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RECORDATION NO. Filed 1425

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JUL 6 1979 9 50 AM JUL 6 1979

INTERSTATE COMMERCE COMMISSION 50.00

Interstate Commerce Commission
Washington, D.C.

CC Washington, D

Gentlemen:

Enclosed for recordation under the provisions of 49 USC Section 11303(a) are the original and seven counterparts of an Equipment Lease dated as of April 15, 1979.

The general description of the railroad equipment covered by the enclosed document is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Lessor: Trust Company for USL, Inc.,
as Trustee under Western
Fuels Trust No. 79-2
1211 West 22nd Street
Oak Brook, Illinois 60521

Lessee: Western Fuels Association, Inc.
1835 K Street, N.W.
Suite 412
Washington, D.C. 20006

The undersigned is the Lessor mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original and six counterparts of the Equipment Lease to Gary Green, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

TRUST COMPANY FOR USL, INC.,
as Trustee under Western Fuels
Trust No. 79-2

By Lisa Wakeman
LESSOR AS AFORESAID

Chapman and Cutler - C. J. Hawley

FEE OPERATION BR.
I.C.C.

Enclosures 9 47 AM '79
JUL 6 1979

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Interstate Commerce Commission
Washington, D.C. 20423

7/6/79

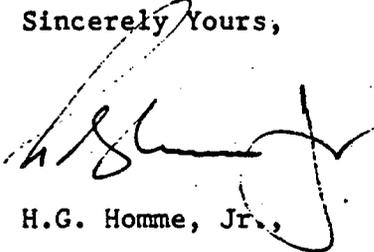
OFFICE OF THE SECRETARY

Gary Green, Esq.
Chapman and Cutler
111 West Monroe Street
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 7/6/79 at 9:50am , and assigned recordation number(s) 10590 & 10592

Sincerely Yours,



H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)

DESCRIPTION OF ITEMS OF EQUIPMENT

Manufacturer of Equipment: Ortner Freight Car Company

Description and Mark and Number of Items of Equipment: 100 Hopper Cars
Marked and Numbered WFAX 79300 to WFAX 79399, both inclusive

Base Purchase Price of Equipment: \$43,050 per Item

Maximum Aggregate Purchase Price of Equipment: \$4,500,000

Place of Delivery: Provo, South Dakota

Outside Delivery Date: July 31, 1979

(Western Fuels No. 79-2)

SCHEDULE A
(to Equipment Lease)

10591

RECORDATION NO. Filed 1425

JUL 6 1979 -9 50 AM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE

Dated as of April 15, 1979

Between

TRUST COMPANY FOR USL, INC.,
as Trustee under Western Fuels Trust No. 79-2

LESSOR

And

WESTERN FUELS ASSOCIATION, INC.

LESSEE

(Western Fuels No. 79-2)
(100 Hopper Cars)

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Attachments to Equipment Lease:

- Schedule A - Description of Items of Equipment
- Schedule B - Certificate of Acceptance
- Schedule C - Schedule of Casualty Value
- Schedule D - Schedule of Termination Value

EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of April 15, 1979 between TRUST COMPANY FOR USL, INC., an Illinois corporation, not individually but solely as trustee (the "Lessor") under a Trust Agreement dated as of April 15, 1979 (the "Trust Agreement") with The Bank of New York (the "Trustor"), and WESTERN FUELS ASSOCIATION, INC., a Wyoming non-profit corporation (the "Lessee");

R E C I T A L S:

A. Pursuant to a Purchase Order Assignment dated as of April 15, 1979, the Lessee has assigned to the Lessor its right to purchase the Equipment referred to below.

B. The Lessee and the Lessor have entered into a Participation Agreement dated as of April 15, 1979 (the "Participation Agreement") with the Trustor, Wells Fargo Bank, National Association, as security trustee (the "Security Trustee") and the institutional investor named in Schedule 2 thereto (the "Note Purchaser") providing commitments of the Trustor and the Note Purchaser which will permit the Lessor to obtain the funds necessary to purchase the equipment (collectively the "Equipment" and individually an "Item of Equipment") described in Schedule A hereto and made a part hereof. The Trustor will commit to advance to the Lessor an amount equal to 42.885847% of the Purchase Price of each Item of Equipment and the Note Purchaser will commit to purchase the 10-1/4% Secured Notes (the "Notes") of the Lessor in an amount equal to 57.114153% of each Item of Equipment. It is contemplated that the Participation Agreement will provide that the Notes will be secured by an assignment of the Lessor's right, title and interest in and to this Lease and in and to the Equipment pursuant to a Security Agreement-Trust Deed dated as of April 15, 1979 (the "Security Agreement") from the Lessor to the Note Purchaser.

C. The Lessee has entered into a Coal Purchase Contract dated as of February 9, 1978 between the Lessee as seller and Board of Public Utilities of Kansas City, Kansas (the "Board"), as buyer, and the Board and the Lessee have entered into a First Amendment dated as of February 9, 1978 to said Coal Purchase Contract. It is contemplated that the Lessee's rights under said Coal Purchase Contract and all amendments thereto (together the "Coal Purchase Contract"), insofar as they pertain to this Lease, the Participation Agreement or the Purchase Order Assignment, will be assigned to the Lessor as collateral security for the performance of the Lessee of its obligations under this Lease or the Participation Agreement and the rights of the Lessor under such assignment will be further assigned to the Security Trustee under the Security Agreement as additional security for the Notes.

SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

1.1. Intent to Lease and Hire. Upon delivery of each Item of Equipment by the manufacturer thereof identified in Schedule A hereto (hereinafter referred to as the "Manufacturer"), the Lessee shall lease and let and the Lessor shall hire to the Lessee such Item of Equipment for the rental and on and subject to the terms and conditions herein set forth.

1.2. Inspection and Acceptance. The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedule A. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and the Manufacturer thereof a Certificate of Acceptance (the "Certificate of Acceptance") in the form attached hereto as Schedule B with respect to such Item of Equipment; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to lease any Item of Equipment delivered after the Outside Delivery Date set forth in Schedule A.

1.3. Certificate of Acceptance. The Lessee's execution and delivery of a Certificate of Acceptance with respect to each Item of Equipment pursuant to Section 1.2 hereof shall conclusively establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against the Manufacturer thereof, such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to new railroad equipment of the character of the Equipment as of the date of this Lease. By execution and delivery of such Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rent for Equipment. The Lessee agrees to pay the Lessor the following rent for each Item of Equipment: 36 installments of fixed rental (the "Fixed Rental"), payable in arrears. The first twelve such installments will each be in an amount equal to 3.64804% of the Purchase Price for such item, and the remaining 24 shall be in an amount equal to 4.45872% of such Purchase Price.

2.2. Rent Payment Dates. The first installment of Fixed Rental for each Item of Equipment shall be due and payable six months following the Term Lease Commencement Date and the balance of said installments shall be payable at semiannual intervals thereafter, with the final such installment payable 18 years following the Term Lease Commencement Date. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the States of Illinois or California are authorized or required to close.

