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9779  
RECORDATION NO. 9779-1425

OCT 17 1978 - 3 22 PM

INTERSTATE COMMERCE COMMISSION

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9779 B

RECORDATION NO. 9779-1425

OCT 17 1978 - 3 22 PM

INTERSTATE COMMERCE COMMISSION

9779 A

RECORDATION NO. 9779-1425

OCT 17 1978 - 3 22 PM

INTERSTATE COMMERCE COMMISSION

0-2201150

No. 0-2201150  
Date OCT 17 1978  
Fee \$120.00

October 16, 1978

AMAX Coal Company, A Division of AMAX Inc.  
Lease Financing Dated as of September 1, 1978

Dear Sir:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of AMAX Coal Company, a Division of AMAX Inc. for filing and recordation counterparts of the following documents:

1. Equipment Lease dated as of September 1, 1978, between First Security Bank of Utah, N.A., as Trustee, and AMAX Coal Company, a Division of AMAX Inc., as Lessee.
2. (a) Trust Indenture dated as of October 1, 1976, between First Security Bank of Utah, N.A., as Owner Trustee, and United States Trust Company of New York, as Trustee.
- (b) Supplemental Indenture dated as of September 1, 1977, between First Security Bank of Utah, N.A., as Owner Trustee, and United States Trust Company of New York, as Trustee.

For the purposes of this filing I have enclosed a conformed copy of the aforesaid Trust Indenture. A fully executed

RECEIVED  
OCT 17 3 35 PM '78  
C. G.  
FEE & REGRATION BR.

*Consigned*

*Wm. L. Floyd*

counterpart of the Trust Indenture has previously been filed with the Commission pursuant to Section 20c of the Interstate Commerce Act on August 16, 1978, at 1:50 p.m. and was assigned recordation number 9644A.

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

(1) Trustee--Indenture Trustee--Mortgagee:

United States Trust Company of New York,  
130 John Street,  
New York, N. Y. 10038

(2) Trustee--Owner Trustee--Lessor--Mortgagor:

First Security Bank of Utah, N.A.,  
P. O. Box 3007,  
Salt Lake City, Utah 84125.

(3) Lessee:

AMAX Coal Company, A Division of AMAX Inc.,  
105 South Meridian Street,  
Indianapolis, Indiana 46225.

Please file and record the documents referred to in this letter and cross-index them under the names of the Trustee--Indenture Trustee--Mortgagee, the Trustee--Owner Trustee--Lessor--Mortgagor, and the Lessee.

Please also cross-index this filing under the name of:

Itel Corporation, Rail Division,  
Two Embarcadero Center,  
San Francisco, California 94111.

whose identifying numbers appear on the equipment solely for maintenance purposes.

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

Fifty (50) 100-Ton 3,850 Cubic Foot, 5-Pocket Open-Top Hopper Cars (AAR Mechanical Designation: HTS) bearing Itel Corporation, Rail Division identifying numbers SSIX 5082 through SSIX 5131, both inclusive.

There is also enclosed a check for \$110 payable to the Interstate Commerce Commission, representing the fee for recording the Equipment Lease and the Trust Indenture as supplemented by the Supplemental Indenture, and a \$10 check for cross-indexing.

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

Very truly yours,

*David C. Spialter*  
*DSW*

David C. Spialter  
As Agent for AMAX Coal Company,  
A Division of AMAX Inc.

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

Encls.

7N

BY HAND

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

10/17/78

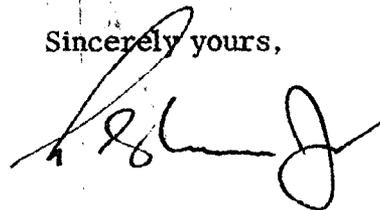
OFFICE OF THE SECRETARY

David C. Spialter  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, N.Y. 10005

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 10/17/78 at 3:30pm and assigned recordation number(s) 9779, 9779-A, 9779-B

Sincerely yours,



H.G. Homme, Jr.,  
Acting Secretary

Enclosure(s)

SE-30-T  
(2/78)

9779

RECORDATION NO. 1428

OCT 17 1978 10 00 PM

~~INTERSTATE COMMERCE COMMISSION~~

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EQUIPMENT LEASE

Dated as of September 1, 1978

between

FIRST SECURITY BANK OF UTAH, N.A.  
not in its individual capacity,  
but solely as trustee under a  
Master Trust Agreement dated as of  
October 1, 1976 between it and  
Itel Capital Services Corporation,  
as Lessor

and

AMAX COAL COMPANY, A DIVISION OF AMAX INC.,  
as Lessee

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Description of Equipment

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Certificate of Acceptance

EXHIBIT C  
Group 1 Equipment

EXHIBIT D  
Group 1 Equipment

EQUIPMENT LEASE

THIS EQUIPMENT LEASE, dated as of the date set forth in Exhibit C hereto (the Lease), between FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity, but solely as trustee (the Lessor) under a Master Trust Agreement dated as of October 1, 1976 between it and Itel Capital Services Corporation, and the entity named as "Lessee" on the signature page hereof (the Lessee).

W I T N E S S E T H :

SECTION 1. Definitions; Construction of References.

In this Lease, unless the context otherwise requires:

(a) All references in this instrument to designated Sections and other subdivisions are to designated Sections and other subdivisions of this Lease, and the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Section or other subdivision;

(b) The terms defined in this Section 1 or elsewhere in this Lease shall have the meanings assigned to them in this Section 1 or elsewhere and include the plural as well as the singular;

(c) Except as otherwise indicated, all the agreements or instruments hereinafter defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof;

(d) The following terms shall have the following meanings for all purposes of this Lease:

Appraisal shall mean a procedure whereby two independent appraisers, neither of whom shall be a manufacturer of the Item of Leased Equipment for which Appraisal is required, one chosen by the Lessee and one by the Lessor, shall mutually agree upon the amount in question. The Lessor or the Lessee, as the case may be, shall deliver a written notice to the other party appointing its appraiser within 15 days after receipt from the other party of a written notice appointing that party's appraiser. If within 15 days after appointment of the two appraisers as described above, the two appraisers are unable to agree upon the amount in question, a third independent appraiser, who shall not be a manufacturer of such Item, shall be chosen within five days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser, such appointment shall be made by an authorized representative of the American Arbitration Association or any organization successor thereto. The decision of the

third appraiser so appointed and chosen shall be given within 10 days after the selection of such third appraiser and such decision shall be binding and conclusive on the Lessor and the Lessee. The Lessor and the Lessee shall pay the fees and expenses of the respective appraisers appointed by them and shall share equally the fees and expenses of the third appraiser, if any.

Basic Rent, Supplemental Rent and Rent shall have the meanings set forth in Section 3 hereof.

Beneficiary, Daily Lease Rate Factor, Rent Commencement Date, Basic Rent Dates, Basic Lease Rate Factor, Expiration Date, First Delivery Date, Final Delivery Date, Interim Rent Date, First Basic Rent Date, Last Basic Rent Date, Depreciable Life, Depreciation Method, Salvage Value, Investment Credit, Overdue Rate, Lease Extension Periods, Return of Equipment and Equipment Marking shall have the meanings with respect to each Group of Equipment set forth in Exhibit C hereto.

Business Day shall have the meaning set forth in the Participation Agreement.

Casualty Value and, if such term shall be applicable to this Lease, Termination Value shall have the meanings with respect to each Group of Equipment set forth in Exhibit D hereto.

Certificate of Acceptance shall mean a certificate of acceptance substantially in the form of Exhibit B hereto.

Closing Date shall have the meaning set forth in the Participation Agreement.

Equipment, and individually an Item or Item of Equipment, shall mean the items of equipment described in Exhibit A hereto.

Fair Market Rental Value of an Item of Leased Equipment shall be determined on the basis of, and shall mean the amount which would be obtainable in, an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) under no compulsion to lease and an informed and willing lessor under no compulsion to lease, in accordance with a net lease of such Item of Leased Equipment. If the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental Value with respect to an Item of Leased Equipment, such Fair Market Rental Value shall be determined in accordance with the procedure for Appraisal.

Fair Market Value of an Item of Leased Equipment shall be determined on the basis of, and shall mean the aggregate amount

which would be obtainable in, an arm's-length transaction between an informed and willing buyer or user (other than: (i) a lessee currently in possession, or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell, and in such determination costs of removal from the location of current use shall not be a deduction from such value and all alternative uses in the hands of such buyer or user, including without limitation, the further leasing of such Item of Leased Equipment, shall be taken into account in making such determination. If the Lessor and the Lessee are unable to agree upon a determination of Fair Market Value with respect to a particular Item of Leased Equipment, such Fair Market Value shall be determined in accordance with the procedure for Appraisal.

First Termination Date, if such term shall be applicable to this Lease, shall have the meaning with respect to each Group of Equipment set forth in Exhibit C hereto.

Group of Equipment and Lessor's Cost shall have the meanings set forth in the Certificate of Acceptance with respect to each Item of Leased Equipment.

Indenture shall mean the Trust Indenture dated as of October 1, 1976 between United States Trust Company of New York, a New York corporation, not in its individual capacity, but solely as trustee thereunder (the Trustee), and the Lessor.

Leased Equipment, and individually an Item of Leased Equipment, shall have the meanings set forth in Section 2 hereof.

Notes shall mean those promissory notes defined as Notes in the Participation Agreement issued in connection with the purchase of the Leased Equipment.

Participation Agreement shall mean the agreement, dated as of the date hereof, among the Lessee, the Lessor, the Trustee, each Beneficiary and each entity named therein as Interim Lender or Long-Term Lender.

Purchase Documents shall mean those documents defined as purchase documents in the Participation Agreement.

Supplement shall mean each supplement to the Indenture creating a separate series of the Notes.

## SECTION 2. Lease of Equipment.

Subject to the terms and conditions of this Lease, the Lessor hereby agrees to lease to the Lessee and the Lessee hereby agrees to lease from the Lessor such Items of Equipment as shall be described in one or more Certificates of Acceptance executed and delivered on behalf of the

Lessor with respect thereto and as shall have been delivered and accepted on or after the First Delivery Date but on or before the Final Delivery Date (Leased Equipment, and individually an Item of Leased Equipment). Subject to the provisions of the Participation Agreement, upon delivery of each Item of Equipment to the Lessor, the Lessee will cause an authorized representative of the Lessee to inspect the same and, if such Item of Equipment is found to be in good order, to accept such Item of Equipment and to execute and deliver a Certificate of Acceptance with respect thereto, whereupon, but also subject to the provisions of the Participation Agreement, such Item of Equipment shall be deemed to have been delivered to and accepted by the Lessee and shall be subject to the terms and conditions of this Lease.

SECTION 3. Term and Rent.

(a) The term of this Lease as to each Item of Leased Equipment included in a Group of Equipment shall begin on its date of acceptance, as set forth in the Certificate of Acceptance executed and delivered with respect thereto, and shall end on the Expiration Date with respect to such Group of Equipment, unless this Lease shall have been terminated, or the term of this Lease with respect to such Group of Equipment shall have been extended, by the terms hereof.

(b) The Lessee shall pay to the Lessor as Basic Rent (herein referred to as Basic Rent) for each Item of Leased Equipment subject to this Lease, the following:

(1) on the Interim Rent Date, an amount equal to the Daily Lease Rate Factor, if any, multiplied by the Lessor's Cost of such Item, for each day elapsed from and including the Rent Commencement Date with respect to such Item to but excluding the Interim Rent Date;

(2) on the First Basic Rent Date, an amount equal to the Basic Lease Rate Factor, multiplied by the Lessor's Cost of such Item; and

(3) on each Basic Rent Date thereafter to and including the Last Basic Rent Date, an amount equal to the Basic Lease Rate Factor, multiplied by the Lessor's Cost of such Item.

(c) The Lessee shall pay to the Lessor the following amounts (herein referred to as Supplemental Rent and, together with all Basic Rent, as Rent):

(1) on demand, any amount payable hereunder (other than Basic Rent, Casualty Value and Termination Value, if any) which the Lessee assumes the obligation to pay, or agrees to pay, under this Lease to the Lessor or others including but not limited to all costs, charges and expenses incurred by the Lessor by reason of any Event of Default in the exercise of the Lessor's remedies with respect thereto, including without limitation reasonable legal fees and disbursements incurred by the Lessor in its individual capacity or in its capacity as trustee under the Trust Agreement;

(2) on the date provided herein, any amount payable hereunder as Casualty Value or Termination Value, if any;

(3) to the extent permitted by applicable law, interest (computed on the basis of a 360-day year of twelve 30-day months) at the Overdue Rate on any payment of Basic Rent, Casualty Value or Termination Value, if any, not paid when due for any period for which the same shall be overdue and on any payment of Supplemental Rent (including, without limitation, interest payable under this clause (3), but excluding payments of Casualty Value or Termination Value, if any) not paid when demanded hereunder for the period from the date of such demand until the date on which the same shall be paid.

(d) Subject to the provisions of the Participation Agreement, all payments of Rent hereunder shall be made on or before 12:00 noon New York time so that the Lessor shall have immediately available funds on the date payable hereunder, and shall be paid to the Lessor at its address set forth herein or at such other address as the Lessor may direct by notice in writing to the Lessee.

#### SECTION 4. Net Lease.

This Lease is a net lease and the Lessee acknowledges and agrees that the Lessee's obligation to pay all Rent hereunder, and the rights of the Lessor in and to such Rent, shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment (Abatements) for any reason whatsoever, including, without limitation, Abatements due to any present or future claims of the Lessee against the Lessor under this Lease (including without limitation any claims under Section 6(a) hereof) or otherwise, or against the manufacturer or seller of any Item of Leased Equipment. Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be affected, by reason of any defect in or damage to, or any loss or destruction of, the Leased Equipment or any Item thereof from whatsoever cause, or the interference with the use thereof by any private person, corporation or governmental authority, or the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause, whether similar or dissimilar to the foregoing, and the Lessee hereby waives to the fullest extent lawful the benefit of any present or future law or regulation to the contrary, it being the express intention of the Lessor and the Lessee that all Rent payable by the Lessee hereunder shall be, and continue to be, payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

#### SECTION 5. Return of Equipment.

(a) Upon the expiration or termination of this Lease with respect to a Group of Equipment, the Lessee, at its own expense, will return the

Items of Leased Equipment then subject to this Lease which are included in such Group of Equipment to the Lessor in the condition in which such Leased Equipment is required to be maintained pursuant to Section 9 hereof and, except as otherwise provided in the succeeding paragraph (b), pursuant to the instructions set forth under the heading Return of Equipment in Exhibit C to this Lease. Such Leased Equipment, upon redelivery pursuant hereto, shall be free and clear of all mortgages, liens, security interests, charges, encumbrances and claims (Liens), other than Liens either (a) resulting from voluntary action by the Lessor without the prior approval of the Lessee and not taken as the result of any default by the Lessee, or (b) resulting from claims against the Lessor not related to the Lessor's ownership of the Leased Equipment (Liens described in clauses (a) and (b) above being herein referred to as Lessor's Liens). In the event any Item of Leased Equipment has not been returned to the Lessor pursuant to this Section 5(a) within 10 days after the Expiration Date, the Lessee shall pay to the Lessor for each day elapsed from and including the Expiration Date to but excluding the date of return an amount equal to 0.0108% of the Lessor's Cost of such Item.

