7-200A010

LESLIE COAL MINING COMPANY
1100 Superior Avenue
Cleveland, Ohio 44114

RECORDATION NO. 8182-K Filed & Recorded
OCT 27 1977 · 9 25 AM
INTERSTATE COMMERCE COMMISSION

Date OCT 27 1977
Fee $ 10
CC Washington, D. C.

October 27, 1977

RECORDATION NO. 9052 Filed & Recorded
OCT 27 1977 · 9 25 AM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9052-A Filed & Recorded
OCT 27 1977 · 9 25 AM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9052-B Filed & Recorded
OCT 27 1977 · 9 25 AM
INTERSTATE COMMERCE COMMISSION

RECORDED OCT 27 9 01 AM '77 INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Sir:

I transmit for recording with the Commission, pursuant to Section 20c of the Interstate Commerce Act (Act), three executed copies of each of the following documents:

(a) Lease Agreement (No. 8), dated as of September 30, 1975, between First National Bank of Louisville, as Trustee, Lessor and Leslie Coal Mining Company, Lessee.

(b) Lease Supplement No. 1 (Lease Agreement No. 8), dated October 27, 1977, between First National Bank of Louisville, as Trustee, and Leslie Coal Mining Company, Lessee.

(c) Assignment of Lease and Agreement (Leslie Coal Mining Company Equipment Trust No. 8), dated as of October 27, 1977, among First National Bank of Louisville, as Owner Trustee, Leslie Coal Mining Company, Lessee and The Chase Manhattan Bank (National Association), as Indenture Trustee.

(d) Supplemental Indenture and Security Agreement No. 8 (Leslie Coal Mining Company Equipment Trust No. 8), dated as of October 27, 1977, between First National Bank of Louisville, as Owner Trustee, and The Chase Manhattan Bank (National Association), as Indenture Trustee. This document is a supplement to the Trust Indenture and Security Agreement, dated as of September 30, 1975, between First National Bank of Louisville, as Owner Trustees, and The Chase Manhattan Bank (National Association), as Indenture Trustee, previously filed with the Commission, Recordation No. 8182-C, filed January 15, 1976, 8:50 A.M.

It is the intention of Leslie Coal Mining Company (the "Company") to effect such filings with the Commission only to the extent required, if at all, to perfect the security interest created by the above documents in the equipment described below; such recording should not be deemed to

Counterparts - Laurette Finch

be an admission by the Company that it or any of its operations are under the jurisdiction of the Commission nor does the Company by this recording in any way submit to the jurisdiction of the Commission.

The equipment covered by the above documents includes the following:

Description	Manufacturer	Serial No.
Supply Car	Huwood-Irwin	-
Supply Car	Huwood-Irwin	-
Supply Car	Huwood-Irwin	-
Supply Locomotive	Greensburg	3409

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

Lessee - Leslie Coal Mining Company
1100 Superior Avenue
Cleveland, Ohio 44114

Lessor, Trustees - First National Bank of Louisville
First National Tower
Louisville, Kentucky 40202

Indenture Trustee - The Chase ManhattanBBank
(National Association)
One Chase Manhattan Plaza
New York, New York 10015

There is also enclosed a check for the recordation fee in the amount of $70.00.

Kindly return to the bearer one counterpart of each document filed herewith.

Very truly yours,

LESLIE COAL MINING COMPANY

By _____
President

Interstate Commerce Commission
Washington, D.C. 20423

10/27/77

OFFICE OF THE SECRETARY

R.H. Chisholm
Leslie Coal Mining Company
1100 Superior Avenue
Cleveland, Ohio 44114

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 10/27/77 at 9:05am, and assigned recordation number(s) 9052, 9052-A & 9052-B & 8182-K

Sincerely yours,

H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

COUNTERPART NO. 18

RECORDATION NO. 9052 Filed & Recorded
OCT 27 1977-9 25 AM
INTERSTATE COMMERCE COMMISSION

Lease Agreement

(No. 8)

Dated as of September 30, 1975

BETWEEN

FIRST NATIONAL BANK OF LOUISVILLE,
As Trustee, Lessor

AND

LESLIE COAL MINING COMPANY,
Lessee

THE RIGHTS OF THE LESSOR IN AND TO THIS LEASE HAVE BEEN ASSIGNED, MORTGAGED AND PLEDGED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, THE INDENTURE TRUSTEE UNDER THE TRUST INDENTURE AND SECURITY AGREEMENT DATED AS OF SEPTEMBER 30, 1975, BETWEEN FIRST NATIONAL BANK OF LOUISVILLE, AS OWNER TRUSTEES, AND THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION), AS INDENTURE TRUSTEE, AS SAID TRUST INDENTURE AND SECURITY AGREEMENT MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME AS PERMITTED THEREBY. THIS LEASE HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS OF WHICH THIS IS COUNTERPART NUMBER 18. SEE SECTION 23 FOR INFORMATION CONCERNING THE RIGHTS OF THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF AND SEE THE DISCLAIMER OF REPRESENTATIONS AND WARRANTIES IN SECTION 2(g).

TABLE OF CONTENTS

Section		Page
1.	DEFINITIONS	1
2.	ACQUISITION OF EQUIPMENT	6
	(a) Agreement to Purchase	6
	(b) Purchase Price	6
	(c) Payment of Purchase Price	7
	(d) Delivery of Instrument of Transfer and Acceptance	7
	(e) Remedy for Breach of Certain Representations	8
	(f) Assignment of Warranties	8
	(g) Disclaimer of Representations and Warranties	8
	(h) Removal of Lessor's Liens	9
3.	TERM AND RENT	9
	(a) Original Term	9
	(b) Basic Rent	9
	(c) Supplemental Rent	9
	(d) Minimum Basic Rent, Stipulated Loss Values and Termination Values	9
4.	RETURN OF EQUIPMENT	10
	(a) Condition upon Return	10
	(b) Location upon Return	10
	(c) Expense of Transportation	10
	(d) Aid in Lease or Sale	11
	(e) Storage	11
5.	LIENS; PERMITTED CONTESTS	11
	(a) Liens	11
	(b) Permitted Contests	11
6.	USE; LOCATION; POSSESSION; REGISTRATION OF TITLE; MARKING	12
	(a) Use	12
	(b) Location	12
	(c) Sublease; Possession	12
	(d) Registration of Title	12
	(e) Marking	12
7.	MAINTENANCE AND REPAIR; REPLACEMENT	13
	(a) Maintenance	13
	(b) Replacement	13
	(c) Alterations, Modifications and Additions	13
	(d) Engineer's Certificate	13
8.	EVENT OF LOSS; AWARDS AND PAYMENTS	14
	(a) Event of Loss	14
	(b) Insurance Payments	14
	(c) Awards in Case of Taking	15
9.	INSURANCE	15
	(a) Coverage Required	15
	(b) Policies	16
	(c) Claims, Contests, etc.	16
	(d) Endorsement	16
	(e) Evidence of Insurance	17
	(f) No Concurrent Policies	17
	(g) Right of the Lessor to Insure	17
10.	GENERAL INDEMNITY	18
	(a) General Indemnity	18
	(b) General	18

Section		Page
11.	ADJUSTMENT OF RENT AND TAX INDEMNITIES	19
	(a) Taxes, Fees and Other Charges	19
	(b) Indemnification for Loss of Certain Tax Benefits	20
	(c) Contests	26
	(d) Refunds	27
	(e) Affiliated Group	27
	(f) Survival	27
	(g) Adjustment of Stipulated Loss Values and Termination Values	28
	(h) Investment Credit Election	28
12.	EVENTS OF DEFAULT	28
13.	REMEDIES	30
14.	EARLY TERMINATION	32
	(a) Termination for Obsolesence	32
	(b) Purchase Option on Indemnity Payments	33
	(c) Purchase Option for Change in Law	34
15.	RENEWAL OPTION	35
	(a) Right to Renew	35
	(b) Restrictions on Renewal	35
	(c) Appraisal	35
16.	NO SET-OFF OR COUNTERCLAIM	36
17.	SUBORDINATION OF LEASE; NO MERGER	36
	(a) Subordination of Lease	36
	(b) No Merger	36
18.	INSPECTION AND INFORMATION	36
	(a) Inspection	36
	(b) Information Concerning Equipment	36
	(c) Biannual Report	37
19.	FURTHER ASSURANCES	37
20.	THE LESSOR'S RIGHT TO PERFORM FOR THE LESSEE	37
	(a) Advances by the Lessor	37
	(b) The Lessor as Agent	37
21.	LIABILITIES OF TRUSTEE; SUCCESSOR TRUSTEE	37
	(a) Liabilities of Trustee	37
	(b) Successor Trustee	38
22.	ASSIGNMENT	38
23.	THE EQUIPMENT TRUST CERTIFICATES	38
	(a) Security for the Equipment Trust Certificates	38
	(b) Refinancing of the Equipment Trust Certificates	39
	(c) Interest Guaranty	39
24.	NOTICES	39
25.	MERGER OR CONSOLIDATION OF THE LESSEE	39
26.	RECORDING; OPINIONS OF COUNSEL	40
	(a) Recording	40
	(b) Annual Counsel Opinion	40
27.	MISCELLANEOUS	40

EXHIBIT A—LEASE SUPPLEMENT NO. 1
EXHIBIT B—INSTRUMENT OF TRANSFER AND ACCEPTANCE
SCHEDULE I—CERTAIN VARIABLE PROVISIONS
SCHEDULES IIA, IIB, IIC AND IID—STIPULATED LOSS VALUE SCHEDULES
SCHEDULES IIIA, IIIB, IIIC AND IIID—TERMINATION VALUE SCHEDULES
SCHEDULE IV

LEASE AGREEMENT
(No. 8)

This **LEASE AGREEMENT** (No. 8) (herein called this "Lease") dated as of September 30, 1975, between FIRST NATIONAL BANK OF LOUISVILLE, a national banking association organized and existing under the laws of the United States of America, not in its individual capacity but solely as Trustee under the Trust Agreement hereinafter defined and any institution which shall act as successor Trustee thereunder (herein called the "Lessor"), and LESLIE COAL MINING COMPANY, a Delaware corporation (herein called the "Lessee"),

WITNESSETH:

SECTION 1. *Definitions.* The following terms have the following meanings for all purposes of this Lease and shall be equally applicable to both the singular and plural forms of the terms herein defined:

"Applicable Quarter" means the calendar quarter specified on Schedule I hereto.