2.3. Place and Manner of Rent Payment. The payments to be made by the Lessee under this Lease shall be made as follows:

(a) Each installment of Fixed Rental shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address thereof provided for payments in Section 21.2 hereof; provided that in the event either the Lessor or the Security Trustee shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such assignee;

(b) The entire amount of any payment of Casualty Value or Termination Value pursuant to Section 11 hereof shall be paid to the Lessor by wire transfer in funds immediately available to the Lessor (with a corresponding written notice identifying the same as a payment of Casualty or Termination Value relating to Western Fuels Trust No. 79-2) and forwarded to the Lessor in the manner provided for notice in Section 21.2 hereof; provided that in the event either the Lessor or the Security Trustee shall notify the Lessee in writing that the right to receive payment of such Casualty and Termination Value shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by such check in the manner designated in such notice or as otherwise designated from time to time in writing by such assignee;

(c) The amount of any payment owing to the Lessor or the Trustor pursuant to Sections 6, 10.2, 11.1 (with respect to public liability insurance) and 21.3 hereof shall be made directly to the party to receive the same without regard to the assignment of this Lease pursuant to Section 16 hereof;

(d) The amount of any interest due in respect of the late payment of any rentals or other amounts pursuant

to Section 19 hereof shall be paid to the party and in the manner herein provided to receive said rental or other amount; and

(e) All payments other than those above specified shall be made by the Lessee directly to the party to receive the same unless any such payment has previously been made by the Lessor or its assignee, in which case the Lessee shall reimburse the Lessor or its assignee, as the case may be, directly for such payment.

The Lessee agrees that it will make payments due hereunder by wire transfer where specified above at the opening of business of the office of the transferring bank on the due date of such payment of Federal or otherwise immediately available funds to the party to whom such payment is to be made, and where not so specified, such payment shall be made by check of the Lessee drawn on a bank located in the continental United States and mailed to the party to receive the same at the address herein provided or at such other address as the Lessee shall have been previously advised in writing.

2.4. Net Lease. This Lease is a net lease and the Lessee's obligation to pay all Fixed Rental and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor or the Trustor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor or the Trustor to enter into this Lease, 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 unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been returned to the possession of the Lessor (for all purposes of this Lease any Item of Equipment shall not be deemed to have been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). 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 Items of Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee pursuant to Section 16 hereof for any reason whatsoever.

SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Sections 11, 14 and 18 hereof, shall terminate 18 years following the Term Lease Commencement Date provided for in Section 2.2 hereof.

SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1. Retention of Title. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and possession and use thereof by the Lessee.

4.2. Duty to Number and Mark Equipment. The Lessee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Leased from a Bank or Trust Company,
as Owner-Trustee and Subject to a
Security Interest recorded with the I.C.C."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been delivered to the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3. Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates 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 5. DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THE EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY EITHER THE LESSOR OR THE TRUSTOR, EACH EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (D) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (E) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby 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 and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturer, provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Item of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Item of Equipment 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 Item of Equipment. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Items of Equipment described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

SECTION 6. LESSEE'S INDEMNITY.

6.1. Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor, in both its individual and fiduciary capacities, the Trustor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Security Trustee and the Note Purchaser) and their respective successors and assigns (the "Indemnitees") from and against:

(a) any and all loss or damage to the Equipment, ordinary wear and tear excepted; and

(b) any claim, cause of action, damages, liability, cost or expense (including, without limitation, counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to any Item of Equipment or any part thereof, including, without limitation, the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Item of Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessee or any indemnified party), (ii) by reason or as the result of any act or omission (whether negligent or otherwise) of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent, trademark or copyright infringements with respect to any Item of Equipment, or (iv) as a result of claims for negligence or strict liability in tort with respect to any Item of Equipment or the operation thereof.

The Lessee shall not, however, be required to pay or discharge any claim, cause of action, damages, liability, cost or expense referred to in this Section 6.1, (i) which arises out of or is caused by the willful misconduct, breach of contract or gross negligence of any Indemnatee (but no such action by any Indemnatee shall prohibit enforcement of such payment or discharge by any other Indemnatee), (ii) which is for any taxes or interest (except pursuant to Section 19 hereof) or penalties thereon, or (iii) so long as the Lessee shall, in good faith and by appropriate legal proceedings, contest the validity or amount thereof in any reasonable manner which will not, in the reasonable opinion of counsel for the Lessor and any assignee under Section 16 hereof, affect or endanger the title and interest of the Lessor or the security interest or other rights of any assignee under Section 16 hereof in and to the Equipment. Further, nothing under this Section shall be deemed to create any right of subrogation against the Lessee on the part of any insurer or to otherwise benefit any person other than those Indemnitees specifically mentioned in this Section.

The indemnities and assumptions of liabilities set forth in this Section 6.1 do not guarantee to any party at any

time a residual value in the Equipment nor do they guarantee the payment of the Notes or any interest accrued thereon.

6.2. Continuation of Indemnities and Assumptions.

The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii) or (iv) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or 15, as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability; provided that the Lessee agrees upon the request of the Lessor to consult in good faith with the Lessor in all such matters. Upon receipt by any of the foregoing Indemnitees of notice of any claim or liability hereby indemnified against, such party shall promptly notify the Lessee of such claim or cause of action.

SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) (the "Interchange Rules") with respect to the use and maintenance of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in the Lessor. In the event the Lessee shall make any alteration, replacement, addition or modification to any Item of Equipment pursuant to this Section 7 (the "Alterations"), the Lessor agrees that it will in the taxable year when made include the fair market value thereof in its gross income for Federal income tax purposes if required to do so by the Internal Revenue Service in order to obtain the tax benefits contemplated to be available to the Trustor by the parties hereto. The Lessee agrees that, within 30 days after the close of any calendar quarter in which the Lessee has made Alterations, the Lessee will give written notice thereof to the Lessor describing, in reasonable detail, the Alterations and specifying the cost thereof with respect to each Item of Equipment and the date or dates when made.

SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange in accordance with the Interchange Rules. The Lessee's obligations to maintain the Equipment under this Section 8 shall not be deemed to be satisfied unless the Lessee has entered into a contract for the term of this Lease with a railroad carrier or a knowledgeable railroad contractor providing for preventive maintenance of the Equipment. Such contract shall provide (without limitation) that each car is to be inspected and necessary repairs or replacement made for elements of the running gear, draft gear, unloading gear and car body and that such inspection, repair or replacement shall be made at intervals not to exceed two years, with the last such inspection to take place not more than one year prior to the end of the original term of this Lease. Except as required by the provisions of Section 7 hereof (or as permitted by this Section 8), the Lessee shall not modify any Item of Equipment without the prior written authority and approval of the Lessor and any assignee pursuant to Section 16 hereof which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment.

SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon any Item of Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease and any other liens or charges which arise by virtue of claims against, through or under any other party other than the Lessor and the Trustor, but the Lessee shall not be required to pay or discharge any

such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity or amount thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor or the security interest or other rights of any assignee under Section 16 hereof in and to the Equipment. The Lessee's obligations under this Section 9 shall survive the termination of this Lease with respect to any matter arising prior to such termination.

SECTION 10. FILING; PAYMENT OF STATE AND LOCAL TAXES.

10.1. Filing. Prior to the delivery and acceptance of the first Item of Equipment hereunder, the Lessee will cause this Lease and the Security Agreement to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with 49 USC 11303 and in such other places within or without the United States as the Lessor or the Security Trustee may reasonably request and will furnish the Lessor and the Security Trustee proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Security Trustee, for the purpose of protecting the Lessor's title to, or the Security Trustee's security interest in, any Item of Equipment and the Lessor's and Security Trustee's interest in the Coal Purchase Contract to the satisfaction of the Lessor's or the Security Trustee's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor and the Security Trustee proof of such filings and an opinion of the Lessee's counsel reasonably satisfactory to the Lessor and the Security Trustee that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action.