(b) Upon the termination of this Lease in accordance with Section 18 hereof, the Lessee, at its own cost, expense and risk shall (a) forthwith and in the usual manner (including, without limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Item has been interchanged, to return such Item so interchanged) place the Leased Equipment upon such storage tracks as the Lessor may reasonably designate, (b) permit the Lessor to store the Leased Equipment on such tracks at the risk of the Lessee without charge for insurance, rent or storage until the Leased Equipment shall have been sold, leased or otherwise disposed of by the Lessor and (c) transport the Leased Equipment to any connecting carrier for shipment, all as directed by Lessor. During any such storage period, the Lessee's obligations under Sections 9, 10 and 12 shall remain in full force and effect notwithstanding the termination of this Lease.

SECTION 6. Warranties of the Lessor.

(a) The Lessor warrants that during the term of this Lease, if no Event of Default has occurred, the Lessee's use of the Leased Equipment shall not be interrupted by the Lessor or anyone claiming solely through or under the Lessor.

(b) The warranties set forth in paragraph (a) of this Section are in lieu of all other warranties of the Lessor, whether written, oral or implied with respect to this Lease or the Leased Equipment; and the Lessor shall not be deemed to have made, and the LESSOR HEREBY DISCLAIMS ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF THE LEASED EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE LEASED EQUIPMENT OR CONFORMITY OF THE LEASED EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER OR ORDERS RELATING THERETO, NOR SHALL THE LESSOR BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT), but the Lessor authorizes the Lessee, at the Lessee's expense, to assert for the Lessor's account, during the term of this Lease, so long as no Event of Default shall have occurred hereunder and be continu-

ing, all of the Lessor's rights under any applicable manufacturer's or seller's warranty and the Lessor agrees to cooperate with the Lessee in asserting such rights; provided, however, that the Lessee shall indemnify and shall hold the Lessor harmless from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by the Lessor in connection with, as a result of, or incidental to, any action by the Lessee pursuant to the above authorization. Any amount received by the Lessee as payment under any such warranty shall be applied to restore the Leased Equipment to the condition required by Section 9 hereof, with the balance of such amount, if any, to be paid over to the Lessor.

SECTION 7. Liens.

The Lessee will not directly or indirectly create, incur, assume or suffer to exist any Liens on or with respect to the Leased Equipment, the Lessor's title thereto or any interest therein (and the Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any such Lien), except (a) the respective rights of the Lessor and the Lessee as herein provided, (b) Lessor's Liens, (c) Liens for taxes either not yet due or being contested in good faith and by appropriate proceedings, if counsel for the Lessor shall have determined that the nonpayment of any such tax or the contest of any such payment in such proceedings do not, in the opinion of such counsel, adversely affect the title, property, or rights of the Lessor, (d) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business of the Lessee and not delinquent, and (e) Liens granted by the Lessor to any assignee or security assignee of the Lessor.

SECTION 8. Taxes.

The Lessee agrees to pay and to indemnify the Lessor for, and hold the Lessor harmless from and against, all income, franchise, sales, use, personal property, ad valorem, value added, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges, or withholdings of any nature (including without limitation any fees or expenses imposed against the Lessor as a condition to qualify to do business in a state if such qualification is required solely as a result of the Lessor's entering into this Lease and the transactions contemplated hereby), together with any penalties, fines or interest thereon (Impositions), arising out of the transactions contemplated by this Lease and imposed against the Lessor, the Lessee or the Leased Equipment by any federal, state, local or foreign government or taxing authority upon or with respect to the Leased Equipment or upon the sale, purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon or with respect to this Lease (excluding, however, federal taxes on, or measured by, the net income of the Lessor, and taxes, fees or other charges on or measured by the net or gross income of the Lessor, which are imposed by (i) the jurisdiction in which the principal office of the Lessor is located or (ii) any other jurisdiction in which the Lessor is subject to taxes, fees, or other

charges as the result of business or transactions unrelated to this Lease), unless, and only to the extent that, the Lessee shall have given to the Lessor written notice of any such Imposition, which notice shall state that such Imposition is being contested by the Lessee in good faith and by appropriate proceedings and counsel for the Lessor shall have determined that the nonpayment thereof or the contest thereof in such proceedings does not, in the opinion of such counsel, adversely affect the title, property or rights of the Lessor. If a claim is made against the Lessee or the Lessor for any Imposition, the party receiving notice of such claim shall promptly notify the other. In case any report or return is required to be made with respect to any obligation of the Lessee under this Section 8 or arising out of this Section 8, the Lessee will either (after notice to the Lessor) make such report or return in such manner as will show the ownership of the Leased Equipment in the Lessor and send a copy of such report or return to the Lessor or will notify the Lessor of such requirement and make such report or return in such manner as shall be satisfactory to the Lessor. The Lessor agrees to cooperate fully with the Lessee in the preparation of any such report or return.

SECTION 9. Use, Maintenance and Operation; Identifying Marks.

(a) The Lessee agrees that the Leased Equipment will be used or is intended for use, in connection with interstate commerce and will be used in compliance with any and all statutes, laws, ordinances and regulations of any governmental agency applicable to the use of the Leased Equipment, and will at all times be used solely in the conduct of its business and be and remain in the possession and control of the Lessee, any permitted sublessee or assignee pursuant to Section 14 hereof, or a common carrier to which the Leased Equipment has been furnished in order to allow the common carrier to haul commodities on behalf of the Lessee pursuant to applicable tariffs, within the geographic limits of the continental United States; provided, however, that the Lessee may use or permit the use of Items of Leased Equipment having an aggregate Lessor's Cost not in excess of 15% of the aggregate Lessor's Cost of all Leased Equipment then subject to this Lease, outside the geographic limits of the continental United States in interchange in the normal course of its business. Throughout the term of this Lease, the possession, use and maintenance of the Leased Equipment shall be at the sole risk and expense of the Lessee.

(b) The Lessee shall use the Items of Leased Equipment only in the manner for which they were designed and intended and will, throughout the term of this Lease, at its own cost and expense, repair and maintain each Item of Leased Equipment so as to keep it in as good condition as when delivered to the Lessee hereunder, ordinary wear and tear excepted, in the same condition as other similar equipment owned or leased by the Lessee and in accordance with all governmental laws, rules and regulations, including but not limited to any law, rule or regulation prescribed or enforced by the Interstate Commerce Commission, the Federal Railroad Administration or the Department of Transportation, and in accordance with any industry rule or standard prescribed by the American Association of Railroads, or any successor thereto.

(c) Except as set forth in paragraph (d) below, the Lessee shall be entitled from time to time during the term of this Lease, to acquire and install on any Item of Leased Equipment at the Lessee's expense, such additional features or options as may be available at such time with respect to such Item, and such additional features and options shall not be considered accessions to such Item and title thereto shall remain in the Lessee except as provided in the last sentence of this paragraph (c). Such additional features or options shall be removed by the Lessee before such Item is returned to the Lessor, and the Lessee shall repair all damage to such Item resulting from such installation and removal so as to restore such Item to the condition in which it existed prior to the installation of such additional features or options. Any such additional features and options not so removed shall be considered accessions to such Item and shall become the property of the Lessor.

(d) The Lessee will not, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld and which consent shall not be withheld if such accessory, equipment or device is required by applicable law or governmental regulation, affix or install any accessory, equipment or device on any Item of Leased Equipment leased hereunder which will either impair the originally intended function or use of any such Item or constitute an improvement or addition to such Item of Leased Equipment which is not, within the meaning of any law, regulation or procedure then in effect, readily removable without causing material damage to such Item of Leased Equipment. Only such accessories, equipment and devices which are not readily removable without material damage shall upon attachment or affixation become the property of the Lessor and thereupon all such accessories, equipment and devices shall become a part of the Leased Equipment leased hereunder. The replaced parts shall no longer be the property of the Lessor.

(e) The Lessee agrees, at its own cost and expense, to (1) cause each Item of Leased Equipment to be kept numbered with the identification therefor as specified in the Certificate of Acceptance therefor and (2) maintain the Equipment Marking on each Item of Leased Equipment and such other markings as from time to time may be required by law or otherwise deemed necessary by the Lessor in order to protect the title of the Lessor to such Item of Equipment, the rights of the Lessor under this Lease and the Lien granted by the Lessor in financing the Lessor's Cost of the Leased Equipment. The Lessee will not place any Item of Leased Equipment in operation or exercise any control or dominion over the same until such Equipment Marking has been placed thereon. The Lessee will replace promptly any such Equipment Marking which may be removed, defaced or destroyed.

#### SECTION 10. Inspection.

The Lessor shall have the right, but not the duty, to inspect the Leased Equipment. Upon the request of the Lessor, the Lessee shall, at any reasonable time, make the Leased Equipment available to the Lessor for inspection on the tracks on which the Leased Equipment is normally used, and shall make the Lessee's records pertaining to the Leased Equipment available to the Lessor for inspection at the Lessee's place of business.

SECTION 11. Loss or Destruction; Requisition of Use.

(a) In the event that any Item of Leased Equipment shall be or become damaged, worn out, destroyed, lost, stolen, or permanently rendered unfit for use for any reason whatsoever, or title thereto shall be requisitioned or otherwise taken by any governmental authority under power of eminent domain or otherwise (Requisition of Use), or any Item of Leased Equipment is returned to the manufacturer or seller thereof pursuant to the patent indemnity provisions of the Purchase Documents, such fact shall promptly be reported by the Lessee to the Lessor.

(b) The Lessee shall determine, within 15 days after the date of occurrence of any such damage or wearing out, whether such Item of Leased Equipment can be repaired or replaced.

(c) In the event the Lessee determines that such Item cannot be repaired or replaced or in the event of such destruction, loss, theft, unfitness for use, Requisition of Use for a stated period which exceeds the term of this Lease, or permanent return of such Item to the manufacturer or seller thereof without replacement thereof (any of such occurrences being referred to as an Event of Loss), the Lessee shall promptly notify the Lessor of such Event of Loss. On the Basic Rent Date next following the date of such Event of Loss, the Lessee shall pay to the Lessor the Casualty Value of such Item, determined as of such Basic Rent Date, together with any Rent then due. In the event the Lessee determines that such Item can be repaired or replaced, the Lessee shall continue to make all payments of Basic Rent due with respect to such Item and shall (1) cause such Item to be repaired or replaced within 90 days after the occurrence of such damage or wearing out, and (2) in the event of replacement, take such action as may be required under and pursuant to the Indenture to perfect, protect and preserve any security interests created by the Lessor under and pursuant to the Indenture; provided, however, that if the Lessee shall, within such 90-day period, have commenced the repair or replacement of such Item and be diligently pursuing such repair or replacement, but is prevented from completing such repair or replacement within such 90-day period due to causes beyond the Lessee's control, then the time for repair or replacement shall be extended by the number of days necessary to complete such repair or replacement up to a maximum of 90 additional days, and further provided, that if the Lessee shall fail to repair or replace such Item within such repair or replacement period (including any extension thereof) an Event of Loss shall be deemed to have occurred and the Lessee shall, on the Basic Rent Date next following the end of such repair or replacement period, pay to the Lessor the Casualty Value of such Item, determined as of such Basic Rent Date, together with any Rent then due. If at such time no more Basic Rent is or will become payable under this Lease, the Casualty Value shall be paid within 30 days following, as appropriate, the Event of Loss or the repair or replacement period. The obligation of the Lessee to pay Rent during the above-described replacement or repair period shall remain in full force and effect. Notwithstanding the foregoing, the Lessee, pursuant to the provisions of Section 15 hereof, shall still be required to indemnify the Lessor for any Loss, as defined in Section 15 hereof, due to the

Lessee's act of replacing or repairing an Item of Leased Equipment authorized hereby. Upon making such Casualty Value payment in respect of such Item and All Rent due and owing with respect thereto, the Lessee's obligation to pay further Basic Rent for such Item shall cease, but the Lessee's obligation to pay Supplemental Rent, if any, for such Item, and to pay Rent for all other Items of Leased Equipment shall remain unchanged. Except in the case of loss, theft, destruction, or return to the manufacturer or seller, the Lessor shall have the option to recover possession of such Item, unless possession of such Item is required to be delivered to an insurance carrier (other than the Lessee) in order to settle an insurance claim arising out of the Event of Loss. The Lessor shall be entitled to retain any salvage value collected by such insurance carrier in excess of the amount, if any, paid to the Lessor by said insurance carrier. The Lessor in such manner as may be satisfactory to the Lessor. Any replacement Item installed by the Lessee in accordance with the provisions of this Section 11(c) shall be in as good operating condition as, and shall have a value and utility at least equal to, the Item replaced, assuming the Item replaced was in the condition and state of repair required to be maintained by the terms hereof.

(d) Following payment of the Casualty Value of an Item of Leased Equipment in accordance with the provisions of Section 11(c), the Lessee shall, as agent for the Lessor, dispose of such Item as soon as it is able to do so for the best price obtainable. Any such disposition shall be on an "as is", "where is" basis without representation or warranty, express or implied. As to each separate Item so disposed of, the Lessee may, after paying the Lessor the amounts specified in Section 11(c), retain all amounts of such price, plus damages received by the Lessee by reason of such Event of Loss, up to the Casualty Value and the Lessee's reasonable costs and expenses of disposition attributable thereto, and shall remit the excess, if any, to the Lessor. As to each Item of Leased Equipment returned to the manufacturer or seller thereof in the manner described in Section 11(a) and not replaced or modified by the manufacturer or seller pursuant to the patent indemnity provisions of the Purchase Documents, the Lessor agrees that the Lessee shall receive and retain all amounts payable to the Lessor by the manufacturer or seller for the return of such Item, up to the Casualty Value paid by the Lessee hereunder, and any excess shall be paid over to or retained by the Lessor. As to each Item of Leased Equipment modified and each replacement Item installed by the manufacturer or seller pursuant to the patent indemnity provisions of the Purchase Documents, the Lessor and the Lessee agree that such modified Item or replacement Item shall be delivered to the Lessee and shall, without any further act of the Lessor or the Lessee, be considered an Item for all purposes of this Lease.

(e) Except as hereinabove in this Section 11 provided, the Lessee shall bear the risk of loss and shall not be released from its obligations hereunder in the event of any damage or Event of Loss to any Item of Leased Equipment after delivery to and acceptance by the Lessee hereunder.

(f) In the case of a Requisition of Use of any Item of Leased Equipment for an indefinite period or for a stated period which does not exceed the term of this Lease, such Requisition of Use shall not terminate this Lease with respect to such Item, and each and every obligation of the Lessee with respect thereto shall remain in full force and effect. So long as no Event of Default shall have occurred and be continuing under this Lease, the Lessee shall be entitled to all sums received by reason of any such Requisition of Use, up to the amount of the Basic Rent paid by the Lessee during the period of such Requisition of Use and any excess shall be promptly remitted to the Lessor.

SECTION 12. Insurance.