"Basic Rent" means during the Original Term for any Item of Equipment the Rent payable pursuant to Section 3(b) hereof and during any Renewal Term the Rent payable pursuant to Section 15(a) hereof.

"Business Day" means any day other than a Saturday, Sunday or a holiday on which banking institutions in Kentucky or New York are authorized or obligated by law or executive order to close.

"Capitalized Cost" for each Item of Equipment after the execution and delivery of Lease Supplement No. 1 means the amount specified therefor in Lease Supplement No. 1. The Capitalized Cost for each Item of Equipment to be set forth in Lease Supplement No. 1 (and the Capitalized Cost of each Item of Equipment prior to the execution and delivery of Lease Supplement No. 1) means the amount payable to Lessee for the purchase of such Item of Equipment pursuant to Section 2(b) hereof.

"Class A Item of Equipment" means (i) after the execution and delivery of Lease Supplement No. 1, each Item of Equipment described in Schedule IA thereto, and (ii) prior thereto each Item of Equipment of a type or class (A) which the Engineer's Opinion indicates will have a useful life of at least 10 years and will have a residual value at the end of 8 years of at least 15% of its Capitalized Cost and (B) which does not qualify as a Class B, Class C or Class D Item of Equipment.

"Class B Item of Equipment" means (i) after the execution and delivery of Lease Supplement No. 1, each Item of Equipment described in Schedule IB thereto, and (ii) prior thereto each Item of Equipment of a type or class (A) which the Engineer's Opinion indicates will have a useful life of at least 12 years and will have a residual value at the end of 10 years of at least 15% of its Capitalized Cost and (B) which does not qualify as a Class C or Class D Item of Equipment.

"Class C Item of Equipment" means (i) after the execution and delivery of Lease Supplement No. 1, each Item of Equipment described in Schedule IC thereto, and (ii) prior thereto each Item of Equipment of a type or class (A) which the Engineer's Opinion indicates will have a useful life of at least 15 years and will have a residual value at the end of 13 years of at least 15% of its Capitalized Cost and (B) which does not qualify as a Class D Item of Equipment.

"Class D Item of Equipment" means (i) after the execution and delivery of Lease Supplement No. 1, each Item of Equipment described in Schedule ID thereto, and (ii) prior thereto each Item of Equipment of a type or class which the Engineer's Opinion indicates will have a useful life of at least 25.5 years and will have a residual value at the end of 23 years of at least 19.10% of its Capitalized Cost.

"Closing Date" means the fifteenth day of the month following the Applicable Quarter, or if such day is not a Business Day, the next following Business Day or such later date in such month as may be agreed upon by the Lessor and the Lessee.

"Code" means the Internal Revenue Code of 1954, as amended.

The term *"default"* means any act or occurrence which, with notice or lapse of time, or both, would constitute an Event of Default under this Lease.

"Easement Agreement" means the Easement Agreement dated as of the date hereof among the Lessee, the Lessor, the other Lessors and the Indenture Trustee, as such Easement Agreement may be supplemented, amended or otherwise modified, from time to time, as permitted thereby and by the Indenture.

"Engineer's Opinion" means the letter of John T. Boyd & Company dated July 22, 1975, filed with the Ruling Request.

"Equipment" means all the Items of Equipment leased hereunder from time to time.

"Equipment Trust Certificates" has the meaning specified in the Indenture.

"Escrow Account" has the meaning specified in the Indenture.

"Escrow Account Termination Date" has the meaning specified in the Indenture.

"Event of Default" has the meaning specified in Section 12 hereof.

"Event of Loss" with respect to any Item of Equipment means any of the following events with respect to such Item of Equipment: (i) loss of such Item of Equipment or the use thereof due to theft, disappearance, destruction, damage beyond economical repair or rendition of such Item of Equipment permanently unfit for normal use for any reason whatsoever (including, without limitation, if it is not economically feasible to maintain, use or operate such Item of Equipment in accordance with Section 6(a) or 7(a) hereof); (ii) any damage to such Item of Equipment which results in an insurance settlement with respect to such Item of Equipment on the basis of an actual or constructive total loss; (iii) the Taking of such Item of Equipment; or (iv) the declaration by the Lessor that an Event of Loss has occurred with respect to such Item of Equipment pursuant to Section 7(d) hereof.

"Executive Officer" has the meaning specified in the Indenture.

"Fees, Taxes and Other Charges" means all governmental or quasi-governmental fees (including, without limitation, license and registration fees), taxes (including, without limitation, income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible], interest equalization and stamp taxes), assessments, levies, imposts, duties, charges or withholdings of any nature whatsoever, together with any and all penalties, fines or interest thereon.

The term *"holder of an Equipment Trust Certificate"* has the meaning specified in the Indenture but shall include the Loan Participant so long as it is obligated to purchase any Equipment Trust Certificate pursuant to the Participation Agreement.

"Immediately Available Funds" shall mean federal funds or collected funds immediately available to the recipient thereof.

"Indemnified Parties" means the Lessor, each Participant, the Indenture Trustee, the Trust Estate, the Indenture Estate and their respective successors, assigns, employees, servants, agents, shareholders and persons that control, are controlled by, or are under common control with the Lessor, any Participant or the Indenture Trustee.

"Indenture" means the Trust Indenture and Security Agreement dated as of the date hereof among the Lessor, the Other Lessors and the Indenture Trustee as such Indenture and Security Agreement may be supplemented, amended or otherwise modified from time to time as permitted thereby.

"Indenture Estate" has the meaning defined in the Indenture.

"Indenture Trustee" means The Chase Manhattan Bank (National Association), as Indenture Trustee under the Indenture and any successor trustee or co-trustees under the Indenture.

"Instruments of Transfer and Acceptance" means the instruments in substantially the form of Exhibit B hereto delivered to the Lessor by the Lessee pursuant to Section 2(d) hereof.

"Insurance Requirements" means all terms of any insurance policy covering or applicable to all or any part of the Equipment and required to be maintained by the Lessee pursuant to Section 9 hereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Equipment or any Item or component part thereof, or the use, condition, maintenance, repair or operation thereof, the violation of which would result in the cancellation or avoidance of any coverage under any such policy.

"Interest Guaranty" means the Guaranty and Agreement dated as of the date hereof by the Lessee to the Indenture Trustee and the Loan Participant, as such Guaranty and Agreement may be supplemented, amended or otherwise modified from time to time as permitted thereby and by the Indenture.

"Item of Equipment" or *"Item"* means (i) after the execution and delivery of Lease Supplement No. 1 each of the items of mining and related equipment described on the schedules thereto and (ii) prior thereto each such item accepted hereunder pursuant to an Instrument of Transfer and Acceptance delivered in accordance with Section 2(d) hereof.

"Landlords Liens" means statutory liens under the laws of the Commonwealth of Kentucky and contractual liens in either case in favor of the owner of the land or mineral rights therein.

"Lease" means this Lease Agreement, as it may be supplemented, amended or otherwise modified from time to time as permitted by the provisions hereof and of the Lease Assignment and the Indenture, including, without limitation, any Lease Supplement applicable hereto, and "herein", "hereunder" and "hereof" and other words of similar import refer to this Lease Agreement as a whole and not to any particular section or subdivision.

"Lease Assignment" means the Assignment of Lease and Agreement in substantially the form of Exhibit F to the Participation Agreement to be entered into among the Lessor, the Lessee and the Indenture Trustee, as such Assignment of Lease and Agreement may be supplemented, amended or otherwise modified from time to time as permitted thereby and by the Indenture.

"Lease Guarantor" means Carolina Power & Light Company, a North Carolina corporation and any corporation succeeding thereto by way of merger, consolidation or acquisition of all or substantially all of its assets.

"Lease Guaranty" means the Lease Guaranty and Completion Agreement dated as of the date hereof, from the Lease Guarantor to the Lessor, the Other Lessors and the Indenture Trustee, executed and delivered simultaneously herewith, as such Lease Guaranty and Completion Agreement may be supplemented, amended or otherwise modified from time to time as permitted thereby and by the Indenture.

"Lease Period" means each of the three month periods beginning on the day following a Rental Payment Date (or in the case of the first Lease Period, the Closing Date) and ending on the next following Rental Payment Date.

"Lease Supplement No. 1" means Lease Supplement No. 1, in substantially the form of Exhibit A hereto, to be entered into between the Lessee and the Lessor at the Closing Date.

"Legal Requirements" means all laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, or arising from any restrictions or agreements of record, which now or at any time hereafter may be applicable to any Item of

Equipment or any component part thereof, or any use, condition, maintenance, repair or operation of any Item of Equipment or any component part thereof.

"Lessee" means the party defined as such in the first paragraph of this Lease, together with any corporation succeeding thereto by way of merger, consolidation or acquisition of all or substantially all of its assets in accordance with the requirements of Section 25.

"Lessor" means the party defined as such in the first paragraph of this Lease, together with any successor or successors to its rights and obligations as lessor hereunder, including at any time after the date hereof, the then owner of the Lessor's interests in the Equipment or any Item thereof.

"Lessor's Liens" means any Liens or disposition of title which either (i) result from claims against the Lessor in its individual capacity not related to the Overall Transaction or (ii) result from an affirmative act by the Lessor which is neither consented to in writing by the Lessee nor taken in connection with any Event of Default.

"Lien" means any mortgage, pledge, lien, charge, encumbrance, lease or security interest of any kind, including any conditional sale or other title retention agreement and any lease in the nature thereof.

"Loan Certificates" means the Loan Certificates issued or to be issued by the Lessor pursuant to the Indenture.

"Loan Participant" means John Hancock Mutual Life Insurance Company.

"Manufacturer" means for any Item of Equipment the manufacturer or supplier thereof.

"Operative Documents" has the meaning specified in the Participation Agreement.

"Original Term" means with respect to any Item of Equipment the Original Term for which such Item is to be leased hereunder pursuant to Section 3(a) hereof.