10.2. Payment of State and Local Taxes. All payments to be made by the Lessee under this Lease to the Lessor, the Trustor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Security Trustee and the Note Purchaser) (the "Tax Indemnitees") will be free of expense to the Tax Indemnitees with respect to any Impositions as hereinafter defined. The Lessee agrees to pay, on demand, any and all Impositions and shall save harmless and indemnify on an after-tax basis the Tax Indemnitees from and against such Impositions. As used in this Section 10.2 "Impositions" shall mean the amount of any local, state, Federal or foreign taxes, assessments or license fees and any charges, fines, interest or penalties in connection therewith which are imposed on or measured by this Lease or the receipt of sums pursuant hereto or any sale, rental, use, payment, shipment, delivery or transfer of title in respect of the Equipment under the terms hereof; provided that Impositions

shall not include as to each respective Tax Indemnitee: (i) United States Federal tax on net income and items of tax preference and any foreign income tax (but only to the extent such Tax Indemnitee receives a benefit in the form of a credit against United States Federal income tax for the year the foreign tax is paid or incurred); (ii) the aggregate of all state or local taxes measured by net income based on such receipts, up to the amount in the aggregate of any such income taxes which would be payable to the state and city in which such Tax Indemnitee has its principal place of business, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided; (iii) any sales or use taxes imposed upon the voluntary transfer or disposition of all or any part of the Equipment, or all or any part of the Beneficial Interest, it being understood that any such transfer or disposition provided for in the Operative Agreements (other than a transfer required by Section 18 hereof) or any transfer or disposition which occurs after an Event of Default or event which, with the passage of time or giving of notice, or both, could become an Event of Default, has occurred and is continuing, shall be deemed not to be a voluntary transfer or disposition; (iv) any local, state, Federal or foreign taxes, assessments or license fees, and any charges, fines, interest or penalties in connection therewith which are imposed solely as a result of the willful misconduct or gross negligence of the Tax Indemnitee or an unwillingness of the Tax Indemnitee to take reasonable action or to furnish reasonable cooperation which would prevent the Lessee from fulfilling its obligations under this Section; and (v) any local, state, Federal or foreign taxes, assessments or license fees imposed on or measured by the compensation received by the Lessor for its services as Trustee under the Trust Agreement. The Lessee will also pay promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon any Tax Indemnitee solely by reason of its interest with respect thereto and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the interest of any Tax Indemnitee therein or result in a lien upon any such Item of Equipment; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the reasonable opinion of the Tax Indemnitee, adversely affect the interest of any Tax Indemnitee hereunder or under the Security Agreement. If any Impositions shall have been charged or levied against any Tax Indemnitee directly and paid by such Tax Indemnitee after such Tax Indemnitee shall have given written notice thereof to the Lessee and the same shall have remained unpaid for a period of ten business days thereafter, the Lessee shall reimburse such Tax Indemnitee on presentation of invoice therefor. Prior to making such payment, such Tax Indemnitee shall promptly notify the Lessee of the Impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

In the event any reports with respect to Impositions are required to be made on the basis of individual Items of Equipment, the Lessee will either prepare and file such reports in such manner as to show as required the interests of each Tax Indemnatee in such Items of Equipment or, if it shall not be permitted to file the same, it will notify each Tax Indemnatee of such reporting requirements, prepare such reports in such manner as shall be satisfactory to each Tax Indemnatee and deliver the same to each Tax Indemnatee within a reasonable period prior to the date the same is to be filed.

In the event that, during the continuance of this Lease, any Imposition accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this Section 10.2, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

11.1. Insurance. The Lessee will at all times after delivery and acceptance of each Item of Equipment, at its own expense, keep or cause to be kept each such Item insured by a reputable insurance company or companies in amounts and against risks as is customary by companies owning property of a similar character and engaged in a business similar to that engaged in by the Lessee, and in any event in amounts and against risks not less than the insurance, if any, maintained by the Lessee with respect to similar equipment which it owns or leases 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 such protection as is consistent with prudent industry practice, but in any event, at least comparable to insurance coverage carried by Lessee on equipment owned or leased by Lessee similar in nature to the Equipment; provided, however, that the Lessee will in any event, if available, maintain insurance in an amount not less than the Casualty Value of the Equipment, but need not maintain insurance in excess of such Casualty Value. Such insurance may provide that losses shall be adjusted with the Lessee and shall provide that the proceeds thereof shall be payable to the Lessor, any assignee thereof pursuant to Section 16 hereof and the Lessee as their interests shall appear; provided that in the event any casualty insurance shall be in effect with respect to the Equipment prior to the payment in full of all principal and interest on the Notes, all payments thereunder shall be made to the Security Trustee under a standard mortgage loss payable clause. All proceeds of insurance received by any party other than the Lessee with respect to any Items of Equipment not suffering a Casualty Occurrence (as hereinafter defined) shall be paid thereby to the Lessee upon reasonable proof that any

damage to any Item with respect to which such proceeds were paid has been fully repaired. Any such proceeds of insurance received by any party with respect to a Casualty Occurrence shall be credited thereby toward the payment required by this Section 11 with respect to such Casualty Occurrence. Each such insurance policy shall provide that all insureds thereunder shall be provided with 30 days' written notice of cancellation, expiration or material change in coverage. No such policy shall provide that the coverage thereunder for the benefit of the Lessor, the Trustor or any assignee under Section 16 hereof shall be restricted, impaired or invalidated by any breach or violation by the Lessee of warranties, declarations or conditions contained in such policy. The Lessee covenants and agrees that it will throughout the term hereof furnish to the Lessor and such assignee certificates of insurers or other satisfactory evidence of the maintenance of the insurance required by this Section 11.1.

11.2. Duty of Lessee to Notify Lessor. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged during the term of this Lease or thereafter while such Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease for a stated period which equals or exceeds the then remaining term of this Lease (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor, the Trustor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Security Trustee and the Note Purchaser in regard thereto and shall pay the Casualty Value (as defined in Section 11.6 hereof) of such Item in accordance with the terms of Section 11.3 hereof.

11.3. Sum Payable for Casualty Loss. The Lessee, on the next succeeding rent payment date following its notice of a Casualty Occurrence with respect to any Item or Items of Equipment, shall pay to the Lessor the Fixed Rental installment due on such payment date for such Item of Equipment plus any rentals or other sums due on or prior to such date then remaining unpaid plus a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment.

11.4. Rent Termination. Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 hereof in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.5. Disposition of Equipment. The Lessee shall, at the option of the Lessor, or the Lessor shall dispose of such Item or Items of Equipment having suffered a Casualty Occurrence

as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as-is", "where-is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of, so long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default shall have occurred and be continuing, and the Casualty Value for such Item shall have been paid, the Lessee may retain all amounts arising from such disposition plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, of any disposition proceeds to the Lessor, and the excess, if any, of any insurance proceeds shall be retained by the Lessee; provided that in the case of any payment of Casualty Value on the final four Fixed Rental payment dates there shall be paid to the Lessor from any insurance proceeds prior to retention thereof by the Lessee an amount equal to the percentage of Purchase Price of the Item of Equipment having suffered a Casualty Occurrence set forth opposite the number of such payment date in the following schedule:

<u>Number of Fixed Rental Payment Date</u>	<u>Percentage of Purchase Price</u>
33	1%
34	2%
35	3%
36	4%

In disposing of such Item of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item of Equipment.