At its own expense, the Lessee will cause to be carried and maintained casualty insurance with respect to each Item of Leased Equipment and public liability insurance, in each case in amounts and against risks customarily insured against by the Lessee on similar equipment owned by it. Any policies with respect to such insurance shall be with an insurance carrier acceptable to the Lessor and, if requested by the Lessor, shall name the Lessor, the Beneficiary, the Trustee (as assignee and secured party) and the Lessee as assureds and loss payees, as their interests may appear, and shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor in the event of cancellation or expiration. The Lessee shall, upon request of the Lessor, furnish appropriate evidence of such insurance.

SECTION 13. Indemnification.

The Lessee agrees to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless the Lessor from and against any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability), actions, suits, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (Claims) which may be imposed on, incurred or asserted against the Lessor, whether or not the Lessor shall also be indemnified as to any such Claim by any other person, in any way relating to or arising out of this Lease or any document contemplated hereby or the performance or enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or disposition of any Item of Leased Equipment or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable and any Claim for patent, trademark or copyright infringement); provided, however, that the Lessee shall not be required to indemnify the Lessor for (a) any Claim in respect of any Item of Leased Equipment arising from acts or events which occur after possession of such Item of Leased Equipment has been redelivered to the Lessor, or (b) any Claim resulting from acts which would constitute the wilful misconduct or gross negligence of the Lessor. To the extent that the Lessor in fact receives indemnification payments

from the Lessee under the indemnification provisions of this Section 13, the Lessee shall be subrogated, to the extent of such indemnity paid, to the Lessor's rights with respect to the transaction or event requiring or giving rise to such indemnity; provided, however, that the Lessee shall not enforce any such rights by legal proceedings without the Lessor's approval, which approval shall not be unreasonably withheld. The Lessee agrees that the Lessor shall not be liable to the Lessee for any Claim caused directly or indirectly by the inadequacy of any Item of Leased Equipment for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any thereof or any interruption or loss of service or use thereof or any loss of business, all of which shall be the risk and responsibility of the Lessee. The rights and indemnities of the Lessor hereunder are expressly made for the benefit of, and shall be enforceable by, the Lessor notwithstanding the fact that the Lessor is either no longer a party to this Lease, or was not a party to this Lease at its outset.

SECTION 14. Sublease.

So long as no Event of Default or event which, with the giving of notice or lapse of time or both, would become an Event of Default shall have occurred hereunder and be continuing, the Lessee shall be entitled to the possession and use of the Leased Equipment by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Leased Equipment or to sublease the Leased Equipment, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Item of Leased Equipment predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended, (Code) to the date hereof, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Leased Equipment by, any person in whose hands such Leased Equipment would not qualify as "section 38 property" within the meaning of said Code. The Lessee may receive and retain compensation for the use of any of the Leased Equipment from railroads or other entities so using such Leased Equipment. Any sublease permitted by this paragraph may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that no sublease shall be permitted hereunder unless the rights of the sublessee thereunder are expressly subject and subordinate to the rights of the Lessor and any security assignee of the Lessor. No sublease, other relinquishment of the possession of any of the Leased Equipment, or assignment by the Lessee of any of its rights hereunder shall in any way discharge or diminish any of the Lessee's obligations to the Lessor hereunder.

SECTION 15. Tax Indemnification.

(a) This Lease has been entered into on the basis that the Lessor shall be entitled to such deductions, credits and other benefits as are provided to an owner of property including, without limitation:

(i) unless otherwise provided in Exhibit C hereto, the investment tax credit (Investment Credit) allowed by section 38 and related sections of the Code, in an amount equal to the percentage set forth in Exhibit C hereto of the Lessor's Cost of each Item of Leased Equipment;

(ii) the deduction for accelerated depreciation (Depreciation Deduction) on each Item of Leased Equipment under various sections of the Code based upon the Depreciable Life, Depreciation Method and Salvage Value set forth in Exhibit C hereto;

(iii) the deduction under section 163 of the Code (Interest Deduction) in the full amount of any interest paid or accrued by the Lessor in accordance with the Lessor's method of accounting for tax purposes with respect to any indebtedness incurred by the Lessor in financing its purchase of each Item of Leased Equipment.

(b) If, by reason of (1) the inaccuracy in law or in fact of any of the Assumptions set forth in paragraph (f) of this Section, (2) the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee in connection with the financing contemplated by this Lease, or (3) the act, failure to act or omission of or by the Lessee, the Lessor shall lose, shall not have or shall lose the right to claim or there shall be disallowed or recaptured with respect to the Lessor, all or any portion of the Investment Credit, the Interest Deduction or the Depreciation Deduction as is provided to an owner of property with respect to an Item of Leased Equipment (Loss) then the Basic Lease Rate Factor applicable to such Item of Leased Equipment shall, on and after the next succeeding Basic Rent Date, after written notice to the Lessee by the Lessor that a Loss has occurred, be increased by such amount for such Item which, after deduction of all taxes to be paid by the Lessor as a result of the receipt thereof, will cause the Lessor's net after-tax return and cash flow over the term of the Lease in respect of such Item to equal the net after-tax return that would have been available if the Lessor had been entitled to the utilization of all of the Investment Credit, the Interest Deduction or the Depreciation Deduction with respect to such Item and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States or any state against the Lessor attributable to the Loss. Any such increase in the Basic Lease Rate Factor shall be determined by the Lessor and, at the Lessee's request and expense, shall be subject to an audit by an independent public accountant selected by the Lessor and reasonably acceptable to the Lessee.

(c) For purposes of this Section, a Loss shall occur upon the earliest of (1) the happening of any event (such as a disposition or

change in the use of any Item of Leased Equipment) which may cause such Loss, (2) the payment by the Lessor to the Internal Revenue Service of the tax increase resulting from such Loss, or (3) the adjustment of the tax return of the Lessor to reflect such Loss. With respect to any Item of Leased Equipment, the Lessor shall be responsible for, and shall not be entitled to a payment under this Section on account of, any Loss due to any event which by the terms of this Lease requires payment by the Lessee of the Casualty Value or Termination Value of such Item, if such Casualty Value or Termination Value is thereafter actually paid by the Lessee, to the extent that such payment reimburses the Lessor for amounts otherwise payable by the Lessee pursuant to this Section.

(d) In the event and to the extent that the cost of any improvement or addition (Capital Expenditure) to any Item of Leased Equipment made by the Lessee, is required to be included in the gross income of the Lessor for federal income tax purposes, then the Lessee shall pay to the Lessor on each Basic Rent Date thereafter, commencing with the first Basic Rent Date following the date on which the Lessee is required to furnish written notice of such inclusion to the Lessor pursuant to the succeeding paragraph (e), such amount which (after deduction of all taxes required to be paid by the Lessor on receipt thereof under the laws of the United States or any political subdivision thereof), when taken together with the amount of Basic Rent due on each such date will, in the reasonable opinion of the Lessor, cause the Lessor's net after-tax return and cash flow over the term of the Lease in respect of such Item to equal the net return that would have been available if the cost of such Capital Expenditure had not been includible in the Lessor's gross income, and the Casualty Values and Termination Values payable with respect to such Item shall be adjusted in amounts calculated in a similar such manner by the Lessor.

(e) For purposes of the preceding paragraph (d), the cost of any Capital Expenditure made by the Lessee shall be deemed to be "required to be included in the gross income of the Lessor for federal income tax purposes", if such inclusion is required by (i) any private ruling letter issued to the Lessor by the Internal Revenue Service that has not been revoked or otherwise rendered inapplicable at the time the cost of such Capital Expenditure is incurred, (ii) any provision of the Code or the applicable regulations thereunder, or (iii) any published revenue ruling or revenue procedure of the Internal Revenue Service which has not been held invalid by a court having ultimate appellate jurisdiction over the federal income tax liability of the Lessor. The Lessee shall, within 30 days after December 31 (or, if the Lessee's fiscal year end occurs on some other date, within 30 days of such other date) in each year in which the Lessee has made any Capital Expenditure which is required to be included in the gross income of the Lessor for federal income tax purposes, give written notice thereof to the Lessor describing such Capital Expenditure in reasonable detail and specifying the cost thereof.

(f) This Lease is to be entered into on the basis of, among other things, the following assumptions (the Assumptions): (i) at the time the Lessor becomes the owner of each Item of Leased Equipment, such

Item will constitute "new section 38 property" within the meaning of sections 46 and 48 of the Code and at the time the Lessor becomes the owner of such Item, such Item of Leased Equipment will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (ii) each Item of Leased Equipment is an asset described in the Asset Guideline Class set forth under the heading Depreciable Life in Exhibit C hereto; (iii) the Lessee will not at any time during the term of this Lease use or fail to use any Item of Leased Equipment in such a way as to disqualify it as "section 38 property" within the meaning of section 48(a) of the Code; (iv) for federal income tax purposes, all amounts includible in the gross income of the Lessor with respect to each Item of Leased Equipment and all deductions allowable to the Lessor with respect to each Item of the Leased Equipment will be treated as derived, from or allocable to, sources within the United States; (v) the Lessee will maintain sufficient records to verify such use, which records will be furnished to the Lessor within 30 days after receipt of a written demand therefor; and, (vi) an amount equal to at least 20% of the Lessor's Cost of each Item of Leased Equipment is a reasonable estimate of what the fair market value of such Item will be on the Expiration Date with respect thereto, without including in such value any increase or decrease for inflation or deflation and after subtracting from such value any cost to the Lessor for removal and delivery of possession of such Item to the Lessor, and at least 20% of the originally estimated useful life of such Item of Leased Equipment is a reasonable estimate of what the remaining useful life of such Item will be on the Expiration Date with respect thereto.

(g) All of the Lessor's rights and privileges arising from the indemnities contained in this Section 15 shall survive the expiration or other termination of this Lease with respect to any or all Items of Leased Equipment and such indemnities are expressly made for the benefit of and shall be enforceable by the Lessor, its successors and assigns.

#### SECTION 16. Lease Extension.

(a) Provided that this Lease has not been terminated and provided that no Default has occurred and is continuing hereunder, the Lessee shall have the option to extend the term of this Lease with respect to any Group of Equipment at the Expiration Date with respect to such Group of Equipment for such Lease Extension Periods as are provided for in Exhibit C hereto for a rental equal to the Fair Market Rental Value thereof, determined as of such Expiration Date.

(b) Not less than 210 days prior to the Expiration Date with respect to such Group, the Lessee may indicate, by written notice to the Lessor, the Lessee's interest in exercising the Lessee's lease extension option described above, which notice shall set forth the Lessee's estimate of the Fair Market Rental Value of such Group of Equipment as of such Expiration Date. If, on or before a date 180 days prior to such Expiration Date, the Lessor and the Lessee are unable to agree upon a

determination of the Fair Market Rental Value of such Group of Equipment, such Fair Market Rental Value shall be determined in accordance with the procedure for Appraisal. After a determination of the Fair Market Rental Value of such Group of Equipment has been made in accordance with the procedure described above, the Lessee may exercise its option to extend the term of this Lease with respect to such Group of Equipment for the Fair Market Rental Value thereof by delivering written notice of such exercise to the Lessor not less than 120 days prior the Expiration Date with respect to such Group.

SECTION 17. Events of Default.

The term Event of Default, wherever used herein, shall mean any of the following events under this Lease (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) The Lessee shall fail to make any payment of Rent within 10 days after the same shall become due; or

(b) The Lessee shall fail to perform or observe any other covenant, condition, or agreement to be performed or observed by it under this Lease or any agreement, document or certificate delivered by the Lessee in connection herewith, and such failure shall continue for 20 days after written notice thereof from the Lessor to the Lessee; or

(c) Any representation or warranty made by the Lessee in this Lease or the Participation Agreement or in any document or certificate furnished to the Lessor in connection herewith shall prove to have been incorrect in any material respect when any such representation or warranty was made or given; or

(d) A petition in bankruptcy shall be filed by the Lessee, or the Lessee shall make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver; or a trustee or a receiver shall be appointed for the Lessee, for any Item of Leased Equipment or for a substantial part of its property without its consent and shall not be dismissed within a period of 60 days; or bankruptcy, reorganization or insolvency proceedings shall be instituted against the Lessee and shall not be dismissed for a period of 60 days; or

(e) The Lessee shall be in default under any material obligation, which default has a material and adverse effect on the overall financial condition of the Lessee, for the payment of borrowed money or for the deferred purchase price of, or for the payment of any rent under any lease agreement covering, material real or personal property, and the applicable grace period with respect thereto shall have expired and the obligations shall not be contested in good faith; or

(f) The Lessee shall attempt to remove, sell, transfer, encumber, part with possession of, assign or sublet (except as expressly permitted by the provisions of this Lease) any Item of Leased Equipment.

SECTION 18. Remedies.

(a) Upon the occurrence of any Event of Default, the Lessor may, at its option, declare this Lease to be in default by written notice to such effect given to the Lessee, and at any time thereafter, the Lessor may exercise one or more of the following remedies, as the Lessor in its sole discretion shall lawfully elect:

(1) Proceed by appropriate court action, 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;

(2) By notice in writing terminate this Lease, whereupon all rights of the Lessee to the use of the Leased Equipment shall absolutely cease and terminate but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessee, if so requested by the Lessor, shall at its expense promptly return the Leased Equipment to the possession of the Lessor at the place and in the condition required upon the return thereof pursuant to and in accordance with Section 5(b) hereof, or the Lessor, at its option, may enter upon the premises where the Leased Equipment is located and take immediate possession of and remove the same by summary proceedings or otherwise. The Lessee shall, without further demand, forthwith pay to the Lessor an amount equal to any unpaid Rent due and payable for all periods up to and including the Basic Rent Date following the date on which the Lessor has declared this Lease to be in default, plus, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the Casualty Value of the Leased Equipment then subject to this Lease, computed as of the Basic Rent Date following the date on which the Lessor has declared this Lease to be in default. Following the return of the Leased Equipment to the Lessor pursuant to this paragraph (2), the Lessor shall proceed to sell the Leased Equipment in such manner as it shall deem appropriate. The proceeds of such sale shall be applied by the Lessor (A) first, to all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor as a result of the default and the exercise of its remedies with respect thereto, and (B) second, to reimburse the Lessee for the Casualty Value to the extent previously paid by the Lessee as liquidated damages. Any surplus remaining thereafter shall be retained by the Lessor. To the extent that the Casualty Value has become due but not been previously paid, the Lessee shall forthwith pay to the Lessor the sum of (i) the amount by which (X) the sum of (a) the Casualty Value thereof, and (b) the amount payable under clause (A) of the preceding sentence, exceeds (Y) the sale price of the Leased Equipment, and (ii) interest at the Overdue Rate on the full amount of the Casualty Value, computed from the date the Casualty Value is payable hereunder until such Casualty Value is paid by the Lessee.

(b) The Lessee shall be liable for all costs, charges and expenses, including without limitation reasonable legal fees and disbursements, incurred by the Lessor in its individual capacity or in its capacity as trustee by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto.

(c) No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any default or Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent default or Event of Default. The failure or delay of the Lessor in exercising any 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 and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein.

SECTION 19. Right of First Refusal.