"Other Leases" means the 12 Lease Agreements dated as of the date hereof, between the lessor thereunder and the Lessee, each of which Lease Agreements is substantially similar to this Lease.

"Other Lessors" means the lessors under the Other Leases.

"Overall Transaction" means the purchasing, financing and leasing of the Equipment as described in this Lease, the Lease Guaranty, the Interest Guaranty, the Lease Assignment, the Participation Agreement, the Trust Agreement, the Easement Agreement, the Indenture, and the Purchasing Supervisory Agreement.

"Overdue Interest Rate" means 2½% over the higher of (i) 10¾% or (ii) the base rate of First National City Bank on 90-day loans to responsible and substantial commercial borrowers as in effect from time to time.

"Owner Participants" means Citicorp Lescaman, Inc., a Delaware corporation, so long as it shall not have assigned all its interests pursuant to Article IX of the Trust Agreement and each other person which may from time to time become an Owner Participant pursuant to the terms of Article IX of the Trust Agreement and in compliance with Section 8 of the Participation Agreement, if applicable.

"Participant" means any Owner Participant or any holder of an Equipment Trust Certificate.

"Participation Agreement" means the Participation Agreement dated as of the date hereof, among the Lessee, the Lessor, the Other Lessors, the Indenture Trustee, the Owner Participants, the Lease Guarantor and the Loan Participant, as such Participation Agreement may be supplemented, amended or otherwise modified from time to time as permitted thereby.

"Parts" means all appliances, parts, instruments, appurtenances, accessories, furnishings and other equipment of whatever nature (other than Items of Equipment) which may from time to time be incorporated or installed in or attached to any Item or Items of Equipment.

"Permitted Contest" means any contest permitted by Section 5(b) hereof.

The term *"person"* means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or any other entity.

"*Proceeding*" means any suit in equity, action at law or other judicial, administrative or arbitration proceeding.

"Purchasing Supervisor" has the meaning specified in the Purchasing Supervisory Agreement.

"Purchasing Supervisory Agreement" means the Purchasing Supervisory Agreement, dated as of the date hereof, among the Lessor and the persons named therein as Purchasing Supervisors, a true copy of which has been delivered to the Lessee, as such Purchasing Supervisory Agreement may be supplemented, amended or otherwise modified from time to time as permitted thereby.

"Renewal Term" means with respect to any Item of Equipment any renewal term with respect thereto entered into pursuant to Section 15 hereof.

"Rent" means Basic Rent and Supplemental Rent.

"Rental Payment Date" means the fifteenth day of each calendar quarter commencing with the first such day after the Closing Date.

"Responsible Officer" means with respect to any corporation, the Chairman of the Board of Directors, the President, any Vice President, any Assistant Vice President, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Assistant Secretary; with respect to any partnership, any general partner thereof; and, with respect to any bank or trust company acting as trustee of an express trust, the term also includes any Trust Officer or Assistant Trust Officer thereof; and in addition, in each such case, such term shall include any other person customarily performing functions similar to those performed by persons who at the time hold such positions.

"Ruling Letter" means the letter of the Chief, Corporation Tax Branch of the Internal Revenue Service, dated October 17, 1975, and addressed to Citicorp Lescaman, Inc. and Leslie Coal Mining Company.

"Ruling Request" means the request for income tax rulings, dated May 1, 1975, submitted to the Commissioner of Internal Revenue, as supplemented or amended.

"Stipulated Loss Value" for any Item of Equipment of any Class on any Rental Payment Date during its Original Term means the amount determined by multiplying (i) the Capitalized Cost of such Item of Equipment by (ii) the percentage set forth opposite such Rental Payment Date on the applicable Schedule II annexed hereto for Items of Equipment of such Class, as adjusted from time to time pursuant to Section 11 hereof.

The Stipulated Loss Value for any Item of Equipment during any Renewal Term shall be determined as set forth in Section 15(a) hereof.

"Supplemental Rent" means all amounts, liabilities and obligations (other than Basic Rent) which the Lessee assumes or agrees to pay hereunder to the Lessor or to whomsoever shall be entitled thereto, including, without limitation, Termination Values, Stipulated Loss Values and any liquidated damages payable pursuant to Section 13 hereof.

"*Taking*" means a taking for a period of 365 consecutive days of the Equipment or any Item or component part thereof, or any interest therein or right accruing thereto, as the result of or in lieu of or in anticipation of the exercise of the right of condemnation, nationalization, seizure, confiscation, requisition or eminent domain pursuant to any law, general or special, or by reason of the temporary requisition of the use of the Equipment or any Item or component part thereof, by any governmental authority, civil or military, or any other person legally possessing the power of eminent domain.

"Term" means with respect to any Item of Equipment the Original Term and all Renewal Terms.

"Termination Value" for any Item of Equipment of any Class on any Rental Payment Date during its Original Term means the amount determined by multiplying (i) the Capitalized Cost of such Item of Equipment by (ii) the percentage set forth opposite such Rental Payment Date on the applicable Schedule III annexed hereto for Items of Equipment of such Class, as adjusted from time to time pursuant to Section 11 hereof.

The Termination Value for any Item of Equipment during any Renewal Term shall be determined as set forth in Section 15(a) hereof.

"Trust Agreement" means the Trust Agreement, dated as of the date hereof, between the Lessor and the Owner Participants and bearing the same number as this Lease Agreement, as such Trust Agreement may be supplemented, amended or otherwise modified from time to time as permitted thereby and by the Indenture.

"Trust Estate" has the meaning defined in the Trust Agreement.

"Trustee" has the meaning specified in the Trust Agreement.

SECTION 2. *Acquisition of Equipment.*

(a) *Agreement to Purchase.* The Lessor hereby agrees to purchase from the Lessee, and the Lessee hereby agrees to sell to the Lessor, all equipment which meets all the following specifications:

(i) the equipment was ordered, purchased, acquired or constructed by the Lessee for use in connection with its planned coal mine in Pike County, Kentucky;

(ii) the equipment is to become available for use by the Lessor in the Applicable Quarter;

(iii) the equipment is personal property under Kentucky law and is located on the date of purchase by the Lessor in Pike County, Kentucky;

(iv) the equipment qualifies as Class A, Class B, Class C or Class D Equipment; and

(v) the Lessee will be able to make the representations and warranties contained in Section 2(d) hereof;

provided, however, that (A) the total Capitalized Cost of equipment which the Lessor shall purchase hereunder and the Lessee shall sell hereunder shall not exceed the aggregate of the amounts which the Owner Participants and Indenture Trustee are obligated under the Participation Agreement to make available on the Closing Date and (B) the Lessee shall not be required to sell to the Lessor any Item of Equipment if, on the date for the delivery of an Instrument of Transfer and Acceptance with respect to such Item of Equipment, a bill shall be pending before the Congress of the United States for the amendment, modification, addition or change in or to any law or regulation the effect of which, in the opinion of the Lessee, as evidenced in written notice to Lessor, would be likely to preclude any Owner Participant from being entitled to the tax treatment contemplated by the specific rulings set forth in paragraphs 1, 2, 11 and 12 of the Ruling Letter.

(b) *Purchase Price.* The price of each Item of Equipment shall be its Capitalized Cost which shall be equal to the sum without duplication of:

(i) All amounts paid, payable or reasonably estimated to be payable by the Lessee to the Manufacturer or any contractor or any taxing authority for or in respect of such Item of Equipment including any applicable sales and compensating use taxes or transportation charges;

(ii) Labor, material, supervision, engineering, overhead and other costs paid, payable or reasonably estimated to be payable by the Lessee and properly allocable to purchasing such Item of Equipment, installing and preparing it for use;

(iii) Financing costs including interest, commitment fees and similar costs paid, payable or reasonably estimated to be payable by the Lessee and properly allocable to such Item of Equipment;

(iv) All expenses paid, payable or reasonably estimated to be payable by the Lessee pursuant to Section 5(b) of the Participation Agreement and properly allocable to such Item of Equipment; and

(v) Any and all other costs and expenses related to any of the foregoing and normally included in determining the cost of property in accordance with generally accepted accounting practice, paid, payable or reasonably estimated to be payable by the Lessee and properly allocable to such Item of Equipment.

The estimated Capitalized Cost of each Item of Equipment shall be set forth on the Instrument of Transfer and Acceptance. At least three Business Days prior to the Closing Date the Lessee shall deliver to the Lessor, the Indenture Trustee and each Participant a certificate certifying the Capitalized Cost of each Item of Equipment computed as set forth above and setting forth the manner of calculation in reasonable detail. In the absence of bad faith or gross negligence such certificate shall be conclusive. At least 10 Business Days prior to the Closing Date the Lessee shall have notified the Lessor and the Indenture Trustee by telephone of the maximum aggregate amount of such Capitalized Costs.

(c) *Payment of Purchase Price.* The amount of the Capitalized Cost for each Item of Equipment shall become due and payable by the Lessor to the Lessee on the Closing Date; *provided, however,* that the Lessor shall not be obligated to pay the Capitalized Cost for any Item of Equipment as to which an Event of Loss occurs prior to the Closing Date or for any item of equipment which does not conform to the specifications set forth in Section 2(a) hereof. The Lessor's obligation to pay the Capitalized Costs for all Items of Equipment shall be subject to the Owner Participants having made available the full amount of their investments contemplated by the Participation Agreement and the Indenture Trustee having purchased the Loan Certificates. If for any reason the Lessor does not pay the Capitalized Cost of any Item of Equipment on the Closing Date it will promptly convey to the Lessee, without recourse, representation or warranty whatsoever except as to the non-existence of Lessor's Liens, all of its right, title and interest in and to such Item of Equipment. In any such case the Lessee's rights under this Lease, including the right to sue for damages or specific performance for failure to pay such Capitalized Costs, shall continue in effect. With respect to any Item of Equipment so conveyed to the Lessee, the Lessor and the Owner Participants shall, if requested by the Lessee, make the election with respect to such Item of Equipment provided for under Section 48(d) of the Code.