11.6. Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Purchase Price (as defined in the Participation Agreement) of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such date of payment.

11.7. Risk of Loss. The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and all rental installments and other sums due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.8. Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not equal or exceed the term of this Lease, the Lessee's obligation to pay all installments of rental and other sums shall continue for the duration of such requisitioning or taking. So long as no Event of Default, or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

11.9. Voluntary Termination. Unless an Event of Default (as defined in Section 14 hereof) or other event which, with notice, demand and/or lapse of time, would constitute an Event of Default shall have occurred and be continuing hereunder, on the Fixed Rental payment dates hereinafter permitted (but not during any renewal term), the Lessee shall be entitled, at its option, upon at least 90 days' prior written notice to the Lessor and the Note Purchaser, to terminate this Lease if the Lessee shall have made a good faith determination that all (but not less than all) of the Items of Equipment have become obsolete or otherwise uneconomical for use in the Lessee's operations, which notice shall be signed by the President, any Vice President or the Treasurer of the Lessee and shall state that the Items of Equipment have become obsolete or otherwise uneconomical for use in the Lessee's operations; such notice shall be accompanied by a certified copy of a resolution of the Board of Directors of the Lessee setting forth the above referred to determination and a written statement of the President, any Vice President or the Treasurer of the Lessee to the Lessor, the Trustor and the Note Purchaser setting forth a summary of the basis for such determination; provided, however, that such termination shall become effective only on a Fixed Rental payment date specified in Schedule D hereto (hereinafter called the Termination Date) and, in no event, prior to seven years after the Term Lease Commencement Date or during any renewal term; and provided, further, that such termination shall not take effect unless the Lessee shall have fully complied with the succeeding paragraphs of this Section 11.9.

During the period from the giving of such notice to the Termination Date, the Lessee, as agent for the Lessor, shall use its best efforts to obtain bids for the purchase and/or lease of the Equipment on and "as-is, where-is" basis, and the Lessee shall certify to the Lessor in writing the amount of each bid received and the name and address of the person (who shall not be the Lessee or any person, firm or corporation affiliated with the Lessee) submitting such bid. An "affiliate" of the Lessee shall mean any person who possesses, directly or indirectly, the right to vote at least 10% of the voting securities of the Lessee or is a member of the Lessee holding comparable rights,

and any person who, directly or indirectly, controls or is controlled by or is under common control with the Lessee, and "control" (including "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or control the direction of the management and policies of such person, whether through the ownership of voting securities, by contract, by membership rights or otherwise. On the Termination Date, the Lessor shall, either (i) without recourse or warranty, sell the Equipment for cash to whomsoever shall have submitted the highest bid therefor prior to the Termination Date, or (ii) lease the Equipment to such party and upon such terms as the Lessor shall determine (subject to the obligations of the Lessor to have previously prepaid the Notes in full or obtained the prior written consent of the Note Purchaser to such lease), and thereupon the Lessee shall cause the Equipment to be delivered to the Lessor in accordance with the terms of Section 13 hereof. If the Equipment shall not have been so sold or leased on the Termination Date, this Lease shall continue in full force and effect. The Lessor, the Trustor and the Note Purchaser shall be under no duty to (but may) solicit bids, inquire into the efforts of the Lessee to obtain bids or otherwise to take any action in connection with any such sale and/or lease other than as expressly provided in this Section 11.9.

If the Equipment is sold as above provided, the total sale price realized at any such sale of the Equipment shall be retained by the Lessor and, in addition, the Lessee shall pay to the Lessor on the Termination Date the excess, if any, of (i) the Termination Value of the Equipment, which shall be the percentage of the Purchase Price of the Equipment set forth in Schedule D opposite the number which corresponds to the Termination Date, over (ii) the proceeds of such sale less all expenses (including reasonable attorneys' fees) incurred by the Lessor in connection with such sale or with the collection or distribution of such payment. No such sum shall be payable by the Lessee if the Equipment is leased as above provided, but in the case of either a sale or lease, the Lessee shall also be obligated to pay the Lessor on the Termination Date any and all rentals and other sums due hereunder with respect to the Equipment accrued up to and including the Termination Date. In the event of such sale or lease and compliance by the Lessee with all the provisions of this Section 11.9, the obligation of the Lessee to pay rental hereunder on all rental payment dates commencing after the Termination Date shall terminate.

SECTION 12. ANNUAL REPORTS.

12.1. Duty of Lessee to Furnish. On or before the first May 1 which occurs more than four months following the date of this Lease, the Lessee will furnish to each Lessor, the Trustor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Security Trustee and the Note Purchaser)

an accurate statement, as of the preceding December 31 (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the 12 months ending on such December 31 (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2. Lessor's Inspection Rights. The Lessor, the Trustor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Security Trustee and the Note Purchaser) each shall have the right, at their respective sole cost and expense, by their respective authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Equipment during the continuance of this Lease.

SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks as the Lessee and the Lessor may agree, or in the absence of such agreement, upon storage tracks in the vicinity of Kansas City, Kansas and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding 90 days following the arrival of 90% of the Items of Equipment then subject hereto at such location, and in the case of those Items of Equipment arriving after 90% of the Items shall have arrived, to so store each such Item for 90 days following its arrival, and as to all Items transport the same at any time within such 90-day period applicable thereto to the nearest connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. All amounts earned in respect of the Equipment after the date of expiration of this Lease, shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Item of Equipment is not assembled, delivered and stored

as hereinabove provided within 30 days after the expiration of this Lease, the Lessee shall, in addition, for each such day thereafter for an aggregate of not exceeding 60 days, pay to the Lessor an amount equal to the amount, if any, by which an amount equal to .024771% of the Purchase Price of such Item of Equipment, exceeds the amount, if any, received by the Lessor (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence. If any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 90 days after the expiration of this Lease, the Lessee shall be liable for the payment of all damages resulting from the breach of such obligation pursuant to Section 14 hereof. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

SECTION 14. DEFAULT.

14.1. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

- (a) Default shall be made in the payment of any part of the rental or Casualty Value or Termination Value provided in Section 2 or 11 hereof and such default shall continue for ten days;
- (b) The Lessee shall make or permit any assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof not permitted by this Lease;
- (c) The Lessee shall at any time fail to maintain insurance in the manner required by Section 11.1 hereof;
- (d) 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 Coal Purchase Contract and all amendments thereto and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied;
- (e) Any material representation or warranty made by the Lessee herein or in the Participation Agreement (other than those made in Section 9(c) of the Participation Agreement) or the Purchase Order Assignment or in any statement or certificate furnished to the Lessor, the Trustor, the Security Trustee or the Note

Purchasers pursuant to or in connection with this Lease, the Participation Agreement or the Purchase Order Assignment is untrue in any material respect as of the date of issuance or making thereof;

(f) Any holder of Funded Debt (as defined below) of the Lessee or a trustee for such holder shall cause to be accelerated the payment thereof prior to its stated maturity or its regularly scheduled dates of payment, or any lessor or assignee thereof shall terminate or shall initiate appropriate proceedings to enforce any Capitalized Lease (as defined below), in each such case upon the happening of a default or event, and following such giving of notice and/or the continuance of such period of time, if any, as shall permit such acceleration or termination or the initiation of such proceedings;

(g) The Lessee becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they may mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for the Lessee or for the major part of its property;

(h) A trustee or receiver is appointed for the Lessee or for the major part of its property and is not discharged within sixty (60) days after such appointment;

(i) Any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(j) An Event of Default (as defined in the Coal Purchase Contract) shall have occurred and be continuing.