(a) Provided that no Event of Default has occurred and is continuing hereunder, the Lessor agrees that, during the term of this Lease or any extension thereof and for 30 days following the expiration of the term of this Lease or any extension thereof with respect to any Item of Leased Equipment, it will not lease or sell such Item of Leased Equipment unless the Lessor shall have given the Lessee at least 15 Business Days' prior written notice of any intended lease or sale, specifying the rental or sale price and the terms of such lease or sale, and the Lessee shall have the opportunity during said period to lease or purchase such Item of Leased Equipment at the same rental or price and on the same terms as specified in such notice.

(b) In the event the Lessee exercises such right of first refusal to purchase any Item of Leased Equipment, then, upon payment of the purchase price, the Lessor shall, upon request of the Lessee, execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Item of Leased Equipment is free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Item of Leased Equipment, and such other documents as may be required to release such Item of Leased Equipment from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

SECTION 20. Voluntary Termination.

(a) The Lessee shall have the right, at any time on or after the First Termination Date, on at least 180 days' prior written notice to the

Lessor, to terminate this Lease with respect to all, but not less than all, Items of Leased Equipment subject to this Lease, such termination to be effective on the Basic Rent Date next following the expiration of the 180-day notice period (the Termination Date); provided, however, that no Event of Default, or event which with the giving of notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing and that such Items shall have become obsolete or surplus to the Lessee's requirements. During the period from the giving of such notice until the Termination Date, the Lessor may, and the Lessee, as agent for the Lessor, shall, use their best efforts to obtain bids for the purchase of such Items of Leased Equipment. The Lessee shall certify to the Lessor in writing the amount of each bid received by the Lessee and the name and address of the party submitting such bid. The Lessee may utilize agents for purposes of fulfilling its obligations set forth in this Section. On the Termination Date, the Lessor shall sell such Items of Leased Equipment, without recourse or warranty, for cash to whosoever shall have submitted the highest bid prior to such date and shall transfer to such purchaser all of the Lessor's right, title and interest in and to such Items, and thereupon the Lessee shall deliver such Items of Leased Equipment so sold to the Lessor in accordance with the terms of Section 5 of this Lease. The Lessor shall certify in writing to the Lessee (i) the amount of such total sale price, (ii) the expenses incurred by the Lessor in connection with such sale, and (iii) that such total sale price represents the highest bid received by the Lessor for the purchase of such Items. The total sale price realized at such sale shall be retained by the Lessor, and, in addition, on the Termination Date, the Lessee shall pay to the Lessor the Basic Rent payment payable on such date and the amount, if any, by which (A) the Termination Value of such Items, computed as of the Termination Date, exceeds (B) the proceeds of such sale less all expenses incurred by the Lessor in selling such Items. In the event no such sale takes place, the Lessee shall pay to the Lessor the Termination Value of such Items, computed as of the Termination Date, plus any expenses incurred by the Lessor in connection herewith and the Basic Rent payment then due. Upon payment of all amounts required to be paid by the Lessee pursuant to this paragraph (a), the obligation of the Lessee for all Basic Rent accruing hereunder with respect to such Items due and payable after, but not on or before, the Termination Date shall cease.

(b) Notwithstanding the foregoing, upon receipt of all bona fide bids for the purchase of such Items, the Lessor may, with the prior written consent of the Trustee, elect not to sell such Items to the highest bidder on the Termination Date, in which case the Lessee shall deliver such Items to the Lessor in accordance with the terms of Section 5 of this Lease. In addition, on the Termination Date, the Lessee shall pay to the Lessor the Basic Rent due on such Termination Date and the amount, if any, by which the Termination Value of such Items plus the amount of any expenses incurred by the Lessor directly or indirectly in connection therewith exceed such highest bid. Upon such redelivery and the payment of such amount, if any, the obligation of the Lessee to pay all Basic Rent

accruing under this Lease with respect to such Items due and payable after, but not on or before, the Termination Date shall cease.

(c) Notwithstanding the foregoing, provided that no Event of Default, or event which, with the giving of notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing, and provided further that the Lessor has not notified the Lessee in writing of the Lessor's election under paragraph (b) above, upon written notification given to the Lessor not less than 30 days prior to the Termination Date, the Lessee may elect to rescind the Lessee's notice of termination, in which case this Lease shall not terminate as set forth in this Section, but shall continue in full force and effect as though no such notice of termination had been given by the Lessee.

SECTION 21. Performance of Obligations of Lessee by Lessor.

If an Event of Default should occur hereunder, the Lessor may thereafter make the payment or perform or comply with the agreement, the nonpayment, nonperformance or noncompliance with which caused such Event of Default, and the amount of such payment and the amount of the reasonable expenses of the Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest at the Overdue Rate as set forth in Exhibit C, shall be payable by the Lessee upon demand by the Lessor.

SECTION 22. Notices.

All communications and notices provided for herein shall be in writing and shall become effective when deposited in the United States mail, with proper postage for first-class mail prepaid, addressed (a) if to the Lessor, at P.O. Box 30007, Salt Lake City, Utah 84125, Attention: Trust Department, Corporate Division (with copies to (1) Itel Corporation, Equipment Finance Division, at One Embarcadero Center, San Francisco, California 94111, Attention: Contract Administration, (2) the Trustee, at 130 John Street, New York, New York 10038, Attention: Corporation Trust and Agency Division and (3) each Beneficiary, at its address set forth in Exhibit C hereto), and (b) if to the Lessee, at its address set forth on the signature page hereof.

SECTION 23. Amendments and Miscellaneous.

(a) The terms of this Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the Lessor and the Lessee; provided that no such waiver, alteration, modification, amendment or supplement shall make any change, and no termination shall be made, which is prohibited by the Indenture or any Supplement.

(b) This Lease, including all agreements, covenants, representations and warranties made herein or in any certificate delivered pursuant

hereto, shall be binding upon and inure to the benefit of (1) the Lessor and its successors, assigns, agents, servants and personal representatives, and, (2) each Beneficiary, (3) the Trustee, as assignee and secured party, and the successors, assigns, agents, servants and personal representatives of each Beneficiary and the Trustee as assignee and secured party, (4) any holder of the obligations of the Lessor issued in connection with this Lease, and (5) the Lessee and its successors and, to the extent permitted hereby, assigns. Without limiting the generality of the foregoing, with respect to the provisions of Sections 6, 8, 13 and 15 hereof, each Beneficiary, the Trustee as assignee and secured party, any holder of obligations of the Lessor issued in connection with this Lease, and the successors, assigns, agents, servants and personal representatives of the foregoing shall each be indemnified thereunder and, with respect to clause (b) of the proviso to Section 13 hereof, the wilful misconduct or gross negligence of the Lessor or any one such person shall not affect the rights of any other person indemnified under such Section 13.

(c) All agreements, indemnities, covenants, representations and warranties contained in this Lease or in any document or certificate delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Lease and the expiration or other termination of this Lease.

(d) Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(e) This Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title or interest in or to the Leased Equipment, except as lessee only.

(f) This Lease may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

(g) This Lease shall be construed in accordance with, and shall be governed by, the laws of the State of New York.

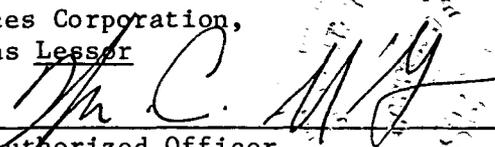
(h) Section headings are for convenience only and shall not be construed as part of this Lease.

(i) Although this Lease is dated as of the date first above written for convenience, the actual dates of execution hereof by the

parties hereto are respectively the dates set forth opposite the signatures hereto, and this Lease shall be effective on the latest of such dates.

IN WITNESS WHEREOF, the parties hereto have each caused this Lease to be duly executed by their respective officers thereunto duly authorized.

FIRST SECURITY BANK OF UTAH, N.A.,  
not in its individual capacity, but  
solely as trustee under a Master  
Trust Agreement dated as of October  
1, 1976 between it and IteL Capital  
Services Corporation,  
as Lessor

By   
Authorized Officer

Date 10-12-78

AMAX COAL COMPANY, A DIVISION OF  
AMAX INC.,  
as Lessee

By \_\_\_\_\_  
Authorized Officer

Date \_\_\_\_\_

[SEAL]

Address: 105 South Meridian Street  
Indianapolis, Indiana  
46225

Attention: Vice President and  
General Counsel

The undersigned hereby certifies that the person executing this Lease on behalf of the Lessee holds the indicated office, was duly elected thereto and at all relevant times has been a duly qualified and acting officer of the Lessee.

\_\_\_\_\_  
Date \_\_\_\_\_

STATE OF UTAH )  
 ) ss.:  
COUNTY OF SALT LAKE )

On this 12 day of Oct., 1978, before me personally appeared  
WILLIAM GREGOR, to me personally known, who, being by me  
duly sworn, says that he is Authorized Officer of FIRST SECURITY BANK OF  
UTAH, N.A., 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 Direc-  
tors, and he acknowledged that the execution of the foregoing instrument  
was the free act and deed of said corporation.

Verna J. Alcorn  
Notary Public  
My Commission Expires November 15, 1981

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT )  
 ) ss.:  
COUNTY OF FAIRFIELD )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1978, before me  
personally appeared \_\_\_\_\_, to me personally known,  
who, being by me duly sworn, says that he is \_\_\_\_\_  
of \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

(a) Except as otherwise expressly provided or as the context shall otherwise require, as used herein, in the Indenture, each Supplement and this Lease and in all certificates and other instruments delivered pursuant hereto and thereto, the terms "Group" and "Group of Equipment" shall refer to the sub-designations described above.

(b) Each Group of Equipment shall include such additional quantities of Items of Equipment specifically described above as the Lessee shall include in a Certificate of Acceptance; provided, however, that in no event shall the Maximum Financing Cost, Maximum Investment Commitment or Maximum Loan Commitment be exceeded without the express approval of each affected party.

DESCRIPTION OF EQUIPMENT

<u>Group of Equipment (a)</u>	<u>Quantity (b)</u>	<u>Manufacturer</u>	<u>Identification Number</u>	<u>Description (c)</u>
1	50	Ortner Freight Car Company	SSIX 5082 through 5131 (inclusive)	50 100-ton 3,850 cubic foot, 5- pocket open-top coal hopper cars; AAR Mechanical Designation: HTS

CERTIFICATE OF ACCEPTANCE NO. \_\_\_\_

under

Equipment Lease dated as of September 1, 1978 (the Lease) between FIRST SECURITY BANK OF UTAH, N.A., not in its individual capacity, but solely as trustee under a Master Trust Agreement dated as of October 1, 1976 between it and IteI Capital Services Corporation as lessor (the Lessor) and AMAX COAL COMPANY, A DIVISION OF AMAX INC. as lessee (the Lessee).

1. Items of Equipment

The Lessee hereby certifies that the Items of Equipment set forth and described in Schedule 1 hereto (which Schedule includes the amount of the Lessor's Cost of each such Item), constituting Items of Equipment of the Group of Equipment indicated below, have been delivered to the location indicated below, tested and inspected by the Lessee, found to be in good order and accepted as Items of Leased Equipment under the Lease, all on the date indicated below:

Group of Equipment:

Location of Items of Equipment:

Date of Acceptance:

2. Representations by the Lessee

The Lessee hereby represents and warrants to the Lessor, each Beneficiary, the Trustee, each Long-Term Lender and the Interim Lender, if any, as such terms are defined in the Lease, that on the Date of Acceptance with respect to each Item of Leased Equipment:

(1) the representations and warranties of the Lessee set forth in the Participation Agreement, as such term is defined in the Lease, are true and correct in all material respects on and as of such date as though made on and as of such date;

(2) the Lessee has satisfied or complied with all requirements set forth in the Participation Agreement and in the Lease to be satisfied or complied with on or prior to such date;

(3) no Event of Default under the Lease or event which, with the giving of notice or the lapse of time, or both, would become such an Event of Default has occurred and is continuing; and

(4) the Lessee has obtained, and there are in full force and effect, such insurance policies with respect to such Item of Leased Equipment required to be obtained under the terms of the Lease.

AMAX COAL COMPANY, A DIVISION OF AMAX  
INC.

as Lessee

By \_\_\_\_\_

Dated: \_\_\_\_\_

Accepted on the Date of Acceptance  
set forth in paragraph 1 above on  
behalf of the Lessor:

FIRST SECURITY BANK OF UTAH, N.A.,  
not in its individual capacity,  
but solely as trustee under a  
Master Trust Agreement dated as  
of October 1, 1976 between it and  
Itel Capital Services Corporation,  
as Lessor

By \_\_\_\_\_  
Authorized Representative

SCHEDULE 1 TO  
CERTIFICATE OF ACCEPTANCE NO. \_\_\_\_\_

Description of Equipment and Lessor's Cost:

<u>Quantity</u>	<u>Manufacturer or Seller</u>	<u>Description</u>	<u>Identification Number</u>	<u>New</u>	<u>Lessor's Cost</u>
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Total Lessor's Cost \$ \_\_\_\_\_

EXHIBIT C

Date of Lease: As of September 1, 1978

Beneficiary: Union Trust Company

Daily Lease Rate Factor: 1/360th of 120% of the prime interest rate of Bank of America, National Trust & Savings Association (being the best per annum rate of interest charged by such Bank to its prime large commercial customers on short-term unsecured borrowings) in effect on the Rent Commencement Date with respect to an Item of Leased Equipment and as adjusted from time to time thereafter to reflect all changes in such prime interest rate effective on the next business day following each change in such prime interest rate.

Rent Commencement Date: The Date of Acceptance as set forth in the Certificate of Acceptance applicable to such Item.

Basic Rent Dates: January 15 and July 15 of each year

Expiration Date: Group 1  
January 15, 1997

First Delivery Date: October 1, 1978

Final Delivery Date: December 31, 1978

Interim Rent Date: January 15, 1979

First Basic Rent Date: July 15, 1979

Last Basic Rent Date: January 15, 1997

First Termination Date: January 15, 1986

Basic Lease Rate Factor: July 15, 1979 )  
to and including): 4.3393%  
July 15, 1986 )  
  
January 15, 1987)  
to and including): 3.5504%  
January 15, 1994)  
  
July 15, 1994 )  
to and including): 1.9724%  
January 15, 1997)

Overdue Rate: 1% over the Long-Term Debt Rate

Lease Extension Periods Two (2) periods of three (3) years each.

Equipment Marking: In letters not less than one inch in height: "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c".

Return of Equipment: The Lessee shall return the Items of Leased Equipment to any place located within a 1000-mile radius of St. Louis, Missouri, as instructed by the Lessor. The Lessor shall designate such place of return and shall notify the Lessee of such place at least 90 days prior to the Expiration Date.

Investment Credit: 10%

Depreciable Life:

A 12-year depreciable life pursuant to section 167(m) of the Code for an asset described in Asset Guideline Class 00.25.

Depreciation Method:

Double-declining balance method switching to the sum-of-the-years digits method and switching to the straight-line method when most beneficial to the Beneficiary and without the prior consent of the Commissioner of Internal Revenue utilizing the "half-year" convention pursuant to Reg. section 1.167(a)-11 (c)(2) and taking into account the Net Salvage Value of the Leased Equipment.

Salvage Value:

An amount equal to 10% of the Lessor's Cost of the Leased Equipment, which amount will be reduced by 10% of the Lessor's Cost as provided in section 167(m) of the Code.