(d) *Delivery of Instrument of Transfer and Acceptance.* With respect to each Item of Equipment to be sold hereunder, the Lessee shall deliver to the Lessor prior to the date on which such Item of Equipment is available for use an Instrument of Transfer and Acceptance in substantially the form attached hereto as Exhibit B dated the date on which it is delivered and with the schedule thereto appropriately completed. The delivery of such Instrument of Transfer and Acceptance with respect to an Item of Equipment shall serve to transfer title and all rights of ownership to such Item of Equipment to the Lessor and shall also serve to evidence the delivery to the Lessee of such Item of Equipment for lease hereunder. The Lessee agrees that by the delivery of an Instrument of Transfer and Acceptance with respect to an Item of Equipment it shall be deemed to make each of the representations, warranties and agreements set forth below:

(i) The information contained on the Instrument of Transfer and Acceptance is true and accurate;

(ii) Such Item of Equipment meets the specifications for an Item of Equipment set forth in Section 2(a) hereof;

(iii) Such Item of Equipment shall upon acquisition by the Lessor constitute to the Lessor an item of property (A) with respect to which (x) an investment credit of at least 7% is allowable to the Lessor under Section 38 of the Code for "new section 38 property", within the meaning of Section 48(b) of the Code, and (y) the allowance for depreciation may be computed pursuant to either the double declining balance method, using a rate equal to twice the straight-line rate, or the sum of the years-digits method, as provided in Section 167(b)(2) and (3) of the Code and (B) which can be

depreciated over an asset depreciation period of 8 years pursuant to Revenue Procedure 72-10, 1972-1 Cum. Bull. 721;

(iv) Such Item of Equipment prior to its acquisition shall not have been put to any use by either the Lessee or any other person, and upon acquisition and use of such Item of Equipment by the Lessor, the original use of such Item of Equipment will be considered to have commenced with the Lessor;

(v) Such Instrument of Transfer and Acceptance duly vests in the Lessor good and valid title to such Item of Equipment free and clear of all Liens and rights of others except only (A) Liens and other rights of the types referred to in clauses (i) through (viii) of Section 5(a) hereof and (B) in the case of certain Items of Equipment rights of the Manufacturer to secure payment of the purchase price thereof, which purchase price shall be paid in full on or prior to the Closing Date; and

(vi) Such Item of Equipment is located in Pike County, Kentucky, the Lessee has examined such Item of Equipment and it unconditionally and irrevocably accepts such Item of Equipment for the purposes of this Lease, and believes in good faith that it will be able to make on the Closing Date the representation, warranty and agreement contained in Section 1 of Lease Supplement No. 1.

(e) *Remedy for Breach of Certain Representations.* The Lessor agrees if any representation or warranty made by the Lessee in good faith and without gross negligence pursuant to Section 2(d) hereof or pursuant to Section 2 of Lease Supplement No. 1 (or the same representation and warranty made in or pursuant to any certificate or document related to the Overall Transaction) proves to be incorrect, it shall not constitute a default pursuant to Section 12 unless the statement made pursuant to clause 2(a)(i) hereof shall prove to be incorrect. If such representation and warranty which proved to be incorrect related to matters of taxation, the Lessor or any other Indemnified Party shall be compensated or indemnified in accordance with Section 11 and if it related to matters other than taxation, the Lessee shall pay to the Lessor or any other Indemnified Party the damages or other Liabilities (as defined in Section 10 hereof), if any, suffered by it by reason of the failure of such representation and warranty to be correct.

(f) *Assignment of Warranties.* The Lessor hereby assigns, without recourse or warranty whatsoever, to the Lessee all warranties, guaranties, the indemnities, express or implied, or similar rights which the Lessor may have against any Manufacturer, seller, engineer, contractor or builder in respect of any Item of Equipment. Such assignment shall remain in effect so long as no Event of Default shall have occurred and be continuing or until the end of the Term of such Item of Equipment. The Lessor hereby agrees to execute and deliver at the Lessee's expense such further documents including powers of attorney as the Lessee may reasonably request (and which in the good faith judgment of the Lessor, do not adversely affect a substantial general interest of the Lessor) in order that the Lessee may have the full benefit of the assignment effected or intended to be effected by this Section 2(f).

(g) *Disclaimer of Representations and Warranties.* NEITHER THE LESSOR, THE INDENTURE TRUSTEE NOR ANY PARTICIPANT WILL BE REQUIRED TO MAKE ANY INSPECTION OF THE EQUIPMENT OR ANY ITEM OR COMPONENT PART THEREOF, AND THE LESSOR LEASES AND THE LESSEE TAKES THE EQUIPMENT AND EACH ITEM AND COMPONENT PART THEREOF *as is,* AND THE LESSEE ACKNOWLEDGES THAT NEITHER THE LESSOR (WHETHER ACTING AS LESSOR HEREUNDER OR IN ANY OTHER CAPACITY), THE INDENTURE TRUSTEE NOR ANY PARTICIPANT HAS MADE, NOR SHALL ANY THEREOF BE DEEMED TO HAVE MADE, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, VALUE, COMPLIANCE WITH SPECIFICATIONS, CONDITION, *merchantability,* DESIGN, QUALITY, DURABILITY, OPERATION OR *fitness for use or purpose* OF THE EQUIPMENT OR ANY ITEM OR COMPONENT PART THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT OR ANY ITEM OR COMPONENT PART THEREOF OR OTHERWISE, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE LESSEE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY IN THE EQUIPMENT OR ANY ITEM OR COMPONENT PART THEREOF, OF ANY NATURE, WHETHER PATENT OR LATENT, NEITHER THE LESSOR, THE INDENTURE TRUSTEE NOR ANY PARTICIPANT SHALL HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION 2(G) HAVE BEEN NEGOTIATED, AND THE FOREGOING PROVISIONS ARE INTENDED TO BE A

COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES BY THE LESSOR, THE INDENTURE TRUSTEE OR ANY PARTICIPANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT OR ANY ITEM OR COMPONENT PART THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT, OR OTHERWISE.

(h) *Removal of Lessor's Liens.* The Lessor agrees that during the Term with respect to each Item of Equipment it will not create or suffer or permit to be created, and that it will promptly remove, discharge or bond or cause to be removed, discharged or bonded, any Lessor's Liens on such Item or component part thereof.

SECTION 3. *Term and Rent.*

(a) *Original Term.* Except as otherwise provided herein, the Original Term for each Item of Equipment of each Class shall commence on the date it is delivered to the Lessee hereunder and shall end on the respective anniversaries of the fifteenth day of the month following the Applicable Quarter.

Class A Equipment—Eighth Anniversary
Class B Equipment—Tenth Anniversary
Class C Equipment—Thirteenth Anniversary
Class D Equipment—Twenty-third Anniversary

(b) *Basic Rent.* The Lessee agrees to pay to the Lessor Basic Rent for each Item of Equipment leased hereunder throughout the Term of such Item of Equipment in quarterly instalments payable on each Rental Payment Date, each such instalment to cover the immediately preceding Lease Period. For each Item of Equipment of each Class the amount of each instalment of Basic Rent payable during the Original Term of such Item of Equipment expressed as a percentage of the Capitalized Cost of such Item of Equipment is set forth on Schedule I hereto. Such percentages shall be subject to adjustment pursuant to Section 11 hereof.

(c) *Supplemental Rent.* The Lessee also agrees to pay to the Lessor, or to whomsoever shall be entitled thereto, any and all Supplemental Rent promptly as the same shall become due and owing, and in the event of any failure on the part of the Lessee to pay any Supplemental Rent, the Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of non-payment of Basic Rent. The Lessee will also pay to the Lessor, on demand, as Supplemental Rent, to the extent permitted by applicable law, interest at the Overdue Interest Rate on any part of any instalment of Basic Rent not paid when due for any period for which the same shall be overdue and on any payment of Supplemental Rent not paid when demanded by the Lessor for such period.

(d) *Minimum Basic Rent, Stipulated Loss Values and Termination Values.* Anything to the contrary notwithstanding, under any circumstances and in any event, (i) the aggregate Basic Rent for all Items of Equipment payable hereunder on each Rental Payment Date shall be an aggregate amount at least sufficient to pay in full the aggregate amount of the quarter-annual instalment payments, containing both principal and interest, due and payable on the Loan Certificates on such date, (ii) the aggregate Basic Rent for all Items of Equipment payable hereunder on each Rental Payment Date occurring after the Escrow Account Termination Date, together with the aggregate basic rent for all items of equipment payable under the Other Leases on such date, shall be an aggregate amount at least sufficient to pay in full the aggregate amount of the quarter-annual instalment payments, containing both principal and interest, due and payable on the Equipment Trust Certificates on such date, (iii) the aggregate Stipulated Loss Values that would be payable hereunder on each Rental Payment Date in connection with Events of Loss (or the exercise of the purchase options pursuant to Section 14(b) or 14(c) hereof) with respect to all Items of Equipment and the aggregate Termination Values that would be computed hereunder as of such date in connection with a termination of this Lease with respect to all Items of Equipment pursuant to Section 14(a) hereof shall, respectively, each be an aggregate amount at least sufficient to pay in full the aggregate unpaid principal amounts of the Loan Certificates on such date (after giving effect to the payment of the quarter-annual instalment payments due and payable on the Loan Certificates on such

date), and (iv) the aggregate Stipulated Loss Values that would be payable hereunder on each Rental Payment Date occurring after the Escrow Account Termination Date in connection with Events of Loss (or the exercise of the purchase options pursuant to Section 14(b) or 14(c) hereof) with respect to all Items of Equipment, together with the aggregate stipulated loss values that would be payable under the Other Leases on such date in connection with events of loss (or the exercise of purchase options pursuant to section 14(b) or 14(c) thereof) with respect to all items of equipment leased thereby, and the aggregate Termination Values that would be computed hereunder as of such date in connection with a termination of this Lease with respect to all Items of Equipment pursuant to Section 14(a) hereof, together with the aggregate termination values that would be computed under the Other Leases as of such date in connection with a termination of the Other Leases with respect to all items of equipment leased thereby pursuant to section 14(a) thereof, shall, respectively, each be an aggregate amount at least sufficient to pay in full the aggregate unpaid principal amounts of the Equipment Trust Certificates on such date (after giving effect to the payment of the quarter-annual instalment payments due and payable on the Equipment Trust Certificates on such date).