"Funded Debt" of the Lessee shall mean any indebtedness thereof for borrowed money, whether incurred, assumed or guaranteed, or indebtedness which has been incurred, assumed or guaranteed in connection with the acquisition of property or assets (including any deferred portion of the purchase price thereof), but excluding any indebtedness of the Lessee for which it is not liable in its general corporate capacity) which in any case has an unpaid principal balance of more than \$100,000 and has a stated maturity of (or is renewable or extendible at the option of the obligor for a period or periods extending) more than 12 months from its date of origin, including the current maturities thereof.

"Capitalized Lease" shall mean any lease of real or personal property by the Lessee, as lessee, which as originally executed provides, or is amended to provide, for a term (including the initial term and any period for which such lease may be renewed or extended at the option of the Lessor) of more than three years and which has an unexpired term of more than one year (including any such renewal or extension periods) and which provides for the payment by such lessee throughout the then remaining term of the lease of periodic rental installments aggregating more than \$100,000, whether or not such lease or the rentals thereunder are reflected in the balance sheet of said lessee, or any lease of real or personal property by any other party otherwise described above for which the Lessee has assumed or guaranteed the obligations of the lessee thereunder.

14.2. Remedies. If any Event of Default has occurred and is continuing, the Lessor or, in the event this Lease shall be assigned to an assignee pursuant to Section 16 hereof, such assignee, at its option, may (subject to the provisions of Section 20.1 hereof in respect of an Event of Default occurring pursuant to Section 14.1(j) above):

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorneys' fees; and/or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts 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 (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Item of Equipment which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period computed by discounting from the end of such term to the date of such termination, such present worth to be computed in each case on a basis of a 7% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess if any of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the net proceeds of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

For purposes of Section 14.2 above, the Fair Rental Value and Fair Market Value for any Item of Equipment shall be determined in the manner provided for appraisal arrangements specified in Section 18.2(b) hereof; provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

14.3. Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of 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 of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

14.4. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any 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.

14.5. Notice of Event of Default. The Lessee also agrees to furnish to the Lessor, the Trustor, the Security Trustee and the Note Purchaser, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after 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 14.5 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 officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or any assignee of the Lessor pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith place such Equipment upon such storage tracks within the continental United States as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(b) Provide storage at the risk of the Lessee for each such Item of Equipment on such tracks until the same has been sold, leased or otherwise disposed of by the Lessor; and

(c) Transport any Items of Equipment to any place of interchange on the lines of a railroad within a 100-mile radius of such storage tracks, all as the Lessor may reasonably direct upon not less than 30 days' written notice to the Lessee.

During any such storage period the Lessee shall maintain the Items of Equipment in such manner as the Lessee normally maintains similar equipment owned or leased by it in similar storage circumstances and in any event shall maintain the insurance required by Section 11.1 hereof during such period. All amounts earned in respect of the Equipment after the date of termination of this Lease, shall belong to the Lessor or in the event this Lease has been assigned pursuant to Section 16 hereof, to such assignee, and, if received by the Lessee, shall be promptly turned over to the Lessor, or in the case of such assignment, to such assignee. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 30 days after the termination of this Lease, the Lessee shall, in addition, pay to the Lessor or, in the case of such assignment, to such assignee for each day thereafter an amount equal to the amount, if any, by which the higher of (i) an amount equal to .024771% of the Purchase Price of such Item of Equipment, or (ii) the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor or such assignee (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

15.2. Specific Performance. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

15.3. Lessor Appointed Lessee's Agent. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and all other sums due or to become due hereunder may be assigned in whole or in part by the Lessor to the Security Trustee or any successor thereof without

the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee, the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (ii) said assignee shall, if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies relating to amounts payable to the Lessor or the Trustor pursuant to Sections 6, 10.2, 11.1 [with respect to public liability insurance] and 21.3 hereof which shall remain enforceable by the Lessor and/or the Trustor, as the case may be), but if no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said assignee, the Lessor and the Trustor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (iii) all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

It is understood and agreed that the right, title and interest of any such assignee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment.

SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1. Lessee's Rights to the Equipment. So long as no Event of Default, or any event which with the lapse of time

or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor (which consent will not be unreasonably withheld), the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2. Use and Possession by Lessee, Interchange, "Mileage". So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to and shall have the exclusive use and possession of the Equipment. The Lessee agrees that use of the Equipment outside the continental United States shall be de minimus, and in any event that the Lessee shall at all times remain in compliance with the terms and provisions of this Lease in respect of all of the Items of Equipment wherever located. The Lessee agrees that it will not assign this Lease or any of its rights hereunder or sublease any Item of Equipment except with the written consent of the Lessor and the Note Purchaser. No such consent shall be required for any sublessee which shall, at the time of execution and delivery of the sublease, be a corporation with an equipment trust certificate or bond credit rating of "A" or better or its equivalent as provided by either Moody's Investors Services, Inc. or Standard and Poor's Corporation. No such sublease or permitted use shall relieve the Lessee of any of the obligations, liabilities or duties hereunder, which shall be and remain those of a principal and not a surety.

It is contemplated that the Lessee shall receive insofar as applicable law and regulations allow, all mileage allowance rentals and/or other compensation (hereinafter referred to as "Mileage") payable by carriers by reason of the use of an Item of Equipment and if for any reason the Lessor shall receive any Mileage then (unless an Event of Default shall have occurred and be continuing, in which event such Mileage or portion thereof shall be retained by the Lessor until such Event of Default shall no longer be continuing) the Lessor shall remit such Mileage to the Lessee promptly after the Lessee shall furnish to the Lessor, at the Lessee's sole expense, either (i) a ruling of the Interstate Commerce Commission to the effect that the remittance thereof to the Lessee will not constitute a rebate within the meaning of 49 U.S.C. Sections 11902 and 11903, as amended, or (ii) an opinion of counsel to the same effect.

17.3. Merger, Consolidation or Acquisition of Lessee. Without the prior written consent of 66-2/3% of the principal amount of outstanding Notes and the Lessor, the Lessee will not be a party to any merger or consolidation; provided, that the foregoing restriction does not apply to the merger or consolidation

of the Lessee with another corporation, if all of the following conditions are met:

(1) The Lessee is the continuing corporation or the corporation (if other than the Lessee) which results from such merger or consolidation (the "Surviving Corporation"), has been organized under the laws of the United States or a jurisdiction thereof and shall have expressly assumed in writing the due and punctual performance and observance of all of the covenants and obligations of the Lessee under the Operative Agreements;

(2) Immediately after the consummation of the transaction and after giving effect thereto, no default or event which with the passing of time or the giving of notice, or both, would constitute a default of the Lessee would exist under any instruments or agreements to which the Lessee is a party;

(3) After giving effect to the proposed merger or consolidation, the Lessee or the Surviving Corporation will be engaged in substantially the same lines of business as was engaged in by the Lessee immediately prior to the merger; and

(4) Immediately after the consummation of the transaction, and after giving effect thereto, the Lessee or the Surviving Corporation has a net worth not less than the net worth of the Lessee immediately prior to the merger.