EXHIBIT D

The Casualty Value and Termination Value of each Item of Leased Equipment shall be the percentage of Lessor's Cost of such Item set forth opposite the applicable rent payment:

<u>Interim Rent Date and Rent Payment Number</u>	<u>Casualty Value (a)(b)</u>	<u>Termination Value (a)(b)</u>
Interim Rent Date	81.9629	
1	82.0862	
2	81.9594	
3	81.6222	
4	81.0603	
5	80.3036	
6	79.3357	
7	78.1826	
8	76.8329	
9	75.3085	
10	73.6030	
11	71.7344	
12	69.7016	
13	67.5183	
14	65.1889	65.1889
15	62.7188	62.7188
16	60.8975	60.8975
17	58.9748	58.9748
18	56.9529	56.9529
19	54.8377	54.8377
20	52.6450	52.6450
21	50.3766	50.3766
22	48.0537	48.0537
23	45.6742	45.6742
24	43.2650	43.2650
25	40.8164	40.8164
26	38.3531	38.3531
27	35.8590	35.8590
28	33.3548	33.3548
29	30.8223	30.8223
30	28.2345	28.2345
31	27.1165	27.1165
32	25.9703	25.9703
33	24.7832	24.7832
34	23.5635	23.5635
35	22.2992	22.2992
36	20.0000	20.0000

and thereafter

(a) In the event the Basic Lease Rate Factor is increased, pursuant to the tax indemnification provisions set forth in Section 15 of the Lease, Casualty Values and Termination Values will be adjusted accordingly.

(b) Casualty Values and Termination Values are expressed as a percentage of Lessor's Cost. Such percentages have been computed without regard to recapture of Investment Credit. Consequently, such percentages applicable on the Interim Rent Date or any Basic Rent Date where a Casualty Value or a Termination Value shall be payable with respect to an Event of Loss or a Termination occurring before the third, fifth or seventh anniversary of the date of acceptance set forth in the Certificate of Acceptance for such Item shall be increased by the percentage of Lessor's Cost set forth below, and for purposes of this Lease, Casualty Values and Termination Values payable on such dates shall be determined on the basis of the sum of such percentages:

<u>Anniversary of the Date of Acceptance</u>	<u>Percentage of Lessor's Cost to be Added to the Foregoing Percentage</u>
Third	21.1506%
Fifth	14.1004%
Seventh	7.0502%

AMAX

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EQUIPMENT LEASE

Dated as of September 1, 1978

between

FIRST SECURITY BANK OF UTAH, N.A.  
not in its individual capacity,  
but solely as trustee under a  
Master Trust Agreement dated as of  
October 1, 1976 between it and  
IteI Capital Services Corporation,  
as Lessor

and

AMAX COAL COMPANY, A DIVISION OF AMAX INC.,  
as Lessee

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EXHIBIT D  
Group 1 Equipment

## EQUIPMENT LEASE

THIS EQUIPMENT LEASE, dated as of the date set forth in Exhibit C hereto (the Lease), between FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity, but solely as trustee (the Lessor) under a Master Trust Agreement dated as of October 1, 1976 between it and Itel Capital Services Corporation, and the entity named as "Lessee" on the signature page hereof (the Lessee).

### W I T N E S S E T H :

#### SECTION 1. Definitions; Construction of References.

In this Lease, unless the context otherwise requires:

(a) All references in this instrument to designated Sections and other subdivisions are to designated Sections and other subdivisions of this Lease, and the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Section or other subdivision;

(b) The terms defined in this Section 1 or elsewhere in this Lease shall have the meanings assigned to them in this Section 1 or elsewhere and include the plural as well as the singular;

(c) Except as otherwise indicated, all the agreements or instruments hereinafter defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof;

(d) The following terms shall have the following meanings for all purposes of this Lease:

Appraisal shall mean a procedure whereby two independent appraisers, neither of whom shall be a manufacturer of the Item of Leased Equipment for which Appraisal is required, one chosen by the Lessee and one by the Lessor, shall mutually agree upon the amount in question. The Lessor or the Lessee, as the case may be, shall deliver a written notice to the other party appointing its appraiser within 15 days after receipt from the other party of a written notice appointing that party's appraiser. If within 15 days after appointment of the two appraisers as described above, the two appraisers are unable to agree upon the amount in question, a third independent appraiser, who shall not be a manufacturer of such Item, shall be chosen within five days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser, such appointment shall be made by an authorized representative of the American Arbitration Association or any organization successor thereto. The decision of the

third appraiser so appointed and chosen shall be given within 10 days after the selection of such third appraiser and such decision shall be binding and conclusive on the Lessor and the Lessee. The Lessor and the Lessee shall pay the fees and expenses of the respective appraisers appointed by them and shall share equally the fees and expenses of the third appraiser, if any.

Basic Rent, Supplemental Rent and Rent shall have the meanings set forth in Section 3 hereof.

Beneficiary, Daily Lease Rate Factor, Rent Commencement Date, Basic Rent Dates, Basic Lease Rate Factor, Expiration Date, First Delivery Date, Final Delivery Date, Interim Rent Date, First Basic Rent Date, Last Basic Rent Date, Depreciable Life, Depreciation Method, Salvage Value, Investment Credit, Overdue Rate, Lease Extension Periods, Return of Equipment and Equipment Marking shall have the meanings with respect to each Group of Equipment set forth in Exhibit C hereto.

Business Day shall have the meaning set forth in the Participation Agreement.

Casualty Value and, if such term shall be applicable to this Lease, Termination Value shall have the meanings with respect to each Group of Equipment set forth in Exhibit D hereto.

Certificate of Acceptance shall mean a certificate of acceptance substantially in the form of Exhibit B hereto.

Closing Date shall have the meaning set forth in the Participation Agreement.

Equipment, and individually an Item or Item of Equipment, shall mean the items of equipment described in Exhibit A hereto.

Fair Market Rental Value of an Item of Leased Equipment shall be determined on the basis of, and shall mean the amount which would be obtainable in, an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) under no compulsion to lease and an informed and willing lessor under no compulsion to lease, in accordance with a net lease of such Item of Leased Equipment. If the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental Value with respect to an Item of Leased Equipment, such Fair Market Rental Value shall be determined in accordance with the procedure for Appraisal.

Fair Market Value of an Item of Leased Equipment shall be determined on the basis of, and shall mean the aggregate amount

which would be obtainable in, an arm's-length transaction between an informed and willing buyer or user (other than: (i) a lessee currently in possession, or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell, and in such determination costs of removal from the location of current use shall not be a deduction from such value and all alternative uses in the hands of such buyer or user, including without limitation, the further leasing of such Item of Leased Equipment, shall be taken into account in making such determination. If the Lessor and the Lessee are unable to agree upon a determination of Fair Market Value with respect to a particular Item of Leased Equipment, such Fair Market Value shall be determined in accordance with the procedure for Appraisal.

First Termination Date, if such term shall be applicable to this Lease, shall have the meaning with respect to each Group of Equipment set forth in Exhibit C hereto.

Group of Equipment and Lessor's Cost shall have the meanings set forth in the Certificate of Acceptance with respect to each Item of Leased Equipment.

Indenture shall mean the Trust Indenture dated as of October 1, 1976 between United States Trust Company of New York, a New York corporation, not in its individual capacity, but solely as trustee thereunder (the Trustee), and the Lessor.

Leased Equipment, and individually an Item of Leased Equipment, shall have the meanings set forth in Section 2 hereof.

Notes shall mean those promissory notes defined as Notes in the Participation Agreement issued in connection with the purchase of the Leased Equipment.

Participation Agreement shall mean the agreement, dated as of the date hereof, among the Lessee, the Lessor, the Trustee, each Beneficiary and each entity named therein as Interim Lender or Long-Term Lender.

Purchase Documents shall mean those documents defined as purchase documents in the Participation Agreement.

Supplement shall mean each supplement to the Indenture creating a separate series of the Notes.

## SECTION 2. Lease of Equipment.

Subject to the terms and conditions of this Lease, the Lessor hereby agrees to lease to the Lessee and the Lessee hereby agrees to lease from the Lessor such Items of Equipment as shall be described in one or more Certificates of Acceptance executed and delivered on behalf of the

Lessor with respect thereto and as shall have been delivered and accepted on or after the First Delivery Date but on or before the Final Delivery Date (Leased Equipment, and individually an Item of Leased Equipment). Subject to the provisions of the Participation Agreement, upon delivery of each Item of Equipment to the Lessor, the Lessee will cause an authorized representative of the Lessee to inspect the same and, if such Item of Equipment is found to be in good order, to accept such Item of Equipment and to execute and deliver a Certificate of Acceptance with respect thereto, whereupon, but also subject to the provisions of the Participation Agreement, such Item of Equipment shall be deemed to have been delivered to and accepted by the Lessee and shall be subject to the terms and conditions of this Lease.

SECTION 3. Term and Rent.

(a) The term of this Lease as to each Item of Leased Equipment included in a Group of Equipment shall begin on its date of acceptance, as set forth in the Certificate of Acceptance executed and delivered with respect thereto, and shall end on the Expiration Date with respect to such Group of Equipment, unless this Lease shall have been terminated, or the term of this Lease with respect to such Group of Equipment shall have been extended, by the terms hereof.

(b) The Lessee shall pay to the Lessor as Basic Rent (herein referred to as Basic Rent) for each Item of Leased Equipment subject to this Lease, the following:

(1) on the Interim Rent Date, an amount equal to the Daily Lease Rate Factor, if any, multiplied by the Lessor's Cost of such Item, for each day elapsed from and including the Rent Commencement Date with respect to such Item to but excluding the Interim Rent Date;

(2) on the First Basic Rent Date, an amount equal to the Basic Lease Rate Factor, multiplied by the Lessor's Cost of such Item; and

(3) on each Basic Rent Date thereafter to and including the Last Basic Rent Date, an amount equal to the Basic Lease Rate Factor, multiplied by the Lessor's Cost of such Item.

(c) The Lessee shall pay to the Lessor the following amounts (herein referred to as Supplemental Rent and, together with all Basic Rent, as Rent):

(1) on demand, any amount payable hereunder (other than Basic Rent, Casualty Value and Termination Value, if any) which the Lessee assumes the obligation to pay, or agrees to pay, under this Lease to the Lessor or others including but not limited to all costs, charges and expenses incurred by the Lessor by reason of any Event of Default in the exercise of the Lessor's remedies with respect thereto, including without limitation reasonable legal fees and disbursements incurred by the Lessor in its individual capacity or in its capacity as trustee under the Trust Agreement;

(2) on the date provided herein, any amount payable hereunder as Casualty Value or Termination Value, if any;

(3) to the extent permitted by applicable law, interest (computed on the basis of a 360-day year of twelve 30-day months) at the Overdue Rate on any payment of Basic Rent, Casualty Value or Termination Value, if any, not paid when due for any period for which the same shall be overdue and on any payment of Supplemental Rent (including, without limitation, interest payable under this clause (3), but excluding payments of Casualty Value or Termination Value, if any) not paid when demanded hereunder for the period from the date of such demand until the date on which the same shall be paid.

(d) Subject to the provisions of the Participation Agreement, all payments of Rent hereunder shall be made on or before 12:00 noon New York time so that the Lessor shall have immediately available funds on the date payable hereunder, and shall be paid to the Lessor at its address set forth herein or at such other address as the Lessor may direct by notice in writing to the Lessee.

#### SECTION 4. Net Lease.

This Lease is a net lease and the Lessee acknowledges and agrees that the Lessee's obligation to pay all Rent hereunder, and the rights of the Lessor in and to such Rent, shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment (Abatements) for any reason whatsoever, including, without limitation, Abatements due to any present or future claims of the Lessee against the Lessor under this Lease (including without limitation any claims under Section 6(a) hereof) or otherwise, or against the manufacturer or seller of any Item of Leased Equipment. Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be affected, by reason of any defect in or damage to, or any loss or destruction of, the Leased Equipment or any Item thereof from whatsoever cause, or the interference with the use thereof by any private person, corporation or governmental authority, or the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause, whether similar or dissimilar to the foregoing, and the Lessee hereby waives to the fullest extent lawful the benefit of any present or future law or regulation to the contrary, it being the express intention of the Lessor and the Lessee that all Rent payable by the Lessee hereunder shall be, and continue to be, payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

#### SECTION 5. Return of Equipment.

(a) Upon the expiration or termination of this Lease with respect to a Group of Equipment, the Lessee, at its own expense, will return the

Items of Leased Equipment then subject to this Lease which are included in such Group of Equipment to the Lessor in the condition in which such Leased Equipment is required to be maintained pursuant to Section 9 hereof and, except as otherwise provided in the succeeding paragraph (b), pursuant to the instructions set forth under the heading Return of Equipment in Exhibit C to this Lease. Such Leased Equipment, upon redelivery pursuant hereto, shall be free and clear of all mortgages, liens, security interests, charges, encumbrances and claims (Liens), other than Liens either (a) resulting from voluntary action by the Lessor without the prior approval of the Lessee and not taken as the result of any default by the Lessee, or (b) resulting from claims against the Lessor not related to the Lessor's ownership of the Leased Equipment (Liens described in clauses (a) and (b) above being herein referred to as Lessor's Liens). In the event any Item of Leased Equipment has not been returned to the Lessor pursuant to this Section 5(a) within 10 days after the Expiration Date, the Lessee shall pay to the Lessor for each day elapsed from and including the Expiration Date to but excluding the date of return an amount equal to 0.0108% of the Lessor's Cost of such Item.

(b) Upon the termination of this Lease in accordance with Section 18 hereof, the Lessee, at its own cost, expense and risk shall (a) forthwith and in the usual manner (including, without limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Item has been interchanged, to return such Item so interchanged) place the Leased Equipment upon such storage tracks as the Lessor may reasonably designate, (b) permit the Lessor to store the Leased Equipment on such tracks at the risk of the Lessee without charge for insurance, rent or storage until the Leased Equipment shall have been sold, leased or otherwise disposed of by the Lessor and (c) transport the Leased Equipment to any connecting carrier for shipment, all as directed by Lessor. During any such storage period, the Lessee's obligations under Sections 9, 10 and 12 shall remain in full force and effect notwithstanding the termination of this Lease.

SECTION 6. Warranties of the Lessor.

(a) The Lessor warrants that during the term of this Lease, if no Event of Default has occurred, the Lessee's use of the Leased Equipment shall not be interrupted by the Lessor or anyone claiming solely through or under the Lessor.

(b) The warranties set forth in paragraph (a) of this Section are in lieu of all other warranties of the Lessor, whether written, oral or implied with respect to this Lease or the Leased Equipment; and the Lessor shall not be deemed to have made, and the LESSOR HEREBY DISCLAIMS ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF THE LEASED EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE LEASED EQUIPMENT OR CONFORMITY OF THE LEASED EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER OR ORDERS RELATING THERETO, NOR SHALL THE LESSOR BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT), but the Lessor authorizes the Lessee, at the Lessee's expense, to assert for the Lessor's account, during the term of this Lease, so long as no Event of Default shall have occurred hereunder and be continu-

ing, all of the Lessor's rights under any applicable manufacturer's or seller's warranty and the Lessor agrees to cooperate with the Lessee in asserting such rights; provided, however, that the Lessee shall indemnify and shall hold the Lessor harmless from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by the Lessor in connection with, as a result of, or incidental to, any action by the Lessee pursuant to the above authorization. Any amount received by the Lessee as payment under any such warranty shall be applied to restore the Leased Equipment to the condition required by Section 9 hereof, with the balance of such amount, if any, to be paid over to the Lessor.