SECTION 4. *Return of Equipment.*

(a) *Condition upon Return.* Each Item of Equipment shall be returned to the Lessor in accordance with this Section 4: (i) at the end of the Term with respect to such Item, and (ii) upon any other termination of this Lease with respect to such Item, *unless* the Lessor is then required to convey its right, title and interest in and to such Item to the Lessee, in which event such Item need not be returned to the Lessor. Upon the return of any Item of Equipment, such Item of Equipment shall be in the condition and repair required to be maintained under Section 7 hereof and shall be free of Liens (except for Liens permitted by clauses (i) [other than the rights of the Lessee under this Lease] and (iii) of Section 5(a) hereof) and shall conform to, and be capable of being operated for its intended use in conformity with, all applicable Legal Requirements. Upon the return of any Item of Equipment, the Lessee shall deliver to the Lessor any manuals, data, maintenance and other necessary records in the Lessee's possession relating to such Item of Equipment. Regardless of the manner in which any Item of Equipment may be attached or connected to any real property and regardless of any damage that might occur in the removal of the Item, each such Item shall at all times be personal property for all purposes. No attachment or connection of any Item of Equipment to any real property, regardless of the manner of attachment or connection and regardless of any damage that might occur in the removal of the Item, shall in any way adversely affect the Lessor's rights under this Section 4.

(b) *Location upon Return.* Each Item of Equipment required to be returned to the Lessor shall be returned to the Lessor in Pike County, Kentucky at a location suitable for storing such Item of Equipment designated at least 90 days prior to the date of return by the Lessee in writing to the Lessor. If the Lessee shall fail to return any Item of Equipment in accordance with this Section 4 by the date required, the Lessee shall pay to the Lessor for the period until such Item of Equipment is so returned Basic Rent at the same rate as the Basic Rent for the Lease Period immediately prior to the end of its Term or such earlier termination date, as the case may be, in addition to any other damages the Lessor may suffer.

(c) *Expense of Transportation.* If requested in writing by the Lessor in respect of any Item of Equipment, the Lessee shall at its own expense properly package or otherwise suitably prepare for transportation such Item of Equipment and load it aboard a railroad or other common carrier reasonably designated by the Lessor. The Lessor shall have the right to make such request with respect to any Item of Equipment at any time prior to 105 days after the redelivery of such Item of Equipment. Except as provided in the next sentence, the Lessee shall not be responsible for transportation costs once placed aboard. If, in respect of any Item of Equipment, the Lessor (i) publicly offers such Item of Equipment for sale or lease and (ii) does not receive any bids to purchase such Item of Equipment for cash from a responsible person (which may be the Lessee) or to lease such Item of Equipment from a responsible lessee (other than the Lessee or any affiliate thereof), then the Lessee shall reimburse the Lessor for the transportation costs incurred by it to any place in the continental United States except Alaska.

(d) *Aid in Lease or Sale.* If the Lessee does not exercise its option to renew referred to in Section 15 hereof with respect to any Item of Equipment, the Lessee agrees that during the last six months of the Term of such Item of Equipment it will cooperate in all reasonable respects with efforts of the Lessor to lease or sell such Item of Equipment. Such cooperation will include keeping the Lessor informed of the location of such Item of Equipment and aiding potential lessees or buyers to inspect and test such Item provided that the Lessee shall not be required for such purpose to materially interfere with the use of such Item or incur out-of-pocket expenses for which it is not reimbursed.

(e) *Storage.* Upon return of any Item of Equipment, the Lessee will provide free storage facilities at the place of return for a period of up to 105 days and thereafter the Lessee will provide storage facilities for a reasonable storage charge; *provided, however,* that upon 30 days' prior written notice to the Lessor, the Lessee may require the Lessor to remove such Item of Equipment at any time after 210 days after the date of its return.

SECTION 5. *Liens; Permitted Contests.*

(a) *Liens.* The Lessee will not, directly or indirectly, create, incur, assume or suffer to exist any Lien on or with respect to any Item of Equipment, title thereto or any interest therein or in this Lease, except (i) the respective rights of the Lessor, the Lessee, the Indenture Trustee and the Participants as provided in this Lease and the documents contemplated hereby, (ii) Liens specifically permitted by the terms of this Lease, (iii) Lessor's Liens, (iv) Liens for taxes either not yet due or which are the subject of a Permitted Contest, (v) Landlords' Liens affecting Lessee's interest in the Equipment and materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business in each such case securing obligations which are not delinquent or are bonded or the enforcement of which has been suspended or which are the subject of a Permitted Contest, (vi) Liens arising out of judgments or awards or attachments against the Lessee which have been bonded or which are the subject of a Permitted Contest, (vii) Liens on or with respect to any Item of Equipment arising after such Item of Equipment has been returned to the Lessor pursuant to the terms hereof unless caused by events or circumstances which occurred prior to such return or by acts or omissions of the Lessee while such Item of Equipment is being stored by the Lessee pursuant to Section 4(e) hereof, and (viii) Liens or dispositions of title which either result from claims against the Indenture Trustee in its individual capacity not related to the Overall Transaction or result from an affirmative act by the Indenture Trustee which is neither consented to in writing by the Lessee nor taken in connection with any Event of Default. The Lessee will promptly, at its own expense, take such action as may be necessary to duly discharge or bond or eliminate any such Lien not excepted above if the same shall arise at any time.

(b) *Permitted Contests.* If no Event of Default shall be continuing, the Lessee shall not be required, nor shall the Lessor have the right without prior consultation with the Lessee, to discharge or remove, as the case may be, any Lien on or against the Equipment or any Item or component part thereof, or comply with any Legal Requirements, or pay any charge or other amount the Lessee may be obligated to pay to any person other than an Indemnified Party pursuant to the terms hereof, so long as the Lessee shall at its own expense contest the existence, amount, applicability, extent or validity thereof in good faith by an appropriate Proceeding timely instituted which shall operate to prevent the collection or satisfaction of the Lien so contested, and the sale or forfeiture of the Equipment or any Item or component part thereof (or of any amounts payable by the Lessee hereunder) to satisfy the same or otherwise resulting from such non-compliance, and which shall not in the reasonable judgment of either the Lessor or the Indenture Trustee materially affect the rights or interests of the Lessor, the Indenture Trustee or any Participant or result in the occurrence of an Event of Default; *provided, however,* that the Lessee shall have given such security as may be required in the Proceeding and such reasonable security as may be demanded by either the Lessor or the Indenture Trustee or both to insure such payment and to prevent any sale or forfeiture of the Equipment or any Item or component part thereof by reason of such nonpayment or noncompliance; and, *provided further,* that neither the Lessor, the Indenture Trustee nor any Participant would be in any danger of criminal liability, or other liability or obligation for which no indemnification is provided hereunder, by reason of such nonpayment or noncompliance. The Lessee shall notify the Lessor and the Indenture

Trustee of any such Proceeding at which the amount in contest exceeds $250,000 within 10 days after the commencement thereof, and shall describe such Proceeding in reasonable detail. The Lessor hereby agrees to execute and deliver at the Lessee's expense such documents including powers of attorney as the Lessee may reasonably request (and which in the good faith judgment of the Lessor do not adversely affect a substantial general interest of the Lessor) in order that the Lessee shall be enabled effectively to conduct any such Proceeding. The Lessee shall promptly pay any valid final judgment enforcing any such Lien and cause the same to be satisfied of record. Any Supplemental Rent which is being contested as permitted by this Section 5(b) shall not be deemed to be due for purposes of this Lease.

SECTION 6. *Use; Location; Possession; Registration of Title; Marking.*

(a) *Use.* The Lessee will permit each Item of Equipment to be used only for lawful business purposes by qualified personnel and for a purpose for which such Item of Equipment was designed. The Lessee will operate or cause to be operated each Item of Equipment in accordance with the best mining practice in similar coal fields in the Commonwealth of Kentucky and in compliance with all applicable Insurance Requirements. The Lessor and the Lessee intend, regardless of the manner in which any Item may be attached or connected to any real estate and regardless of any damage that might occur in the removal of such Item, that (i) such Item shall at all times be personal property under the laws of the jurisdiction where it is located, (ii) such Item shall not become or be deemed to be a part of any real property or a permanent accession to any real property and (iii) such Item shall at all times remain the personal property of the Lessor severable from any real property to which it may have been attached or connected, and the Lessee agrees it will not attach or affix any Item of Equipment to real property in such a manner as to cause it to become real property under applicable law.

(b) *Location.* The Lessee shall not permit any Item of Equipment to be located outside the continental United States at any time, but within the continental United States and subject to compliance with Section 26 hereof, the Lessee shall have the right, without the prior consent of the Lessor and the Indenture Trustee, to relocate and operate any Item of Equipment during its term at any location.

(c) *Sublease; Possession.* Unless a default or an Event of Default shall have occurred and be continuing, the Lessee may without the prior written consent of the Lessor and the Indenture Trustee sublease any Class A Item of Equipment; *provided, however,* that the rights of any sublessee pursuant to such sublease shall be subject and subordinate to all the terms of this Lease, and any agreement relating to such sublease shall be made expressly subject and subordinate to all terms of this Lease and any such sublease shall not affect, reduce or relieve Lessee of any of its obligations hereunder or reduce, eliminate or otherwise adversely affect any rights or remedies of the Lessor hereunder, and all obligations of the Lessee hereunder shall continue in full effect as the obligations of a principal and not of a guarantor or surety, to the same extent as though no such sublease had been entered into. The Lessee shall within 10 days after the execution and delivery of any sublease give notice to the Lessor and the Indenture Trustee of the existence and term of such sublease and of the name and address of the sublessee. The Lessee hereby assigns to the Lessor as collateral security all rents and other sums of money payable under any such sublease, including the right to collect all such rents and other sums upon the occurrence and during the continuance of an Event of Default, such rents and other sums of money as collected to be applied to the discharge of the Lessee's obligations hereunder. Except as specified above, the Lessee will not sublease or otherwise deliver, transfer or relinquish possession of any Item of Equipment except for temporary periods for the purpose of repair or maintenance.