SECTION 18. RIGHT OF FIRST REFUSAL; PURCHASE AND RENEWAL OPTIONS.

18.1. Right of First Refusal. Unless an Event of Default, or any event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, the Lessor shall not, at any time after the end of the original term of this Lease (or, except as hereinafter provided, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.3 hereof, at the end of such renewal term) sell, transfer or otherwise dispose of an Item or Items of Equipment nor shall the beneficial interest of the Trustor under the Trust Agreement in respect thereof be sold, transferred or otherwise disposed of, in each case except to the Lessee pursuant to Section 18.2 hereof (and if an option to purchase shall have been available to the Lessee pursuant to said Section 18.2 and the Lessee shall have failed to have elected such option, then the provisions of this Section 18.1 shall not be applicable) unless:

(a) the Lessor shall have received from a responsible purchaser or purchasers a bona fide offer or offers in writing

to purchase in the aggregate all, but not less than all, of the Items of Equipment;

(b) the Lessor shall have given the Lessee notice (i) setting forth in detail the identity of such purchaser or purchasers, the proposed purchase price or prices, the proposed date of purchase and all other material terms and conditions of such purchase, including, without limitation, any arrangements for the financing of such purchase known to the Lessor, and (ii) offering to sell such Items of Equipment to the Lessee upon the same terms and conditions as those set forth in such notice; and

(c) the Lessor shall not have received from the Lessee notice, within 20 days following the notice referred to in clause (b) of this Section 18.1, of its election to purchase such Items of Equipment upon such terms and conditions.

If the Lessee shall not have so elected to purchase such Item or Items of Equipment, the Lessor may sell such Item or Items of Equipment at such price and upon other terms and conditions as it may choose. Notwithstanding the foregoing provisions of this Section 18.1, the Lessor may, if the Lessee has not purchased the Equipment pursuant to Section 18.2 hereof or renewed this Lease pursuant to Section 18.3 hereof, lease any or all Items of Equipment at any time after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.3 hereof, at the end of such renewal term) without first offering to lease the Equipment to the Lessee.

18.2. Purchase Option. Provided that the Lessee is not in default, the Lessee shall have the following option to purchase:

(a) The Lessee shall have the right to purchase all, but not less than all, of the Items of Equipment then leased hereunder at the expiration of any renewal term pursuant to Section 18.3 hereof which expires not less than three years following the expiration of the original term hereof at a price equal to the Fair Market Value of such Items of Equipment (as hereinafter defined). The Lessee shall give the Lessor written notice 180 days prior to the end of the term of its election to exercise the purchase option provided for in this Section. Payment of the option price shall be made to the Lessor at the address thereof provided for payments in Section 20.1 hereof in funds there current against delivery of a bill of sale transferring and assigning to the Lessee all right, title and interest of the Lessor in and to the Equipment and containing a warranty against liens or claims of persons claiming by, through or under the Lessor except liens and claims which the Lessee assumed or is obligated to discharge under the terms of the Lease. The Lessor shall not be required to make any representation or warranty as to the condition of the Equipment or any other matters.

(b) The Fair Market Value of an Item of Equipment shall be determined in the manner provided in Section 18.3(b) hereof.

18.3. Renewal Options. Provided that no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have the following renewal options:

(a) The Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Items of Equipment then leased hereunder for up to, but no more than, seven consecutive additional one-year periods or any combination of consecutive whole years aggregating not more than seven years and with no single option to exceed more than a five-year period, the first such period commencing on the scheduled expiration of the initial term and each subsequent renewal period, if elected, commencing upon the expiration of the previous extended term of this Lease, at the then Fair Rental Value (as hereinafter defined) payable in semiannual payments in arrears in each year of such extended term. Each renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice of any such election 180 days prior to the commencement of any renewal term provided for in this Section 18.3. The Casualty Value payable for and during any renewal term in respect of any Item of Equipment suffering a Casualty Occurrence during such term shall be an amount determined as follows:

(i) At the beginning of such renewal term, the Fair Market Value of such Item shall be determined as of both the beginning of such term and the end of such term;

(ii) The Casualty Value payable as of the first Fixed Rental payment date during such renewal term shall be equal to the Fair Market Value of such Item as of the beginning of such term;

(iii) The Casualty Value payable as of the final Fixed Rental payment date during such renewal term shall be equal to the Fair Market Value of such Item as of the end of such term; and

(iv) The Casualty Value payable on the Fixed Rental payment dates, if any, between such first and final Fixed Rental payment dates shall be an amount determined on a straight-line basis (declining, increasing or level, as the case may be) from the Fair Market Value in clause (ii) above to the Fair Market Value in clause (iii) above.

(b) The Fair Rental Value or Fair Market Value, as the case may be, of the Items of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee or buyer, as the case may be (other than a lessee or buyer, as the case may be, currently in possession) and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell, as the case may be. If on or before 90 days prior to the date of commencement of the renewal term elected by the Lessee, or the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value or the Fair Market Value of such Items of Equipment, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean any independent appraiser mutually agreed upon by the Lessor and the Lessee or if no such mutual agreement is reached within 15 days after the beginning of such 30-day period, or the end of such 30-day period, as the case may be, two independent appraisers, one chosen by the Lessor and one chosen by the Lessee, or, if such appraisers cannot agree on the amount of such value within 15 days after such appointment, an independent appraiser to be chosen by the American Arbitration Association promptly thereafter. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

18.4. Delivery of Equipment. Unless the Lessee has elected to purchase the Items of Equipment then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 18, all of such Items of Equipment shall be returned to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNT PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding any nonpayment of rent due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to 11-1/4% per annum (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. COLLATERAL ASSIGNMENT BY LESSEE OF CERTAIN CONTRACTS, AGREEMENTS AND LEASES.

20.1. Assignment. As collateral security for the payment of any and all of the obligations and liabilities of the Lessee due hereunder, the Lessee does hereby grant a security interest in and assigns to the Lessor all of its right, title and interest under and pursuant to the Coal Purchase Contract to the extent the Coal Purchase Contract requires payments thereunder to the Lessee in respect of the rentals and other sums payable by the Lessee hereunder and to the further extent of any damages thereunder in the event of nonpayment of any part of such amounts and the proceeds of all of the foregoing and the party to which Fixed Rentals are then payable pursuant to Section 2.3 hereof (the "Rental Payee") shall collect and receive all such sums and moneys and apply the same to the payment of the Lessee's obligations hereunder; provided, however, that if an Event of Default shall occur hereunder pursuant to Section 14.1(j) hereof, prior to taking any action hereunder against the Lessee or against the Board under the Coal Purchase Contract the Lessor will, so long as no other Event of Default has occurred and is continuing hereunder, consult with the Lessee regarding the course of action which the Lessor proposes to pursue, and if within 60 days following the occurrence of such Event of Default the Lessee is able to and does provide such additional collateral security as the Lessor and the Noteholders in their sole judgment deem satisfactory, then such Event of Default shall be deemed cured and the Lessee may take such action against the Board as it shall deem appropriate.