SECTION 7. Liens.

The Lessee will not directly or indirectly create, incur, assume or suffer to exist any Liens on or with respect to the Leased Equipment, the Lessor's title thereto or any interest therein (and the Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any such Lien), except (a) the respective rights of the Lessor and the Lessee as herein provided, (b) Lessor's Liens, (c) Liens for taxes either not yet due or being contested in good faith and by appropriate proceedings, if counsel for the Lessor shall have determined that the nonpayment of any such tax or the contest of any such payment in such proceedings do not, in the opinion of such counsel, adversely affect the title, property, or rights of the Lessor, (d) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business of the Lessee and not delinquent, and (e) Liens granted by the Lessor to any assignee or security assignee of the Lessor.

SECTION 8. Taxes.

The Lessee agrees to pay and to indemnify the Lessor for, and hold the Lessor harmless from and against, all income, franchise, sales, use, personal property, ad valorem, value added, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges, or withholdings of any nature (including without limitation any fees or expenses imposed against the Lessor as a condition to qualify to do business in a state if such qualification is required solely as a result of the Lessor's entering into this Lease and the transactions contemplated hereby), together with any penalties, fines or interest thereon (Impositions), arising out of the transactions contemplated by this Lease and imposed against the Lessor, the Lessee or the Leased Equipment by any federal, state, local or foreign government or taxing authority upon or with respect to the Leased Equipment or upon the sale, purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon or with respect to this Lease (excluding, however, federal taxes on, or measured by, the net income of the Lessor, and taxes, fees or other charges on or measured by the net or gross income of the Lessor, which are imposed by (i) the jurisdiction in which the principal office of the Lessor is located or (ii) any other jurisdiction in which the Lessor is subject to taxes, fees, or other

charges as the result of business or transactions unrelated to this Lease), unless, and only to the extent that, the Lessee shall have given to the Lessor written notice of any such Imposition, which notice shall state that such Imposition is being contested by the Lessee in good faith and by appropriate proceedings and counsel for the Lessor shall have determined that the nonpayment thereof or the contest thereof in such proceedings does not, in the opinion of such counsel, adversely affect the title, property or rights of the Lessor. If a claim is made against the Lessee or the Lessor for any Imposition, the party receiving notice of such claim shall promptly notify the other. In case any report or return is required to be made with respect to any obligation of the Lessee under this Section 8 or arising out of this Section 8, the Lessee will either (after notice to the Lessor) make such report or return in such manner as will show the ownership of the Leased Equipment in the Lessor and send a copy of such report or return to the Lessor or will notify the Lessor of such requirement and make such report or return in such manner as shall be satisfactory to the Lessor. The Lessor agrees to cooperate fully with the Lessee in the preparation of any such report or return.

SECTION 9. Use, Maintenance and Operation; Identifying Marks.

(a) The Lessee agrees that the Leased Equipment will be used or is intended for use, in connection with interstate commerce and will be used in compliance with any and all statutes, laws, ordinances and regulations of any governmental agency applicable to the use of the Leased Equipment, and will at all times be used solely in the conduct of its business and be and remain in the possession and control of the Lessee, any permitted sublessee or assignee pursuant to Section 14 hereof, or a common carrier to which the Leased Equipment has been furnished in order to allow the common carrier to haul commodities on behalf of the Lessee pursuant to applicable tariffs, within the geographic limits of the continental United States; provided, however, that the Lessee may use or permit the use of Items of Leased Equipment having an aggregate Lessor's Cost not in excess of 15% of the aggregate Lessor's Cost of all Leased Equipment then subject to this Lease, outside the geographic limits of the continental United States in interchange in the normal course of its business. Throughout the term of this Lease, the possession, use and maintenance of the Leased Equipment shall be at the sole risk and expense of the Lessee.

(b) The Lessee shall use the Items of Leased Equipment only in the manner for which they were designed and intended and will, throughout the term of this Lease, at its own cost and expense, repair and maintain each Item of Leased Equipment so as to keep it in as good condition as when delivered to the Lessee hereunder, ordinary wear and tear excepted, in the same condition as other similar equipment owned or leased by the Lessee and in accordance with all governmental laws, rules and regulations, including but not limited to any law, rule or regulation prescribed or enforced by the Interstate Commerce Commission, the Federal Railroad Administration or the Department of Transportation, and in accordance with any industry rule or standard prescribed by the American Association of Railroads, or any successor thereto.

(c) Except as set forth in paragraph (d) below, the Lessee shall be entitled from time to time during the term of this Lease, to acquire and install on any Item of Leased Equipment at the Lessee's expense, such additional features or options as may be available at such time with respect to such Item, and such additional features and options shall not be considered accessions to such Item and title thereto shall remain in the Lessee except as provided in the last sentence of this paragraph (c). Such additional features or options shall be removed by the Lessee before such Item is returned to the Lessor, and the Lessee shall repair all damage to such Item resulting from such installation and removal so as to restore such Item to the condition in which it existed prior to the installation of such additional features or options. Any such additional features and options not so removed shall be considered accessions to such Item and shall become the property of the Lessor.

(d) The Lessee will not, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld and which consent shall not be withheld if such accessory, equipment or device is required by applicable law or governmental regulation, affix or install any accessory, equipment or device on any Item of Leased Equipment leased hereunder which will either impair the originally intended function or use of any such Item or constitute an improvement or addition to such Item of Leased Equipment which is not, within the meaning of any law, regulation or procedure then in effect, readily removable without causing material damage to such Item of Leased Equipment. Only such accessories, equipment and devices which are not readily removable without material damage shall upon attachment or affixation become the property of the Lessor and thereupon all such accessories, equipment and devices shall become a part of the Leased Equipment leased hereunder. The replaced parts shall no longer be the property of the Lessor.

(e) The Lessee agrees, at its own cost and expense, to (1) cause each Item of Leased Equipment to be kept numbered with the identification therefor as specified in the Certificate of Acceptance therefor and (2) maintain the Equipment Marking on each Item of Leased Equipment and such other markings as from time to time may be required by law or otherwise deemed necessary by the Lessor in order to protect the title of the Lessor to such Item of Equipment, the rights of the Lessor under this Lease and the Lien granted by the Lessor in financing the Lessor's Cost of the Leased Equipment. The Lessee will not place any Item of Leased Equipment in operation or exercise any control or dominion over the same until such Equipment Marking has been placed thereon. The Lessee will replace promptly any such Equipment Marking which may be removed, defaced or destroyed.

SECTION 10. Inspection.

The Lessor shall have the right, but not the duty, to inspect the Leased Equipment. Upon the request of the Lessor, the Lessee shall, at any reasonable time, make the Leased Equipment available to the Lessor for inspection on the tracks on which the Leased Equipment is normally used, and shall make the Lessee's records pertaining to the Leased Equipment available to the Lessor for inspection at the Lessee's place of business.

SECTION 11. Loss or Destruction; Requisition of Use.

(a) In the event that any Item of Leased Equipment shall be or become damaged, worn out, destroyed, lost, stolen, or permanently rendered unfit for use for any reason whatsoever, or title thereto shall be requisitioned or otherwise taken by any governmental authority under power of eminent domain or otherwise (Requisition of Use), or any Item of Leased Equipment is returned to the manufacturer or seller thereof pursuant to the patent indemnity provisions of the Purchase Documents, such fact shall promptly be reported by the Lessee to the Lessor.

(b) The Lessee shall determine, within 15 days after the date of occurrence of any such damage or wearing out, whether such Item of Leased Equipment can be repaired or replaced.

(c) In the event the Lessee determines that such Item cannot be repaired or replaced or in the event of such destruction, loss, theft, unfitness for use, Requisition of Use for a stated period which exceeds the term of this Lease, or permanent return of such Item to the manufacturer or seller thereof without replacement thereof (any of such occurrences being referred to as an Event of Loss), the Lessee shall promptly notify the Lessor of such Event of Loss. On the Basic Rent Date next following the date of such Event of Loss, the Lessee shall pay to the Lessor the Casualty Value of such Item, determined as of such Basic Rent Date, together with any Rent then due. In the event the Lessee determines that such Item can be repaired or replaced, the Lessee shall continue to make all payments of Basic Rent due with respect to such Item and shall (1) cause such Item to be repaired or replaced within 90 days after the occurrence of such damage or wearing out, and (2) in the event of replacement, take such action as may be required under and pursuant to the Indenture to perfect, protect and preserve any security interests created by the Lessor under and pursuant to the Indenture; provided, however, that if the Lessee shall, within such 90-day period, have commenced the repair or replacement of such Item and be diligently pursuing such repair or replacement, but is prevented from completing such repair or replacement within such 90-day period due to causes beyond the Lessee's control, then the time for repair or replacement shall be extended by the number of days necessary to complete such repair or replacement up to a maximum of 90 additional days, and further provided, that if the Lessee shall fail to repair or replace such Item within such repair or replacement period (including any extension thereof) an Event of Loss shall be deemed to have occurred and the Lessee shall, on the Basic Rent Date next following the end of such repair or replacement period, pay to the Lessor the Casualty Value of such Item, determined as of such Basic Rent Date, together with any Rent then due. If at such time no more Basic Rent is or will become payable under this Lease, the Casualty Value shall be paid within 30 days following, as appropriate, the Event of Loss or the repair or replacement period. The obligation of the Lessee to pay Rent during the above-described replacement or repair period shall remain in full force and effect. Notwithstanding the foregoing, the Lessee, pursuant to the provisions of Section 15 hereof, shall still be required to indemnify the Lessor for any Loss, as defined in Section 15 hereof, due to the

Lessee's act of replacing or repairing an Item of Leased Equipment authorized hereby. Upon making such Casualty Value payment in respect of such Item and All Rent due and owing with respect thereto, the Lessee's obligation to pay further Basic Rent for such Item shall cease, but the Lessee's obligation to pay Supplemental Rent, if any, for such Item, and to pay Rent for all other Items of Leased Equipment shall remain unchanged. Except in the case of loss, theft, destruction, or return to the manufacturer or seller, the Lessor shall have the option to recover possession of such Item, unless possession of such Item is required to be delivered to an insurance carrier (other than the Lessee) in order to settle an insurance claim arising out of the Event of Loss. The Lessor shall be entitled to retain any salvage value collected by such insurance carrier in excess of the amount, if any, paid to the Lessor by said insurance carrier. The Lessor in such manner as may be satisfactory to the Lessor. Any replacement Item installed by the Lessee in accordance with the provisions of this Section 11(c) shall be in as good operating condition as, and shall have a value and utility at least equal to, the Item replaced, assuming the Item replaced was in the condition and state of repair required to be maintained by the terms hereof.

(d) Following payment of the Casualty Value of an Item of Leased Equipment in accordance with the provisions of Section 11(c), the Lessee shall, as agent for the Lessor, dispose of such Item as soon as it is able to do so for the best price obtainable. Any such disposition shall be on an "as is", "where is" basis without representation or warranty, express or implied. As to each separate Item so disposed of, the Lessee may, after paying the Lessor the amounts specified in Section 11(c), retain all amounts of such price, plus damages received by the Lessee by reason of such Event of Loss, up to the Casualty Value and the Lessee's reasonable costs and expenses of disposition attributable thereto, and shall remit the excess, if any, to the Lessor. As to each Item of Leased Equipment returned to the manufacturer or seller thereof in the manner described in Section 11(a) and not replaced or modified by the manufacturer or seller pursuant to the patent indemnity provisions of the Purchase Documents, the Lessor agrees that the Lessee shall receive and retain all amounts payable to the Lessor by the manufacturer or seller for the return of such Item, up to the Casualty Value paid by the Lessee hereunder, and any excess shall be paid over to or retained by the Lessor. As to each Item of Leased Equipment modified and each replacement Item installed by the manufacturer or seller pursuant to the patent indemnity provisions of the Purchase Documents, the Lessor and the Lessee agree that such modified Item or replacement Item shall be delivered to the Lessee and shall, without any further act of the Lessor or the Lessee, be considered an Item for all purposes of this Lease.

(e) Except as hereinabove in this Section 11 provided, the Lessee shall bear the risk of loss and shall not be released from its obligations hereunder in the event of any damage or Event of Loss to any Item of Leased Equipment after delivery to and acceptance by the Lessee hereunder.

(f) In the case of a Requisition of Use of any Item of Leased Equipment for an indefinite period or for a stated period which does not exceed the term of this Lease, such Requisition of Use shall not terminate this Lease with respect to such Item, and each and every obligation of the Lessee with respect thereto shall remain in full force and effect. So long as no Event of Default shall have occurred and be continuing under this Lease, the Lessee shall be entitled to all sums received by reason of any such Requisition of Use, up to the amount of the Basic Rent paid by the Lessee during the period of such Requisition of Use and any excess shall be promptly remitted to the Lessor.

SECTION 12. Insurance.

At its own expense, the Lessee will cause to be carried and maintained casualty insurance with respect to each Item of Leased Equipment and public liability insurance, in each case in amounts and against risks customarily insured against by the Lessee on similar equipment owned by it. Any policies with respect to such insurance shall be with an insurance carrier acceptable to the Lessor and, if requested by the Lessor, shall name the Lessor, the Beneficiary, the Trustee (as assignee and secured party) and the Lessee as assureds and loss payees, as their interests may appear, and shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor in the event of cancellation or expiration. The Lessee shall, upon request of the Lessor, furnish appropriate evidence of such insurance.

SECTION 13. Indemnification.

The Lessee agrees to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless the Lessor from and against any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability), actions, suits, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (Claims) which may be imposed on, incurred or asserted against the Lessor, whether or not the Lessor shall also be indemnified as to any such Claim by any other person, in any way relating to or arising out of this Lease or any document contemplated hereby or the performance or enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or disposition of any Item of Leased Equipment or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable and any Claim for patent, trademark or copyright infringement); provided, however, that the Lessee shall not be required to indemnify the Lessor for (a) any Claim in respect of any Item of Leased Equipment arising from acts or events which occur after possession of such Item of Leased Equipment has been redelivered to the Lessor, or (b) any Claim resulting from acts which would constitute the wilful misconduct or gross negligence of the Lessor. To the extent that the Lessor in fact receives indemnification payments

from the Lessee under the indemnification provisions of this Section 13, the Lessee shall be subrogated, to the extent of such indemnity paid, to the Lessor's rights with respect to the transaction or event requiring or giving rise to such indemnity; provided, however, that the Lessee shall not enforce any such rights by legal proceedings without the Lessor's approval, which approval shall not be unreasonably withheld. The Lessee agrees that the Lessor shall not be liable to the Lessee for any Claim caused directly or indirectly by the inadequacy of any Item of Leased Equipment for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any thereof or any interruption or loss of service or use thereof or any loss of business, all of which shall be the risk and responsibility of the Lessee. The rights and indemnities of the Lessor hereunder are expressly made for the benefit of, and shall be enforceable by, the Lessor notwithstanding the fact that the Lessor is either no longer a party to this Lease, or was not a party to this Lease at its outset.