(d) *Registration of Title.* To the extent that title to any Item of Equipment such as an item of transportation equipment is evidenced by a certificate of title, the Lessee agrees at its own expense to cause each such certificate of title to designate the Lessor as the registered owner of such Item of Equipment.

(e) *Marking.* The Lessee agrees to place on each Item of Equipment in a conspicuous place identification plates bearing the inscription "Owned by First National Bank of Louisville, as Owner Trustee, Lessor, and subject to a security interest in favor of The Chase Manhattan Bank (National Association), as Indenture Trustee. Any sale of this property may be in violation of said security interest." The Lessee shall maintain such plates throughout the Term with respect to such Item.

SECTION 7. *Maintenance and Repair; Replacement.*

(a) *Maintenance.* The Lessee, at its own expense, will keep and maintain, or cause to be kept and maintained, each Item of Equipment (other than an Item of Equipment as to which an Event of Loss has occurred) in good working order and repair and fit to be used for its intended use, ordinary wear and tear excepted, and in conformity with all Legal Requirements and Insurance Requirements, and will provide all maintenance and service and make all repairs necessary for such purpose. The Lessor shall not be obliged in any way to maintain, alter, repair, rebuild, or replace any Item of Equipment, and the Lessee expressly waives the right to perform any such action at the expense of the Lessor pursuant to any law at any time in effect.

(b) *Replacement.* If any Parts which were originally incorporated or installed in or attached to an Item of Equipment at the time of delivery thereof hereunder (herein called "Original Parts"), or any Parts in replacement of or substitution for Original Parts, shall become worn out, lost, stolen, destroyed, damaged beyond repair or otherwise permanently rendered unfit for use, the Lessee, at its own expense, shall promptly replace such Original Parts or Parts, or cause the same to be replaced, by replacement Parts which are either new or have a useful life at least equal to the remaining estimated useful life of such Item of Equipment, which are free of all Liens not permitted by this Lease and which are in as good an operating condition as, and have a value or utility at least equal to, the Parts replaced assuming such replaced Parts were in the condition and repair required to be maintained by the terms hereof; *provided, however,* that the Lessee shall have the right to install temporary replacement Parts pending completion of permanent repairs or installation of permanent replacement Parts, in which event the Lessee shall install replacement Parts meeting the requirements for replacement Parts set forth in this Section 7(b) or shall cause such temporary replacement Parts to meet such requirements as soon as reasonably possible and in any event within the earlier of twelve (12) months from the date of the installation of such temporary replacement Parts or the date of expiration or other termination of the Term of such Item of Equipment. All such replacement Parts shall immediately, without further act, become the property of the Lessor and part of the Item of Equipment into which such replacement Parts are incorporated or installed for all purposes hereof; but the Parts replaced thereby shall no longer be the property of the Lessor.

(c) *Alterations, Modifications and Additions.* The Lessee may at its expense from time to time make such alterations, modifications and additions to any Item of Equipment as the Lessee may deem desirable in the proper conduct of its business; *provided, however,* that no such alteration, modification or addition shall diminish the value or utility of any Item of Equipment, or impair the condition thereof, below the value, utility or condition thereof immediately prior to such alteration, modification or addition assuming such Item of Equipment was then of the value and utility and in the condition and repair required to be maintained by the terms of this Lease. Title to all Parts resulting from any such alteration, modification or addition shall, without further act, vest in the Lessor; *provided, however,* that so long as no default or Event of Default shall have occurred and be continuing, the Lessee may at any time (and shall prior to return to the Lessee) remove any Part from any Item of Equipment if (i) such Part is in addition to, and not in replacement of or substitution for, any Original Part or any Part in replacement of, or substitution for, any Original Part and (ii) such Part can be removed from such Item of Equipment without diminishing or impairing the value and utility or condition and repair which such Item of Equipment would have had at such time had such alteration, modification or addition not occurred. Any Part described in the proviso to the preceding sentence removed by the Lessee shall cease to be the property of the Lessor.

(d) *Engineer's Certificate.* Prior to January 31, 1979, the Lessee shall deliver to the Lessor and the Indenture Trustee an opinion of a qualified engineer appointed by the Lessee and acceptable to the Lessor and the Indenture Trustee (who shall be an independent engineer if requested by either the Lessor or the Indenture Trustee) to the effect that such engineer has examined, or caused to be examined under his supervision, the Equipment and the Lessee's records relating thereto and that either (i) substantially all the Equipment is capable of performing substantially as intended under normal operating conditions or (ii) separately listing the Equipment which does and does not perform substantially as intended and setting forth in reasonable detail the deficiencies with the latter list of Equipment (herein called the

"Deficient Equipment") and whether the deficiencies of the Deficient Equipment are economically susceptible of being corrected. Either the Lessor or the Indenture Trustee may at its option by written notice to the Lessee declare that an Event of Loss has occurred with respect to any Item of Deficient Equipment the deficiencies of which either (A) such Engineer's Certificate has stated to be not economically susceptible of correction or (B) have not been corrected within nine months after the date of such Engineer's Certificate.

SECTION 8. *Event of Loss; Awards and Payments.*

(a) *Event of Loss.* Upon the occurrence of an Event of Loss with respect to any Item of Equipment, the Lessee shall give the Lessor and the Indenture Trustee written notice of such Event of Loss within 30 days after obtaining knowledge thereof, which notice shall specify the circumstances causing such Event of Loss and the Lessee shall pay to the Lessor, on the Rental Payment Date next succeeding the giving of such notice by at least 30 days, (i) the Stipulated Loss Value for such Item of Equipment computed as of such Rental Payment Date; (ii) all other Rent with respect to such Item of Equipment due on or prior to such Rental Payment Date (including the installment of Basic Rent due on such date), and (iii) any reimbursement for Fees, Taxes and Other Charges required by Section 11 hereof. In the event of payment in full of such amounts, the obligation of the Lessee to pay Basic Rent hereunder with respect to such Item of Equipment in respect of Lease Periods after such Rental Payment Date shall cease, and if there is no continuing Event of Default the Lessor will convey to the Lessee, without recourse, representation or warranty whatsoever except for the non-existence of Lessor's Liens, all the Lessor's right, title and interest, if any, in and to such Item of Equipment and any payments or rights to payment from any person relating thereto (other than from any insurance maintained by the Lessor or any Participant).

(b) *Insurance Payments.* The Lessor and the Indenture Trustee shall have the right (but no obligation) to participate fully in any negotiation or Proceeding in connection with the settlement of any claim in respect of any insurance required to be maintained by the Lessee pursuant to this Lease and the Lessee will pay all costs, fees and expenses incurred in connection therewith. Any payment received by the Lessor as the proceeds of insurance maintained by the Lessee, less any expenses paid by the Lessor in connection therewith is herein referred to as the "Net Insurance Proceeds". The Lessee's obligations under this Lease to maintain and repair the Equipment shall not be affected by the availability or sufficiency of any Net Insurance Proceeds, but, if there is no continuing Event of Default, the Lessor will pay or make reimbursement for the expense of repairing any damage to the Equipment or any Item or component part thereof resulting from any event not an Event of Loss which results in an insurance settlement with respect to the Equipment or any Item or component part thereof from and to the extent of the Net Insurance Proceeds received by the Lessor in connection therewith. Any such payments or reimbursements shall be made to the Lessee, or as it may direct, in an amount not more than the excess of the total amounts paid or obligations incurred in connection with such repair over the amounts previously paid or reimbursed by the Lessor. Such payments or reimbursements shall be made upon receipt by the Lessor of a request therefor, signed by an Executive Officer of the Lessee, certifying in reasonable detail as to the satisfaction of the conditions for such payment or reimbursement and specifying the persons to whom such amounts are to be paid. If there is no continuing Event of Default and after receipt of satisfactory evidence of completion of such repair, any balance of any such Net Insurance Proceeds remaining after all such payments and reimbursements shall be paid over to, or retained by, the Lessee. If the cost of such repair shall exceed the amount of the Net Insurance Proceeds in connection therewith, the deficiency shall be paid by the Lessee. Any Net Insurance Proceeds received by the Lessor as the result of the occurrence of an Event of Loss with respect to the Equipment or any Item shall, after payment by the Lessee of all amounts required to be paid by it pursuant to Section 8(a) hereof, be paid over by the Lessor to the Lessee; *provided, however,* that, if any such proceeds are received or held during the continuance of an Event of Default, such proceeds may be retained by the Lessor or the Indenture Trustee as security for, and applied toward the satisfaction of, any amounts to which the Lessor or the Indenture Trustee may be entitled hereunder, and, if such Event of Default is cured or waived, such amounts not so applied shall thereupon be paid over to the Lessee. For the purposes of this Section 8(b), (i) any portion of any Net Insurance Proceeds received by the Indenture

Trustee shall be deemed to have been received by the Lessor, and (ii) if the Indenture Trustee pays over or credits to the Lessee any portion of any Net Insurance Proceeds, the amount so paid or credited shall be deemed to be a payment or reimbursement by the Lessor.

(c) *Awards in Case of Taking.* The Lessor and the Indenture Trustee shall have the right (but no obligation) to participate fully in any negotiation or Proceeding to fix the amount of compensation payable in respect of any Taking and the Lessee will pay all costs, fees and expenses incurred in connection therewith. All amounts paid pursuant to an agreement entered into in lieu of or in anticipation of any Taking shall be deemed to constitute compensation in respect of such Taking. The Lessor and the Lessee agree that this Lease shall control the rights of the Lessor and the Lessee in any compensation or award on account of any Taking, and any contrary provision of any present or future law is hereby waived. Any payment received by the Lessor as compensation for any Taking, less any expenses paid by the Lessor in connection therewith, is herein referred to as the "Net Taking Proceeds". All Net Taking Proceeds received by the Lessor shall, after payment by the Lessee of all amounts required to be paid by it pursuant to Section 8(a) hereof, be paid over by the Lessor to the Lessee; *provided, however,* that if any such proceeds are received or held during the continuance of an Event of Default the Lessor may retain such payments as security for, and apply such proceeds toward, the satisfaction of any amounts to which the Lessor may be entitled hereunder and, if such Event of Default is cured or waived, any such amounts not so applied shall thereupon be paid over to the Lessee. Any amount paid as compensation for a taking of temporary use of the Equipment or any Item or component part thereof shall be the property of the Lessee, and, if any such payment is made to the Lessor, the Lessor shall promptly pay over such amount to the Lessee so long as there is no continuing Event of Default. Any portion of any such payment for the taking of temporary use which is allocable to a period after the end of the Term with respect to the Equipment or any Item or component part thereof shall be the property of and shall be promptly paid to the Lessor. For the purposes of this Section 8(c), (i) any portion of any Net Taking Proceeds received by the Indenture Trustee shall be deemed to have been received by the Lessor, and (ii) if the Indenture Trustee pays over or credits to the Lessee any portion of any Net Taking Proceeds, the amount so paid or credited shall be deemed to be a payment or reimbursement by the Lessor.