20.2. Amendment or Waiver of Assignment Contracts. The Lessee may consent to the amendment of any contract, agreement or lease assigned pursuant to Section 20.1 hereof, or waive any of its rights thereunder, only with the prior written consent of the Lessor and the Noteholder or if such amendment or waiver will not reduce the amounts the Lessee receives for fixed costs under the Coal Purchase Contract or in any way impair the ability of the Lessee to promptly meet its obligations under this Lease for which case the Lessee will provide a certificate signed by its President or any Vice President which shall state that said amendment does not affect the ability of the Lessee to promptly meet its obligations under this Lease.

20.3. Further Assignment. The Lessee acknowledges and agrees that (i) all rights and interests of the Lessor pursuant to this Section 20 may be assigned by the Lessor to any assignee in accordance with Section 16 hereof, and (ii) the assignment provided for in this Section 20 shall not in any way obligate the Lessor or any of its successors or assigns to perform or satisfy any of the obligations or liabilities of the Lessee under any of the assigned contracts, agreements or leases.

20.4. Power of Attorney. Subject to the limitations contained in this Section 20, the Lessee hereby irrevocably constitutes and appoints the Lessor its true and lawful attorney

with full power of substitution for it in its name and stead to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all sums or properties which may be or become due, payable or distributable to and in respect of the interests assigned under this Section 20, with full power to settle, adjust or compromise any claim thereof or therefor as fully as the Lessee could itself do and to endorse the name of the Lessee on all commercial paper given in payment or part payment of and all documents of satisfaction, discharge or receipt required or requested in connection therewith and in its discretion, to file any claim, to take any other action or proceeding, either in its name or name of the Lessee or otherwise, which the Lessor may deem necessary or appropriate to collect or otherwise realize upon any and all interest assigned hereunder, or which may be necessary or appropriate to protect and preserve the right, title and interest of the Lessor in and to the interests assigned under this Section 20 and the security intended to be afforded hereby. The power of attorney granted in this Section 20.4 is power coupled with an interest and will survive an Event of Default under this Lease.

20.5. Rights under Uniform Commercial Code. Upon the occurrence of any Event of Default under this Lease, the Lessor shall, in addition to all other rights and remedies provided for herein, have in connection with the assignment provided for in this Section 20, all the rights of a secured party under the Uniform Commercial Code of Illinois (regardless of whether such Code is the law of the jurisdiction where the rights or remedies are asserted).

20.6. Further Assurance. Without limiting the foregoing, the Lessee hereby further covenants that it will, upon the written request of the Lessor execute and deliver such further instruments and do and perform such other acts and things as the Lessor or its assigns may deem necessary or appropriate effectively to invest in and secure to the Lessor and its assigns the interests assigned pursuant to this Section 20 or other rights or interests due or hereafter to become due.

20.7. Application of Moneys. All distributions and payments to the Lessor shall be applied by the Lessor to the payment and reduction of the obligations and liabilities of the Lessee under this Lease and in accordance with the terms and provisions of the Security Agreement.

20.8. Duration. The satisfaction or discharge of any part of the obligations or liabilities of the Lessee under this Lease shall not in any way satisfy or discharge the assignment provided for in this Section 20, but such assignment shall remain in full force and effect until all of the obligations or liabilities of the Lessee hereunder have been paid and performed in full.

SECTION 21. MISCELLANEOUS.

21.1. Limitations of Liability. It is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and assigns that this Lease is executed by Trust Company for USL, Inc., not individually or personally but solely as Trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Trustee, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by Trust Company for USL, Inc. or the Trustor, or for the purpose or with the intention of binding Trust Company for USL, Inc. or the Trustor personally, but are made and intended for the purpose of binding only the Trust Estate as defined in the Trust Agreement, that this Lease is executed and delivered by Trust Company for USL, Inc. solely in the exercise of the powers expressly conferred upon Trust Company for USL, Inc., as trustee under the Trust Agreement, that actions to be taken by the Lessor pursuant to its obligations hereunder may, in certain instances, be taken by the Lessor only upon specific authority of the Trustor, that nothing herein contained shall be construed as creating any liability on Trust Company for USL, Inc. or the Trustor, individually or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of, Trust Company for USL, Inc. or the Trustor, to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessee and by each and every person now or hereafter claiming by, through or under the Lessee, and that so far as Trust Company for USL, Inc. or the Trustor, individually or personally are concerned, the Lessee and any person claiming by, through or under the Lessee shall look solely to the Trust Estate as defined in the Trust Agreement for the performance of any obligation under this Lease; provided that nothing in this Section 20.1 shall be construed to limit in scope or substance those representations and warranties of Trust Company for USL, Inc. in its individual capacity set forth in the Participation Agreement. The term "Lessor" as used in this Lease shall include any trustee succeeding Trust Company for USL, Inc., as trustee under the Trust Agreement or the Trustor if the trust created thereby is revoked. Any obligation of the Lessor hereunder may be performed by the Trustor, and any such performance shall not be construed as revocation of the trust created by the Trust Agreement. Nothing contained in this Lease shall restrict the operation of the provisions of the Trust Agreement with respect to its revocation or the resignation or removal of the Trustee thereunder.

It is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and assigns that this Lease is executed by the Lessee in its corporate capacity and that nothing herein contained shall be construed as creating any liability on any member, officer

or director of the Lessee to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessor and the Trustor and by each and every person now or hereafter claiming by, through or under the Lessor or the Trustor.

21.2. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class, postage prepaid, addressed as follows:

If to the Lessor: Trust Company for USL, Inc.,
as Trustee under Western Fuels
Trust No. 79-2
1211 West 22nd Street
Oak Brook, Illinois 60521
Attention: Vice President

(with copies of such notice to be sent to:

United States Lease Financing, Inc.
633 Battery Street
San Francisco, California 94111
Attention: Vice President of
Lease Underwriting)

If to the Trustor: The Bank of New York
48 Wall Street
New York, New York 10015
Attention: Deno D. Papageorge

If to the Security Trustee: Wells Fargo Bank, National Association
475 Sansome Street
San Francisco, California 94111
Attention: Corporate Trust Department

If to the Lessee: Western Fuels Association, Inc.
1835 K Street, N.W., Suite 412
Washington, D.C. 20006
Attention: Mr. Robert Norrgard

If to the Note Purchaser: At its address provided therefor
in Schedule 2 to the Participation Agreement

or addressed to any such party at such other address as such party shall hereafter furnish to such other parties in writing.

21.3. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor, the Trustor or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the assignee thereunder (including, without limitation, the Security Trustee

and the Note Purchaser) may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by any such party and all cost and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder, with interest at the rate of 11-1/4% per annum.

21.4. Execution in Counterparts. This Lease, and any lease supplemental hereto, 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.

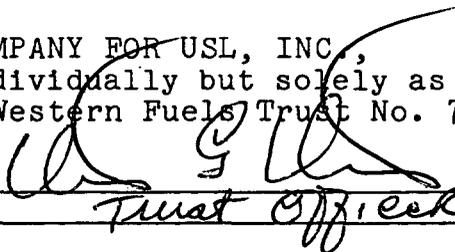
21.5. Law Governing. This Lease shall be construed in accordance with the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

21.6. Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

21.7. Severability. 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 provisions in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

TRUST COMPANY FOR USL, INC.,
not individually but solely as Trustee
under Western Fuels Trust No. 79-2

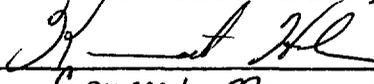
By 
Its Trust Officer

[CORPORATE SEAL]

ATTEST:


Authorized Officer

WESTERN FUELS ASSOCIATION, INC.