SECTION 14. Sublease.

So long as no Event of Default or event which, with the giving of notice or lapse of time or both, would become an Event of Default shall have occurred hereunder and be continuing, the Lessee shall be entitled to the possession and use of the Leased Equipment by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Leased Equipment or to sublease the Leased Equipment, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Item of Leased Equipment predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended, (Code) to the date hereof, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Leased Equipment by, any person in whose hands such Leased Equipment would not qualify as "section 38 property" within the meaning of said Code. The Lessee may receive and retain compensation for the use of any of the Leased Equipment from railroads or other entities so using such Leased Equipment. Any sublease permitted by this paragraph may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that no sublease shall be permitted hereunder unless the rights of the sublessee thereunder are expressly subject and subordinate to the rights of the Lessor and any security assignee of the Lessor. No sublease, other relinquishment of the possession of any of the Leased Equipment, or assignment by the Lessee of any of its rights hereunder shall in any way discharge or diminish any of the Lessee's obligations to the Lessor hereunder.

SECTION 15. Tax Indemnification.

(a) This Lease has been entered into on the basis that the Lessor shall be entitled to such deductions, credits and other benefits as are provided to an owner of property including, without limitation:

(i) unless otherwise provided in Exhibit C hereto, the investment tax credit (Investment Credit) allowed by section 38 and related sections of the Code, in an amount equal to the percentage set forth in Exhibit C hereto of the Lessor's Cost of each Item of Leased Equipment;

(ii) the deduction for accelerated depreciation (Depreciation Deduction) on each Item of Leased Equipment under various sections of the Code based upon the Depreciable Life, Depreciation Method and Salvage Value set forth in Exhibit C hereto;

(iii) the deduction under section 163 of the Code (Interest Deduction) in the full amount of any interest paid or accrued by the Lessor in accordance with the Lessor's method of accounting for tax purposes with respect to any indebtedness incurred by the Lessor in financing its purchase of each Item of Leased Equipment.

(b) If, by reason of (1) the inaccuracy in law or in fact of any of the Assumptions set forth in paragraph (f) of this Section, (2) the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee in connection with the financing contemplated by this Lease, or (3) the act, failure to act or omission of or by the Lessee, the Lessor shall lose, shall not have or shall lose the right to claim or there shall be disallowed or recaptured with respect to the Lessor, all or any portion of the Investment Credit, the Interest Deduction or the Depreciation Deduction as is provided to an owner of property with respect to an Item of Leased Equipment (Loss) then the Basic Lease Rate Factor applicable to such Item of Leased Equipment shall, on and after the next succeeding Basic Rent Date, after written notice to the Lessee by the Lessor that a Loss has occurred, be increased by such amount for such Item which, after deduction of all taxes to be paid by the Lessor as a result of the receipt thereof, will cause the Lessor's net after-tax return and cash flow over the term of the Lease in respect of such Item to equal the net after-tax return that would have been available if the Lessor had been entitled to the utilization of all of the Investment Credit, the Interest Deduction or the Depreciation Deduction with respect to such Item and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States or any state against the Lessor attributable to the Loss. Any such increase in the Basic Lease Rate Factor shall be determined by the Lessor and, at the Lessee's request and expense, shall be subject to an audit by an independent public accountant selected by the Lessor and reasonably acceptable to the Lessee.

(c) For purposes of this Section, a Loss shall occur upon the earliest of (1) the happening of any event (such as a disposition or

change in the use of any Item of Leased Equipment) which may cause such Loss, (2) the payment by the Lessor to the Internal Revenue Service of the tax increase resulting from such Loss, or (3) the adjustment of the tax return of the Lessor to reflect such Loss. With respect to any Item of Leased Equipment, the Lessor shall be responsible for, and shall not be entitled to a payment under this Section on account of, any Loss due to any event which by the terms of this Lease requires payment by the Lessee of the Casualty Value or Termination Value of such Item, if such Casualty Value or Termination Value is thereafter actually paid by the Lessee, to the extent that such payment reimburses the Lessor for amounts otherwise payable by the Lessee pursuant to this Section.

(d) In the event and to the extent that the cost of any improvement or addition (Capital Expenditure) to any Item of Leased Equipment made by the Lessee, is required to be included in the gross income of the Lessor for federal income tax purposes, then the Lessee shall pay to the Lessor on each Basic Rent Date thereafter, commencing with the first Basic Rent Date following the date on which the Lessee is required to furnish written notice of such inclusion to the Lessor pursuant to the succeeding paragraph (e), such amount which (after deduction of all taxes required to be paid by the Lessor on receipt thereof under the laws of the United States or any political subdivision thereof), when taken together with the amount of Basic Rent due on each such date will, in the reasonable opinion of the Lessor, cause the Lessor's net after-tax return and cash flow over the term of the Lease in respect of such Item to equal the net return that would have been available if the cost of such Capital Expenditure had not been includible in the Lessor's gross income, and the Casualty Values and Termination Values payable with respect to such Item shall be adjusted in amounts calculated in a similar such manner by the Lessor.

(e) For purposes of the preceding paragraph (d), the cost of any Capital Expenditure made by the Lessee shall be deemed to be "required to be included in the gross income of the Lessor for federal income tax purposes", if such inclusion is required by (i) any private ruling letter issued to the Lessor by the Internal Revenue Service that has not been revoked or otherwise rendered inapplicable at the time the cost of such Capital Expenditure is incurred, (ii) any provision of the Code or the applicable regulations thereunder, or (iii) any published revenue ruling or revenue procedure of the Internal Revenue Service which has not been held invalid by a court having ultimate appellate jurisdiction over the federal income tax liability of the Lessor. The Lessee shall, within 30 days after December 31 (or, if the Lessee's fiscal year end occurs on some other date, within 30 days of such other date) in each year in which the Lessee has made any Capital Expenditure which is required to be included in the gross income of the Lessor for federal income tax purposes, give written notice thereof to the Lessor describing such Capital Expenditure in reasonable detail and specifying the cost thereof.

(f) This Lease is to be entered into on the basis of, among other things, the following assumptions (the Assumptions): (i) at the time the Lessor becomes the owner of each Item of Leased Equipment, such

Item will constitute "new section 38 property" within the meaning of sections 46 and 48 of the Code and at the time the Lessor becomes the owner of such Item, such Item of Leased Equipment will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (ii) each Item of Leased Equipment is an asset described in the Asset Guideline Class set forth under the heading Depreciable Life in Exhibit C hereto; (iii) the Lessee will not at any time during the term of this Lease use or fail to use any Item of Leased Equipment in such a way as to disqualify it as "section 38 property" within the meaning of section 48(a) of the Code; (iv) for federal income tax purposes, all amounts includible in the gross income of the Lessor with respect to each Item of Leased Equipment and all deductions allowable to the Lessor with respect to each Item of the Leased Equipment will be treated as derived, from or allocable to, sources within the United States; (v) the Lessee will maintain sufficient records to verify such use, which records will be furnished to the Lessor within 30 days after receipt of a written demand therefor; and, (vi) an amount equal to at least 20% of the Lessor's Cost of each Item of Leased Equipment is a reasonable estimate of what the fair market value of such Item will be on the Expiration Date with respect thereto, without including in such value any increase or decrease for inflation or deflation and after subtracting from such value any cost to the Lessor for removal and delivery of possession of such Item to the Lessor, and at least 20% of the originally estimated useful life of such Item of Leased Equipment is a reasonable estimate of what the remaining useful life of such Item will be on the Expiration Date with respect thereto.

(g) All of the Lessor's rights and privileges arising from the indemnities contained in this Section 15 shall survive the expiration or other termination of this Lease with respect to any or all Items of Leased Equipment and such indemnities are expressly made for the benefit of and shall be enforceable by the Lessor, its successors and assigns.

SECTION 16. Lease Extension.

(a) Provided that this Lease has not been terminated and provided that no Default has occurred and is continuing hereunder, the Lessee shall have the option to extend the term of this Lease with respect to any Group of Equipment at the Expiration Date with respect to such Group of Equipment for such Lease Extension Periods as are provided for in Exhibit C hereto for a rental equal to the Fair Market Rental Value thereof, determined as of such Expiration Date.

(b) Not less than 210 days prior to the Expiration Date with respect to such Group, the Lessee may indicate, by written notice to the Lessor, the Lessee's interest in exercising the Lessee's lease extension option described above, which notice shall set forth the Lessee's estimate of the Fair Market Rental Value of such Group of Equipment as of such Expiration Date. If, on or before a date 180 days prior to such Expiration Date, the Lessor and the Lessee are unable to agree upon a

determination of the Fair Market Rental Value of such Group of Equipment, such Fair Market Rental Value shall be determined in accordance with the procedure for Appraisal. After a determination of the Fair Market Rental Value of such Group of Equipment has been made in accordance with the procedure described above, the Lessee may exercise its option to extend the term of this Lease with respect to such Group of Equipment for the Fair Market Rental Value thereof by delivering written notice of such exercise to the Lessor not less than 120 days prior the Expiration Date with respect to such Group.

SECTION 17. Events of Default.

The term Event of Default, wherever used herein, shall mean any of the following events under this Lease (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) The Lessee shall fail to make any payment of Rent within 10 days after the same shall become due; or

(b) The Lessee shall fail to perform or observe any other covenant, condition, or agreement to be performed or observed by it under this Lease or any agreement, document or certificate delivered by the Lessee in connection herewith, and such failure shall continue for 20 days after written notice thereof from the Lessor to the Lessee; or

(c) Any representation or warranty made by the Lessee in this Lease or the Participation Agreement or in any document or certificate furnished to the Lessor in connection herewith shall prove to have been incorrect in any material respect when any such representation or warranty was made or given; or

(d) A petition in bankruptcy shall be filed by the Lessee, or the Lessee shall make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver; or a trustee or a receiver shall be appointed for the Lessee, for any Item of Leased Equipment or for a substantial part of its property without its consent and shall not be dismissed within a period of 60 days; or bankruptcy, reorganization or insolvency proceedings shall be instituted against the Lessee and shall not be dismissed for a period of 60 days; or

(e) The Lessee shall be in default under any material obligation, which default has a material and adverse effect on the overall financial condition of the Lessee, for the payment of borrowed money or for the deferred purchase price of, or for the payment of any rent under any lease agreement covering, material real or personal property, and the applicable grace period with respect thereto shall have expired and the obligations shall not be contested in good faith; or

(f) The Lessee shall attempt to remove, sell, transfer, encumber, part with possession of, assign or sublet (except as expressly permitted by the provisions of this Lease) any Item of Leased Equipment.

SECTION 18. Remedies.

(a) Upon the occurrence of any Event of Default, the Lessor may, at its option, declare this Lease to be in default by written notice to such effect given to the Lessee, and at any time thereafter, the Lessor may exercise one or more of the following remedies, as the Lessor in its sole discretion shall lawfully elect:

(1) Proceed by appropriate court action, 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;

(2) By notice in writing terminate this Lease, whereupon all rights of the Lessee to the use of the Leased Equipment shall absolutely cease and terminate but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessee, if so requested by the Lessor, shall at its expense promptly return the Leased Equipment to the possession of the Lessor at the place and in the condition required upon the return thereof pursuant to and in accordance with Section 5(b) hereof, or the Lessor, at its option, may enter upon the premises where the Leased Equipment is located and take immediate possession of and remove the same by summary proceedings or otherwise. The Lessee shall, without further demand, forthwith pay to the Lessor an amount equal to any unpaid Rent due and payable for all periods up to and including the Basic Rent Date following the date on which the Lessor has declared this Lease to be in default, plus, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the Casualty Value of the Leased Equipment then subject to this Lease, computed as of the Basic Rent Date following the date on which the Lessor has declared this Lease to be in default. Following the return of the Leased Equipment to the Lessor pursuant to this paragraph (2), the Lessor shall proceed to sell the Leased Equipment in such manner as it shall deem appropriate. The proceeds of such sale shall be applied by the Lessor (A) first, to all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor as a result of the default and the exercise of its remedies with respect thereto, and (B) second, to reimburse the Lessee for the Casualty Value to the extent previously paid by the Lessee as liquidated damages. Any surplus remaining thereafter shall be retained by the Lessor. To the extent that the Casualty Value has become due but not been previously paid, the Lessee shall forthwith pay to the Lessor the sum of (i) the amount by which (X) the sum of (a) the Casualty Value thereof, and (b) the amount payable under clause (A) of the preceding sentence, exceeds (Y) the sale price of the Leased Equipment, and (ii) interest at the Overdue Rate on the full amount of the Casualty Value, computed from the date the Casualty Value is payable hereunder until such Casualty Value is paid by the Lessee.

(b) The Lessee shall be liable for all costs, charges and expenses, including without limitation reasonable legal fees and disbursements, incurred by the Lessor in its individual capacity or in its capacity as trustee by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto.

(c) No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any default or Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent default or Event of Default. The failure or delay of the Lessor in exercising any 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 and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein.

SECTION 19. Right of First Refusal.

(a) Provided that no Event of Default has occurred and is continuing hereunder, the Lessor agrees that, during the term of this Lease or any extension thereof and for 30 days following the expiration of the term of this Lease or any extension thereof with respect to any Item of Leased Equipment, it will not lease or sell such Item of Leased Equipment unless the Lessor shall have given the Lessee at least 15 Business Days' prior written notice of any intended lease or sale, specifying the rental or sale price and the terms of such lease or sale, and the Lessee shall have the opportunity during said period to lease or purchase such Item of Leased Equipment at the same rental or price and on the same terms as specified in such notice.

(b) In the event the Lessee exercises such right of first refusal to purchase any Item of Leased Equipment, then, upon payment of the purchase price, the Lessor shall, upon request of the Lessee, execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Item of Leased Equipment is free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Item of Leased Equipment, and such other documents as may be required to release such Item of Leased Equipment from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

SECTION 20. Voluntary Termination.

(a) The Lessee shall have the right, at any time on or after the First Termination Date, on at least 180 days' prior written notice to the

Lessor, to terminate this Lease with respect to all, but not less than all, Items of Leased Equipment subject to this Lease, such termination to be effective on the Basic Rent Date next following the expiration of the 180-day notice period (the Termination Date); provided, however, that no Event of Default, or event which with the giving of notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing and that such Items shall have become obsolete or surplus to the Lessee's requirements. During the period from the giving of such notice until the Termination Date, the Lessor may, and the Lessee, as agent for the Lessor, shall, use their best efforts to obtain bids for the purchase of such Items of Leased Equipment. The Lessee shall certify to the Lessor in writing the amount of each bid received by the Lessee and the name and address of the party submitting such bid. The Lessee may utilize agents for purposes of fulfilling its obligations set forth in this Section. On the Termination Date, the Lessor shall sell such Items of Leased Equipment, without recourse or warranty, for cash to whosoever shall have submitted the highest bid prior to such date and shall transfer to such purchaser all of the Lessor's right, title and interest in and to such Items, and thereupon the Lessee shall deliver such Items of Leased Equipment so sold to the Lessor in accordance with the terms of Section 5 of this Lease. The Lessor shall certify in writing to the Lessee (i) the amount of such total sale price, (ii) the expenses incurred by the Lessor in connection with such sale, and (iii) that such total sale price represents the highest bid received by the Lessor for the purchase of such Items. The total sale price realized at such sale shall be retained by the Lessor, and, in addition, on the Termination Date, the Lessee shall pay to the Lessor the Basic Rent payment payable on such date and the amount, if any, by which (A) the Termination Value of such Items, computed as of the Termination Date, exceeds (B) the proceeds of such sale less all expenses incurred by the Lessor in selling such Items. In the event no such sale takes place, the Lessee shall pay to the Lessor the Termination Value of such Items, computed as of the Termination Date, plus any expenses incurred by the Lessor in connection herewith and the Basic Rent payment then due. Upon payment of all amounts required to be paid by the Lessee pursuant to this paragraph (a), the obligation of the Lessee for all Basic Rent accruing hereunder with respect to such Items due and payable after, but not on or before, the Termination Date shall cease.