SECTION 9. *Insurance.*

(a) *Coverage Required.* The Lessee will, at all times during the Term with respect to any Item, maintain insurance of the following character:

(i) Insurance against loss by fire and lightning and insurance against risks customarily covered by the Standard Extended Coverage Endorsement, including but not limited to loss by windstorm, hail, explosion, riot (including riot attending a strike), civil commotion, aircraft, vehicles, smoke damage, and vandalism and malicious mischief in amounts sufficient to prevent the Lessor or the Lessee from becoming a co-insurer of any loss under the applicable policies, but in any event in amounts not less than the aggregate, as of the next Basic Rent Payment Date, of Stipulated Loss Values of all Items of Equipment and stipulated loss values of all items of equipment leased under the Other Leases.

(ii) Difference in conditions or All Risk Insurance in an amount of at least $10,000,000 with respect to the Equipment and all equipment leased under the Other Leases.

(iii) Explosion insurance in respect of any transformers and certain of the electrical equipment, boilers, pressure systems and similar apparatus constituting a part of the Equipment, if any, and customarily covered by such insurance, in an amount not less than $5,000,000.

(iv) All Risk Insurance in respect of Equipment located underground in an amount of at least $1,000,000 with respect to the Equipment and all equipment leased under the Other Leases.

(v) Public liability insurance (Comprehensive, Automobile and General) against claims for bodily injury, death or property damage, such insurance to afford coverage not less than $25,000,000 per occurrence.

(vi) The Lessee shall comply and cause all persons operating any Item to comply, with applicable workmen's compensation, disability (if any) and similar laws relating to its operations wherever located and shall maintain insurance coverage, or an adequately funded self-insurance program, to the extent required by law.

(vii) Other insurance in amounts and against risks customarily insured against by companies comparable to the Lessee in respect of similar equipment and any event in at least such amounts and against such risks as are customarily maintained by the Lessee on similar equipment owned or operated by the Lessee.

(viii) Increased amounts of the above-described insurance to the extent that such increased amounts are either (A) customarily maintained by companies comparable to the Lessee in respect of similar equipment or (B) maintained by the Lessee on similar equipment owned or operated by the Lessee.

(ix) Such increased insurance (as to risks covered, policy amounts of the above-described insurance, policy provisions or otherwise) related to the Project or the Lessee in connection with the Overall Transaction as either the Lessor or the Indenture Trustee or both may from time to time reasonably request and as shall be obtainable at commercially reasonable rates, *provided, however,* that the Lessee shall have a reasonable time to obtain any insurance required by this Section 9(a)(ix).

(b) *Policies.* Such policies may provide for deductible amounts consistent with those provided for in policies maintained by the Lessee on similar equipment owned or operated by the Lessee and reasonably satisfactory to the Lessor and the Indenture Trustee. In addition, with the prior written consent of the Lessor and the Indenture Trustee, the Lessee may in lieu of any of the above insurance self-insure to the extent and under the conditions specified in such consent. Such insurance shall be written by companies of recognized financial standing satisfactory to the Lessor and the Indenture Trustee, all policies shall name as the insured parties thereunder the Lessor, as the owner of the Equipment, the Lessee, the Indenture Trustee and each Participant as their interests may appear, except that the policies carried pursuant to Sections 9(a)(i), (ii), (iii) and (iv) hereof, may provide that any loss in the amount of $250,000 or less shall be payable directly to the Lessee. Such insurance may be obtained by the Lessee by endorsement on the blanket insurance policies of one of its shareholders, *provided* that such blanket policies satisfy the requirements specified in this Section 9, and in the case of the requirements specified in Sections 9(a)(i), (ii), (iii) and (iv) hereof, provide for a reserved amount thereunder with respect to the Equipment so as to assure that the required amount of such insurance will continue to be available with respect to the Equipment notwithstanding any losses with respect to other property covered by such blanket insurance.

(c) *Claims, Contests, Etc.* Insurance claims by reason of damage to or destruction of any part of the Equipment may be adjusted by the Lessee and the policies required hereunder may so provide. Neither the Lessor nor the Indenture Trustee shall be responsible for any premium or required to incur any expense under any policy of insurance or to prosecute (but may do so at its option) any claim against any insurer or to contest any settlement proposed by any insurer, *provided* that the Lessee may prosecute any such claim or contest any such settlement and in such event the Lessee may bring any such prosecution or contest in the name of the Lessor, the Lessee or both. The Lessor will join in such prosecution or contest at the Lessee's request, *provided* that the Lessee shall indemnify the Lessor against all costs, liabilities and expenses in connection with such prosecution or contest.

(d) *Endorsement.* Every such insurance policy (other than general public liability or workmen's compensation insurance policies) shall bear a first mortgage endorsement in favor of the Indenture Trustee, and loss under any such policy in excess of $250,000 shall be made payable to the Indenture Trustee, but any recoveries under any such policies received by the Indenture Trustee shall be applied by the Indenture Trustee as provided in the Indenture and this Lease Agreement. Every such insurance policy shall contain an agreement by the insurer that it waives all rights of subrogation against the Lessee, the Lessor, the Owner Participants and the Indenture Trustee, that it will give 30 days' prior written notice of

suspension, cancellation, termination, non-renewal or lapse of coverage to the Lessor, the Lessee, the Owner Participants and the Indenture Trustee, and that any loss thereunder shall be payable notwithstanding any (i) use of the property for purposes more hazardous than permitted by the terms of the policy, (ii) other action, inaction, breach of warranty or condition, misrepresentation or negligence of the Lessee, the Lessor, any Owner Participant or the Indenture Trustee, (iii) foreclosure or other action or proceeding taken by the Indenture Trustee pursuant to any provision of the Indenture, or (iv) change in title or ownership of the Equipment or any Item or Items. No such policy shall contain a provision relieving the issuer thereof of liability for any loss by reason of the existence of other policies of insurance covering the Item or Items against the peril involved.

(e) *Evidence of Insurance.* The Lessee shall deliver to the Lessor and the Indenture Trustee on or before the Closing Date original or duplicate policies or certificates of insurers in form satisfactory to the Lessor and the Indenture Trustee evidencing all insurance then required to be maintained by the Lessee hereunder, and thereafter, within 30 days of the issuance of any additional policies or amendments or supplements to any of such policies, the Lessee will deliver, or cause to be delivered, the same (or certificates of the insurers under such policies evidencing the same) to the Lessor and the Indenture Trustee, and the Lessee shall, not later than 30 days prior to the expiration of any policy, deliver certificates of the insurers evidencing the replacement thereof. The Lessee will, within 20 days prior to each March 31 during the Term with respect to any Item, cause to be delivered to the Lessor and Indenture Trustee a certificate of an Executive Officer of the Lessee (i) listing the policies of insurance then outstanding and in effect, the names of the companies issuing such insurance, the amounts, deductibles, and expiration date or dates of such insurance and the risk or risks covered thereby and any material changes in such insurance since the last such certificate; and (ii) stating that such insurance complies with the requirements contained in this Lease. The Lessee will advise the Lessor and the Indenture Trustee in writing promptly of any known default in the payment of any premium and of any other known act or omission on the part of the Lessee which might invalidate or render unenforceable, in whole or in part, any insurance on or with respect to the Equipment, or any Item or Items. The Lessee will also advise the Lessor and the Indenture Trustee in writing promptly of any notice or other communication (other than routine premium payment reminders) received from any such insurer by which such insurer indicates it has suspended, cancelled, terminated or not renewed, or may seek to suspend, cancel, terminate or not renew, any such insurance, or that any such insurance coverage has or may lapse.

(f) *No Concurrent Policies.* Neither the Lessor nor the Lessee shall obtain or carry separate policies of insurance concurrent in form or contributing in the event of loss with that required in this Section 9 hereof to be furnished by the Lessee unless the Lessor, the Owner Participants, the Lessee and the Indenture Trustee are included therein as named insureds, with loss payable as set forth in this Lease, *provided, however,* that during the last year of the Term of any Item of Equipment, the Lessor may without complying with this sentence insure at its own expense such Item of Equipment for an amount not greater than the excess, if any, of the fair market value of such Item of Equipment over its Stipulated Loss Value. The Lessor and the Lessee shall each immediately notify the other and the Indenture Trustee whenever it obtains any such separate insurance and shall deliver to such others the policy or policies whereby such coverage was obtained, or certificates evidencing the same.

(g) *Right of the Lessor to Insure.* Subject to the provisions of Section 9(f) hereof, the Lessor shall have the right, at its expense, to obtain any insurance in respect of the Equipment or any Item or Items. In addition to the foregoing, if the Lessee shall be in default in respect of its obligation to obtain insurance pursuant to clauses (i) through (vi) of Section 9(a) hereof, the Lessor or the Indenture Trustee shall, after notice of such default to the Lessee and the failure of Lessee to forthwith remedy the same, have the right (without, in any way, limiting or otherwise modifying any other rights or remedies of the Lessor or the Indenture Trustee under this Lease by reason of such default or otherwise) to obtain such insurance at the expense of the Lessee and, in such event, the Lessee shall reimburse the Lessor or the Indenture Trustee, as the case may be, upon demand for the cost thereof as Supplemental Rent.

