of any such adjustments in the damages and amounts set forth in Section 10 of this Lease and the applicable Casualty Value and Termination Value percentages set forth in Schedule B to this Lease, if any payment of such damages, amounts, Casualty Values or Termination Values shall have been made prior to the adjustments made pursuant to this paragraph, (a) the Lessee shall pay to the Owner the excess amount which would have been payable on the due date of such payment by reason of the adjustments pursuant to this paragraph or (b) the Owner shall pay to the Lessee the amount of such payments in excess of the amount of such payments which would have been payable by reason of the adjustments pursuant to this paragraph. The Lessee's and the Owner's agreements to pay any sums which may become payable pursuant to this Section 21 shall survive the expiration or other termination of this Lease.

SECTION 22. Severability; Effect and Modification of Lease; Third Party Beneficiaries. 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 Owner and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto, except the Participation Agreement and the Guaranty Agreement. 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 Owner and the Lessee.

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the permitted successors and assigns of a party, each of which shall be deemed to be a third party beneficiary hereof) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

SECTION 23. Execution. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

SECTION 24. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303.

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

WINCHESTER AND WESTERN
RAILROAD COMPANY

[CORPORATE SEAL]

Attest:

By _____
Title:

MERRILL LYNCH LEASING INC.

[CORPORATE SEAL]

Attest:

By John P. Murphy
Title:

Michael A. Peraboni
Authorized Officer
ASST SECY

)
) ss.:
)

On this day of , 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of WINCHESTER AND WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

State of New York)
County of New York) ss.:

On this *2nd* day of *July*, 1979, before me personally appeared *John C. Murphy*, to me personally known, who, being by me duly sworn, says that he is *Vice President* of MERRILL LYNCH LEASING INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sonia M. Larsen

Notary Public

[Notarial Seal]

SONIA M. LARSEN
Notary Public, State of New York
No. 31-2262410
Qualified in New York County
Commission Expires March 30, 1981

SCHEDULE A TO LEASE

Type	Builder's Plant	Quantity	Lessee's Identification Numbers (Both Inclusive)	Estimated Unit Base Price	Estimated Total Base Price	Estimated Time and Place of Delivery
100-ton cubic foot covered Hopper cars	Winder, Georgia	45 50 <i>gwm</i>	WW 3001 thru WW 3045-3050 Inclusive	\$43,025 <i>gwm</i>	\$1,936,125 \$2,151,250 <i>gwm</i>	July 1979, at Winder, Georgia

SCHEDULE B

to
Lease of
Railroad Equipment
Percentage
of Purchase
Price

CASUALTY VALUE

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>
Interim		46	87.24%	95	79.26%
July	96.56%	47	87.19	96	78.97
Interim		48	87.13	97	78.70
August	97.69	49	87.08	98	78.42
1	90.13	50	87.01	99	78.14
2	90.35	51	86.94	100	77.85
3	90.58	52	86.87	101	77.55
4	84.58	53	86.79	102	77.25
5	84.75	54	86.71	103	76.95
6	84.92	55	86.62	104	76.64
7	85.09	56	86.52	105	76.33
8	85.25	57	86.42	106	76.01
9	85.41	58	86.32	107	75.70
10	85.56	59	86.21	108	75.38
11	85.70	60	86.10	109	75.05
12	85.83	61	85.98	110	74.72
13	85.96	62	85.86	111	74.39
14	86.09	63	85.73	112	74.05
15	86.21	64	85.60	113	73.71
16	86.32	65	85.47	114	73.37
17	86.43	66	85.32	115	73.02
18	86.53	67	85.18	116	72.66
19	86.62	68	85.03	117	72.30
20	86.72	69	84.87	118	71.94
21	86.80	70	84.71	119	71.58
22	86.88	71	84.55	120	71.21
23	86.96	72	84.38	121	70.84
24	87.03	73	84.20	122	70.47
25	87.09	74	84.03	123	70.09
26	87.15	75	83.84	124	69.71
27	87.20	76	83.66	125	69.33
28	87.25	77	83.46	126	68.94
29	87.29	78	83.27	127	68.54
30	87.33	79	83.06	128	68.15
31	87.36	80	82.86	129	67.75
32	87.39	81	82.65	130	67.34
33	87.42	82	82.43	131	66.94
34	87.43	83	82.22	132	66.53
35	87.44	84	81.99	133	66.12
36	87.45	85	81.77	134	65.71
37	87.46	86	81.54	135	65.29
38	87.45	87	81.30	136	64.87
39	87.44	88	81.06	137	64.45
40	87.43	89	80.82	138	64.02
41	87.41	90	80.57	139	63.58
42	87.38	91	80.31	140	63.14
43	87.35	92	80.05	141	62.71
44	87.32	93	79.79	142	62.26
45	87.28	94	79.52	143	61.82