(b) Notwithstanding the foregoing, upon receipt of all bona fide bids for the purchase of such Items, the Lessor may, with the prior written consent of the Trustee, elect not to sell such Items to the highest bidder on the Termination Date, in which case the Lessee shall deliver such Items to the Lessor in accordance with the terms of Section 5 of this Lease. In addition, on the Termination Date, the Lessee shall pay to the Lessor the Basic Rent due on such Termination Date and the amount, if any, by which the Termination Value of such Items plus the amount of any expenses incurred by the Lessor directly or indirectly in connection therewith exceed such highest bid. Upon such redelivery and the payment of such amount, if any, the obligation of the Lessee to pay all Basic Rent

accruing under this Lease with respect to such Items due and payable after, but not on or before, the Termination Date shall cease.

(c) Notwithstanding the foregoing, provided that no Event of Default, or event which, with the giving of notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing, and provided further that the Lessor has not notified the Lessee in writing of the Lessor's election under paragraph (b) above, upon written notification given to the Lessor not less than 30 days prior to the Termination Date, the Lessee may elect to rescind the Lessee's notice of termination, in which case this Lease shall not terminate as set forth in this Section, but shall continue in full force and effect as though no such notice of termination had been given by the Lessee.

SECTION 21. Performance of Obligations of Lessee by Lessor.

If an Event of Default should occur hereunder, the Lessor may thereafter make the payment or perform or comply with the agreement, the nonpayment, nonperformance or noncompliance with which caused such Event of Default, and the amount of such payment and the amount of the reasonable expenses of the Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest at the Overdue Rate as set forth in Exhibit C, shall be payable by the Lessee upon demand by the Lessor.

SECTION 22. Notices.

All communications and notices provided for herein shall be in writing and shall become effective when deposited in the United States mail, with proper postage for first-class mail prepaid, addressed (a) if to the Lessor, at P.O. Box 30007, Salt Lake City, Utah 84125, Attention: Trust Department, Corporate Division (with copies to (1) Intel Corporation, Equipment Finance Division, at One Embarcadero Center, San Francisco, California 94111, Attention: Contract Administration, (2) the Trustee, at 130 John Street, New York, New York 10038, Attention: Corporation Trust and Agency Division and (3) each Beneficiary, at its address set forth in Exhibit C hereto), and (b) if to the Lessee, at its address set forth on the signature page hereof.

SECTION 23. Amendments and Miscellaneous.

(a) The terms of this Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the Lessor and the Lessee; provided that no such waiver, alteration, modification, amendment or supplement shall make any change, and no termination shall be made, which is prohibited by the Indenture or any Supplement.

(b) This Lease, including all agreements, covenants, representations and warranties made herein or in any certificate delivered pursuant

hereto, shall be binding upon and inure to the benefit of (1) the Lessor and its successors, assigns, agents, servants and personal representatives, and, (2) each Beneficiary, (3) the Trustee, as assignee and secured party, and the successors, assigns, agents, servants and personal representatives of each Beneficiary and the Trustee as assignee and secured party, (4) any holder of the obligations of the Lessor issued in connection with this Lease, and (5) the Lessee and its successors and, to the extent permitted hereby, assigns. Without limiting the generality of the foregoing, with respect to the provisions of Sections 6, 8, 13 and 15 hereof, each Beneficiary, the Trustee as assignee and secured party, any holder of obligations of the Lessor issued in connection with this Lease, and the successors, assigns, agents, servants and personal representatives of the foregoing shall each be indemnified thereunder and, with respect to clause (b) of the proviso to Section 13 hereof, the wilful misconduct or gross negligence of the Lessor or any one such person shall not affect the rights of any other person indemnified under such Section 13.

(c) All agreements, indemnities, covenants, representations and warranties contained in this Lease or in any document or certificate delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Lease and the expiration or other termination of this Lease.

(d) Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(e) This Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title or interest in or to the Leased Equipment, except as lessee only.

(f) This Lease may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument.

(g) This Lease shall be construed in accordance with, and shall be governed by, the laws of the State of New York.

(h) Section headings are for convenience only and shall not be construed as part of this Lease.

(i) Although this Lease is dated as of the date first above written for convenience, the actual dates of execution hereof by the

parties hereto are respectively the dates set forth opposite the signatures hereto, and this Lease shall be effective on the latest of such dates.

IN WITNESS WHEREOF, the parties hereto have each caused this Lease to be duly executed by their respective officers thereunto duly authorized.

FIRST SECURITY BANK OF UTAH, N.A.,  
not in its individual capacity, but  
solely as trustee under a Master  
Trust Agreement dated as of October  
1, 1976 between it and Itel Capital  
Services Corporation,  
as Lessor

By \_\_\_\_\_  
Authorized Officer

Date \_\_\_\_\_

AMAX COAL COMPANY, A DIVISION OF  
AMAX INC.,  
as Lessee

By W. Wilson  
Authorized Officer Vice President

Date 10/12/78

[SEAL]

Address: 105 South Meridian Street  
Indianapolis, Indiana  
46225

Attention: Vice President and  
General Counsel

The undersigned hereby certifies that the person executing this Lease on behalf of the Lessee holds the indicated office, was duly elected thereto and at all relevant times has been a duly qualified and acting officer of the Lessee.

Attest:  
Raymond Head  
Assistant Secretary

Date October 12, 1978

STATE OF UTAH )  
 ) ss.:  
COUNTY OF SALT LAKE )

On this \_\_\_\_ day of \_\_\_\_\_, 1978, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., 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.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT )  
 ) ss.:  
COUNTY OF FAIRFIELD )

On this 12th day of October, 1978, before me personally appeared R. B. Crowl, to me personally known, who, being by me duly sworn, says that he is Vice President of Army Coal Company, a division of AMAX, 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.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

March 31, 1981

(a) Except as otherwise expressly provided or as the context shall otherwise require, as used herein, in the Indenture, each Supplement and this Lease and in all certificates and other instruments delivered pursuant hereto and thereto, the terms "Group" and "Group of Equipment" shall refer to the sub-designations described above.

(b) Each Group of Equipment shall include such additional quantities of Items of Equipment specifically described above as the Lessee shall include in a Certificate of Acceptance; provided, however, that in no event shall the Maximum Financing Cost, Maximum Investment Commitment or Maximum Loan Commitment be exceeded without the express approval of each affected party.

DESCRIPTION OF EQUIPMENT

<u>Group of Equipment (a)</u>	<u>Quantity (b)</u>	<u>Manufacturer</u>	<u>Identification Number</u>	<u>Description (c)</u>
1	50	Ortner Freight Car Company	SSIX 5082 through 5131 (inclusive)	50 100-ton 3,850 cubic foot, 5- pocket open-top coal hopper cars; AAR Mechanical Designation: HTS

CERTIFICATE OF ACCEPTANCE NO. \_\_\_\_

under

Equipment Lease dated as of September 1, 1978 (the Lease) between FIRST SECURITY BANK OF UTAH, N.A., not in its individual capacity, but solely as trustee under a Master Trust Agreement dated as of October 1, 1976 between it and Itel Capital Services Corporation as lessor (the Lessor) and AMAX COAL COMPANY, A DIVISION OF AMAX INC. as lessee (the Lessee).

1. Items of Equipment

The Lessee hereby certifies that the Items of Equipment set forth and described in Schedule 1 hereto (which Schedule includes the amount of the Lessor's Cost of each such Item), constituting Items of Equipment of the Group of Equipment indicated below, have been delivered to the location indicated below, tested and inspected by the Lessee, found to be in good order and accepted as Items of Leased Equipment under the Lease, all on the date indicated below:

Group of Equipment:

Location of Items of Equipment:

Date of Acceptance:

2. Representations by the Lessee

The Lessee hereby represents and warrants to the Lessor, each Beneficiary, the Trustee, each Long-Term Lender and the Interim Lender, if any, as such terms are defined in the Lease, that on the Date of Acceptance with respect to each Item of Leased Equipment:

(1) the representations and warranties of the Lessee set forth in the Participation Agreement, as such term is defined in the Lease, are true and correct in all material respects on and as of such date as though made on and as of such date;

(2) the Lessee has satisfied or complied with all requirements set forth in the Participation Agreement and in the Lease to be satisfied or complied with on or prior to such date;

(3) no Event of Default under the Lease or event which, with the giving of notice or the lapse of time, or both, would become such an Event of Default has occurred and is continuing; and

(4) the Lessee has obtained, and there are in full force and effect, such insurance policies with respect to such Item of Leased Equipment required to be obtained under the terms of the Lease.

AMAX COAL COMPANY, A DIVISION OF AMAX  
INC.

as Lessee

By

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

Dated:

10/12/78

Accepted on the Date of Acceptance  
set forth in paragraph 1 above on  
behalf of the Lessor:

FIRST SECURITY BANK OF UTAH, N.A.,  
not in its individual capacity,  
but solely as trustee under a  
Master Trust Agreement dated as  
of October 1, 1976 between it and  
IteI Capital Services Corporation,  
as Lessor

By

\_\_\_\_\_  
Authorized Representative

SCHEDULE 1 TO  
CERTIFICATE OF ACCEPTANCE NO. \_\_\_\_\_

Description of Equipment and Lessor's Cost:

<u>Quantity</u>	<u>Manufacturer or Seller</u>	<u>Description</u>	<u>Identification Number</u>	<u>New</u>	<u>Lessor's Cost</u>
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Total Lessor's Cost \$ \_\_\_\_\_

EXHIBIT C

Date of Lease: As of September 1, 1978

Beneficiary: Union Trust Company

Daily Lease Rate Factor: 1/360th of 120% of the prime interest rate of Bank of America, National Trust & Savings Association (being the best per annum rate of interest charged by such Bank to its prime large commercial customers on short-term unsecured borrowings) in effect on the Rent Commencement Date with respect to an Item of Leased Equipment and as adjusted from time to time thereafter to reflect all changes in such prime interest rate effective on the next business day following each change in such prime interest rate.

Rent Commencement Date: The Date of Acceptance as set forth in the Certificate of Acceptance applicable to such Item.

Basic Rent Dates: January 15 and July 15 of each year

Expiration Date: Group 1  
January 15, 1997

First Delivery Date: October 1, 1978

Final Delivery Date: December 31, 1978

Interim Rent Date: January 15, 1979

First Basic Rent Date: July 15, 1979

Last Basic Rent Date: January 15, 1997

First  
Termination Date: January 15, 1986

Basic  
Lease Rate Factor: July 15, 1979 )  
to and including): 4.3393%  
July 15, 1986 )  
  
January 15, 1987)  
to and including): 3.5504%  
January 15, 1994)  
  
July 15, 1994 )  
to and including): 1.9724%  
January 15, 1997)

Overdue Rate: 1% over the Long-Term Debt Rate

Lease Extension Periods Two (2) periods of three (3) years  
each.

Equipment Marking: In letters not less than one inch in  
height: "Ownership Subject to a  
Security Agreement Filed under the  
Interstate Commerce Act, Section  
20c".

Return of Equipment: The Lessee shall return the Items of  
Leased Equipment to any place located  
within a 1000-mile radius of St.  
Louis, Missouri, as instructed by the  
Lessor. The Lessor shall designate  
such place of return and shall notify  
the Lessee of such place at least 90  
days prior to the Expiration Date.

Investment Credit: 10%

Depreciable Life:

A 12-year depreciable life pursuant to section 167(m) of the Code for an asset described in Asset Guideline Class 00.25.

Depreciation Method:

Double-declining balance method switching to the sum-of-the-years digits method and switching to the straight-line method when most beneficial to the Beneficiary and without the prior consent of the Commissioner of Internal Revenue utilizing the "half-year" convention pursuant to Reg. section 1.167(a)-11 (c)(2) and taking into account the Net Salvage Value of the Leased Equipment.

Salvage Value:

An amount equal to 10% of the Lessor's Cost of the Leased Equipment, which amount will be reduced by 10% of the Lessor's Cost as provided in section 167(m) of the Code.

EXHIBIT D

The Casualty Value and Termination Value of each Item of Leased Equipment shall be the percentage of Lessor's Cost of such Item set forth opposite the applicable rent payment:

<u>Interim Rent Date and Rent Payment Number</u>	<u>Casualty Value (a)(b)</u>	<u>Termination Value (a)(b)</u>
Interim Rent Date	81.9629	
1	82.0862	
2	81.9594	
3	81.6222	
4	81.0603	
5	80.3036	
6	79.3357	
7	78.1826	
8	76.8329	
9	75.3085	
10	73.6030	
11	71.7344	
12	69.7016	
13	67.5183	
14	65.1889	65.1889
15	62.7188	62.7188
16	60.8975	60.8975
17	58.9748	58.9748
18	56.9529	56.9529
19	54.8377	54.8377
20	52.6450	52.6450
21	50.3766	50.3766
22	48.0537	48.0537
23	45.6742	45.6742
24	43.2650	43.2650
25	40.8164	40.8164
26	38.3531	38.3531
27	35.8590	35.8590
28	33.3548	33.3548
29	30.8223	30.8223
30	28.2345	28.2345
31	27.1165	27.1165
32	25.9703	25.9703
33	24.7832	24.7832
34	23.5635	23.5635
35	22.2992	22.2992
36	20.0000	20.0000

and thereafter

(a) In the event the Basic Lease Rate Factor is increased, pursuant to the tax indemnification provisions set forth in Section 15 of the Lease, Casualty Values and Termination Values will be adjusted accordingly.

(b) Casualty Values and Termination Values are expressed as a percentage of Lessor's Cost. Such percentages have been computed without regard to recapture of Investment Credit. Consequently, such percentages applicable on the Interim Rent Date or any Basic Rent Date where a Casualty Value or a Termination Value shall be payable with respect to an Event of Loss or a Termination occurring before the third, fifth or seventh anniversary of the date of acceptance set forth in the Certificate of Acceptance for such Item shall be increased by the percentage of Lessor's Cost set forth below, and for purposes of this Lease, Casualty Values and Termination Values payable on such dates shall be determined on the basis of the sum of such percentages:

<u>Anniversary of the Date of Acceptance</u>	<u>Percentage of Lessor's Cost to be Added to the Foregoing Percentage</u>
Third	21.1506%
Fifth	14.1004%
Seventh	7.0502%