By 
Its General Manager

[CORPORATE SEAL]

ATTEST:


Secretary
Manager of Finance

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 29th day of June, 1979, before me personally appeared THOMAS G. THOMPSON, to me personally known, who being by me duly sworn, says that he is the TRUST OFFICER of TRUST COMPANY FOR USL, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth B. Nowak
Notary Public

[NOTARIAL SEAL]

My commission expires:

NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES JUNE 30 1981
ISSUED THRU ILLINOIS NOTARY ASSOC.

CITY OF WASHINGTON)
) SS
DISTRICT OF COLUMBIA)

On this 5th day of July, 1979, before me personally appeared Rennett D. Holum, to me personally known, who being by me duly sworn, says that he is the General Manager of Western Tulls Association, Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Virginia C. Richards
Notary Public

[NOTARIAL SEAL]

My commission expires:

My Commission Expires April 14, 1981

DESCRIPTION OF ITEMS OF EQUIPMENT

Manufacturer of Equipment: Ortner Freight Car Company

Description and Mark and
Number of Items of
Equipment: 100 Hopper Cars
Marked and Numbered WFX 79300
to WFX 79399, both inclusive

Base Purchase Price of
Equipment: \$43,050 per Item

Maximum Aggregate Purchase
Price of Equipment: \$4,500,000

Place of Delivery: Provo, South Dakota

Outside Delivery Date: July 31, 1979

(Western Fuels No. 79-2)

SCHEDULE A
(to Equipment Lease)

CERTIFICATE OF ACCEPTANCE
UNDER EQUIPMENT LEASE

TO: Trust Company For USL, Inc., as
Trustee under Western Fuels Trust No. 79-2
(the "Lessor")

Ortner Freight Car Company (the "Manufacturer")

I, a duly appointed and authorized representative of Western Fuels Association, Inc. (the "Lessee") under the Equipment Lease dated as of April 15, 1979 between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Items of Equipment:

TYPE OF EQUIPMENT: Hopper Cars

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, and appear to conform to the specifications applicable thereto, that the Lessee has no knowledge of any defect in any of the foregoing Items of Equipment with respect to design, manufacture, condition or in any other respect, and that each Item has been labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item in letters not less than one inch in height as follows:

"Leased from a Bank or Trust Company,
as Owner-Trustee and Subject to a Security
Interest Recorded with the I.C.C."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer for any warranties it has made with respect to the Equipment.

Dated: _____, 19__

Inspector and Authorized
Representative of the Lessee

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SCHEDULE B
(to Equipment Lease)

SCHEDULE OF CASUALTY VALUE

As used in this Lease, the Casualty Value of each Item of Equipment on any rental payment date during the term of this Lease shall be an amount equal to the percentage of the Purchase Price of such Item set forth opposite such rental payment date in the following schedule (as the same may be increased pursuant to Annex 1 to this Schedule C): provided, however, that in the event (i) the Lessee has made payments pursuant to Section 9 of the Participation Agreement to reflect a loss of investment credit or loss of depreciation deduction (as such terms are defined in Section 9(a) of the Participation Agreement) or (ii) the amount of Casualty Value of the Item payable by the Lessee set opposite the applicable rental payment date includes an amount in respect of recapture of investment tax credit (reduced by any disallowance or recapture of investment tax credit claimed by the Trustor in respect of the Item under Section 38 of the Code for which the Lessee has made or is required to make any payments pursuant to Section 9(a) of the Participation Agreement) in excess of the amount of investment tax credit actually recaptured by the Trustor (herein referred to as an "Excess Amount"), then such percentage of the Purchase Price shall be redetermined and adjusted in a manner which, after taken into account any such payments (and any offsetting benefits paid to the Lessee pursuant to Section 9(c) of the Participation Agreement) or any such Excess Amount, as the case may be, will provide the Trustor the same after-tax economic yields and cash flows (computed on the same assumptions as utilized by the Trustor in originally evaluating this transaction) which was contemplated in fixing such percentage of Purchase Price, it being understood that no such redetermination or adjustment shall reduce the amount payable on any date for Casualty Value to an amount less than the aggregate principal amount of the Notes allocable to the Item unpaid on such date, together with the interest thereon which is accrued and unpaid on such date, after giving effect to the payment of Fixed Rental on such date.

Term Lease Commencement Date
or Number of Fixed Rental
Payment Date on which
Casualty Value is Paid

Percentage of Purchase
Price Payable as
Casualty Value

<u>Term Lease Commencement Date</u>	<u>Percentage of Purchase Price Payable as Casualty Value</u>
	--
1	82.245%
2	84.665
3	86.321
4	87.714
5	88.815
6	89.678
7	90.270
8	90.638
9	90.758
10	90.671
11	90.360
12	89.867
13	88.389
14	86.730
15	84.910
16	82.947
17	80.858
18	78.642
19	76.326
20	73.895
21	71.382
22	68.766
23	66.087
24	63.318
25	60.505
26	57.618
27	54.697
28	51.709
29	48.686
30	45.595
31	42.470
32	39.274
33	36.043
34	32.740
35	29.402
36 and thereafter during any storage period	25.000

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ANNEX 1 TO SCHEDULE C
(to Equipment Lease)

The percentages set forth in Table 1 to this Schedule C have been computed without regard to recapture of the Investment Credit provided for in Section 38 and related sections of the Internal Revenue Code of 1954, as amended. Consequently, the Casualty Value of any Item of Equipment suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of such Item shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of</u> <u>Delivery and Acceptance</u>	<u>Percentage of</u> <u>Purchase Price</u>
3rd	24.4194%
5th	16.2796%
7th	8.1398%

SCHEDULE OF TERMINATION VALUE

As used in this Lease, the Termination Value for an Item of Equipment payable on the fourteenth Fixed Rental payment date or any Fixed Rental payment date thereafter during the Primary Term shall mean an amount equal to the percent of the Purchase Price of such Item set forth opposite such date in the following schedule; provided, however, that in the event the Lessee has made payments pursuant to Section 9 of the Participation Agreement to reflect a loss of depreciation deduction, such percentage of the Purchase Price shall be redetermined and adjusted in a manner which, after taking into account such payments (and any offsetting benefits paid to the Lessee pursuant to Section 9(c) of the Participation Agreement) will provide the same after-tax rate of return which was contemplated in fixing such percentage of Purchase Price, it being understood that no such redetermination or adjustment shall reduce the amount payable on any date for Termination Value to an amount less than the aggregate principal amount of the Notes unpaid on such date, together with interest thereon accrued and unpaid on such date, after giving effect to the Fixed Rental payable on such date.

<u>Number of Fixed Rental Payment Date on which Casualty Value is Paid</u>	<u>Percentage of Purchase Price Payable as Casualty Value</u>
14	84.399%
15	82.459
16	80.371
17	78.149
18	75.795
19	73.333
20	70.749
21	68.075
22	65.289
23	62.432
24	59.475
25	56.465
26	53.371
27	50.232
28	47.016
29	43.753
30	40.409
31	37.018
32	33.542
33	30.018
34	26.406
35	22.743

(Western Fuels No. 79-2)

SCHEDULE D
(to Equipment Lease)