CASUALTY VALUE

(continued)

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>
144	61.38%	169	49.25%	194	35.13%
145	60.93	170	48.73	195	34.52
146	60.48	171	48.20	196	33.91
147	60.03	172	47.67	197	33.29
148	59.56	173	47.14	198	32.67
149	59.11	174	46.60	199	32.04
150	58.64	175	46.06	200	31.41
151	58.17	176	45.51	201	30.78
152	57.70	177	44.96	202	30.14
153	57.22	178	44.41	203	29.50
154	56.74	179	43.86	204	28.86
155	56.27	180	43.30	205	28.20
156	55.79	181	42.74	206	27.56
157	55.30	182	42.18	207	26.90
158	54.82	183	41.61	208	26.24
159	54.33	184	41.04	209	25.58
160	53.83	185	40.47	210	24.91
161	53.34	186	39.89	211	24.23
162	52.84	187	39.31	212	23.55
163	52.34	188	38.71	213	22.87
164	51.82	189	38.13	214	22.18
165	51.32	190	37.53	215	21.49
166	50.80	191	36.94	216	20.79
167	50.29	192	36.34	217	0
168	49.77	193	35.74		

The foregoing percentages have been calculated without regard to recapture of the Investment Credit. Consequently, the above Casualty Values shall each be increased by an amount equal to the sum of pre-tax equivalents of the Investment Credit lost to each Beneficiary computed in accordance with the marginal federal, state and local income tax rate of each Beneficiary at the date of payment of such Casualty Value. Promptly upon receipt of the notice of Casualty Occurrence, the Lessor, after obtaining the information required from the Beneficiaries, shall notify the Lessee and the Vendor of the applicable marginal tax rates and such other information as may be required to compute the increase in Casualty Value pursuant to the preceding sentence.

TERMINATION VALUES

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Date</u>	<u>Percentage of Purchase Price</u>
120	71.21%	169	49.25%
121	70.84	170	48.73
122	70.47	171	48.20
123	70.09	172	47.67
124	69.71	173	47.14
125	69.33	174	46.60
126	68.94	175	46.06
127	68.54	176	45.51
128	68.15	177	44.96
129	67.75	178	44.41
130	67.34	179	43.86
131	66.94	180	43.30
132	66.53	181	42.74
133	66.12	182	42.18
134	65.71	183	41.61
135	65.29	184	41.04
136	64.87	185	40.47
137	64.45	186	39.89
138	64.02	187	39.31
139	63.58	188	38.71
140	63.14	189	38.13
141	62.71	190	37.53
142	62.26	191	36.94
143	61.82	192	36.34
144	61.38	193	35.74
145	60.93	194	35.13
146	60.48	195	34.52
147	60.03	196	33.91
148	59.56	197	33.29
149	59.11	198	32.67
150	58.64	199	32.04
151	58.17	200	31.41
152	57.70	201	30.78
153	57.22	202	30.14
154	56.74	203	29.50
155	56.27	204	28.86
156	55.79	205	28.20
157	55.30	206	27.56
158	54.82	207	26.90
159	54.33	208	26.24
160	53.83	209	25.58
161	53.34	210	24.91
162	52.84	211	24.23
163	52.34	212	23.55
164	51.82	213	22.87
165	51.32	214	22.18
166	50.80	215	21.49
167	50.29	216	20.79
168	49.77	217	0