SECTION 10. *General Indemnity.*

(a) *General Indemnity.* Except as otherwise expressly stated herein, the Lessee hereby assumes liability for, and hereby agrees to indemnify, protect, defend, save and keep harmless each Indemnified Party from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including, without limitation, reasonable legal and investigative fees and expenses, of whatsoever kind and nature (herein called "Liabilities") which may be incurred by or imposed at any time (whether during the Term or thereafter) on any Indemnified Party or any Item of Equipment (whether or not also indemnified against by any Manufacturer or any other person) and in any way relating to or arising out of, or alleged (by a person other than such Indemnified Party) to in any way relate to or arise out of, (i) this Lease, the Participation Agreement, the Trust Agreement, the Indenture, the Easement Agreement, the Loan Certificates, the Equipment Trust Certificates, the Lease Guaranty, the Interest Guaranty, the Lease Assignment or the Purchasing Supervisory Agreement, including any acts or omissions of any Purchasing Supervisor or (ii) the manufacture, financing, purchase, acquisition, ownership, acceptance, rejection, delivery, non-delivery, possession, use, operation, leasing, subleasing, condition, maintenance, repair, sale, return or other application or disposition of any Item of Equipment, or otherwise in connection with the Overall Transaction, including, without limitation, claims or penalties arising from any violation of any Legal Requirements or Insurance Requirements, as well as any claim as the result of latent, patent and other defects, whether or not discoverable by any Indemnified Party, any claim the insurance as to which is inadequate, any claim for patent, trademark or copyright infringement, any tort claim or claim for damages, any claim or liability in respect of any adverse environmental impact or effect; *provided, however,* that the foregoing indemnity with respect to any Indemnified Party shall not extend to any Liabilities (A) resulting from the wilful misconduct or gross negligence of such Indemnified Party, (B) resulting from acts or events with respect to any Item of Equipment which occur after possession of such Item of Equipment has been redelivered to the Lessor (unless resulting from acts or omissions of the Lessee while such Item of Equipment is being stored by the Lessee pursuant to Section 4(e) hereof) in accordance with the terms of Section 4 hereof at a time when an Event of Default has not occurred and is continuing, (C) described in Section 11 hereof, (D) resulting from the violation by such Indemnified Party of any banking, insurance or securities law, rule or regulation applicable to its business generally (unless resulting from an offer or a Sale (as defined in the Indenture) of the Loan Certificates by the Indenture Trustee in accordance with Section 7.03(d) of the Indenture), (E) arising from the breach of any express duty or express representation or warranty to the Lessee of such Indemnified Party contained herein or in the Participation Agreement or in any instrument, document, certificate or agreement contemplated thereby or relating thereto, (F) otherwise expressly stated herein or in the Participation Agreement to be borne by such Indemnified Party, or (G) resulting from the transfer of an interest of an Owner Participant under the Trust Agreement, unless such transfer was made at the request of the Lessee. For purposes of this Section 10, the Lessee shall not be entitled to assert any defense against any Indemnified Party in respect of any act or omission to act of any Purchasing Supervisor. If at any time a Responsible Officer of any Indemnified Party has actual knowledge of a Liability or a potential Liability that would be indemnified against hereunder, such Indemnified Party shall give prompt written notice thereof to the Lessee. Upon receipt of such notice, the Lessee shall assume full responsibility for the defense against or settlement of any such Liability, and such Indemnified Party shall cooperate with the Lessee by providing, at the expense of the Lessee, such witnesses, documents and other assistance as the Lessee may reasonably request; *provided, however,* (i) such Indemnified Party shall be consulted as to the legal counsel to be employed in respect thereof and may veto the employment of any legal counsel unacceptable to it and (ii) if such Indemnified Party shall give to the Lessee notice that in its good faith judgment an important general interest of such Indemnified Party is involved in such Liability or potential Liability, such Indemnified Party shall have the right to control, in consultation with the Lessee, the defense against or settlement of such Liability.

(b) *General.* The obligations of the Lessee under this Section 10 shall survive the expiration or earlier termination of this Lease and are expressly made for the benefit of, and shall be enforceable by, each Indemnified Party separately or together without necessity of declaring this Lease in default and any

Indemnified Party seeking to enforce the indemnification may initially proceed directly against the Lessee under this Section 10 without first resorting to any other rights of indemnification it may have; *provided, however,* that the obligations of the Lessee under this Section 10 shall not extend to acts or events with respect to any Item of Equipment which occurred after possession of such Item of Equipment has been redelivered to the Lessor (unless resulting from acts or omissions of the Lessee while such Item of Equipment is being stored by the Lessee pursuant to Section 4(e) hereof), in accordance with the terms of Section 4 hereof at a time when an Event of Default has not occurred and is continuing. Except to the extent otherwise provided in the Lease Assignment, all payments required to be paid pursuant to this Section 10 shall be made directly to, or as otherwise requested by, the Indemnified Party entitled thereto, upon written demand by such Indemnified Party. All such written demands shall specify the amounts payable and the facts upon which the right to indemnification is based. The Lessee shall not be required to make any payment pursuant to this Section 10 until such time as the Indemnified Party shall have in good faith made or shall be obligated to make payment in respect of the Liability indemnified against hereunder or a final judgment of a court or other competent tribunal shall have been entered that such Indemnified Party is obligated to make payment.

SECTION 11. *Adjustment of Rent and Tax Indemnities.*

(a) *Taxes, Fees and Other Charges.* (1) The Lessee hereby agrees to pay and assume liability for, and on written demand to indemnify, protect, defend, save and hold harmless each of the Indemnified Parties from and against, any and all Fees, Taxes and Other Charges imposed against any of the Indemnified Parties, the Lessee or any Item of Equipment by any federal, state or local governmental or taxing authority in the United States or by any foreign government or any subdivision or taxing authority thereof, upon or with respect to (i) any Item of Equipment, (ii) the manufacture, financing, purchase, ownership, acquisition, acceptance, rejection, delivery, non-delivery, possession, use, operation, transportation, leasing, subleasing, condition, maintenance, repair, sale, return, abandonment, or other application or disposition of any Item of Equipment, (iii) the rental payments, receipts or earnings arising from any Item of Equipment or payable pursuant to this Lease or (iv) this Lease, the Lease Guaranty, the Interest Guaranty, the Lease Assignment, the Participation Agreement, the Trust Agreement, the Easement Agreement, the Indenture or the Purchasing Supervisory Agreement, the Loan Certificates or the issuance thereof pursuant to the Trust Agreement, the Equipment Trust Certificates or the issuance thereof pursuant to the Indenture or otherwise with respect to or in connection with the Overall Transaction.

(2) The provisions of this Section 11(a) shall not apply to:

(i) Fees, Taxes and Other Charges on, or measured solely by, the net income of any Participant (as distinguished from any net income of the Lessor, the Indenture Trustee, the Trust Estate or the Indenture Estate) to the extent that either: (A) such Fees, Taxes and Other Charges are imposed by the federal government of the United States under Section 11 or Section 1201 of the Code, or any successor Section of said Code, or any corresponding provision of any revenue laws of the United States enacted subsequent to the Closing Date, imposing substantially similar taxes on net income, or (B) such Fees, Taxes and Other Charges are imposed by any state or local governmental or other taxing authority in the United States where the principal place of business of such Participant is located, or (C) such Fees, Taxes and Other Charges are imposed by any state or local government or other taxing authority in the United States other than any state or local government or other taxing authority within the United States where (x) any Item of Equipment is located or (y) the Lessee or the Lease Guarantor, or any affiliate or related party thereof, is present or subject to taxation, whether or not such presence is related to this Lease, or (z) neither the Lessee or the Lease Guarantor, or any affiliate or related party thereof, or such Participant is present or subject to taxation; *provided, however,* that notwithstanding the foregoing there shall not be excluded any Fees, Taxes and Other Charges on, or measured solely by, the net income of such Participant (a) as the direct or indirect result of (x) the payment by the Lessee or the Lease Guarantor, or any affiliate or related party thereof, of any amount in respect of the purchase of any Item of Equipment from any person other than Lessor or from the receipt by the Lessee or the Lease Guarantor, or any affiliate or related party

thereof, of any refund, credit or damages with respect to any Item of Equipment, or (y) any sale or other disposition of any Item of Equipment pursuant to Section 13 hereof, except in the event that the Lessor elects to exercise its rights under Section 13(c) or 13(d) hereof or (b) which are in substitution for or relieve the Lessee from any Fees, Taxes and Other Charges which the Lessee would otherwise be obligated to pay under the terms of this Section 11; and

(ii) Fees, Taxes and Other Charges on, or measured solely by, any fees or compensation received by the Lessor or the Indenture Trustee for services rendered in connection with the Overall Transaction.

(3) In case any report or return is required to be made with respect to any obligations of the Lessee under this Section 11(a) or arising out of this Section 11(a), the Lessee shall either make such report or return in such manner (including the making thereof in the Lessor's name) as will show the ownership of each Item of Equipment in the Lessor and send a copy of such report or return to the Lessor, or shall notify the Lessor of such requirement and make such report or return in such manner as shall be satisfactory to the Lessor. Each Indemnified Party agrees that it will promptly forward to the Lessee any notice, bill or any advice received by it concerning any such Fees, Taxes and Other Charges and will use its best efforts and take such lawful and reasonable steps as may be proposed by the Lessee in writing to minimize any of the same for which the Lessee is responsible under this Section 11(a).

(4) The amount which the Lessee shall be required to pay to or for the account of any Indemnified Party with respect to any item which is subject to indemnification under Section 10 hereof or under Section 5(b) of the Participation Agreement or any Fees, Taxes and Other Charges which are subject to indemnification under this Section 11(a), shall be an amount sufficient to restore the Indemnified Party to the same position the Indemnified Party would have been in had such item or such Fees, Taxes and Other Charges not been incurred or imposed. If the payment by the Lessee under Section 10 hereof or this Section 11(a) of an amount equal to such item or such Fees, Taxes and Other Charges would be more or less than the amount which would be required to make such Indemnified Party whole as a result of (i) the inclusion of any payment to be made by the Lessee under Section 10 hereof or this Section 11(a) in the taxable income of any Indemnified Party in one year and the deduction of the item or the Fees, Taxes and Other Charges with respect to which such payment is made from the taxable income of such Indemnified Party in a different year, (ii) the non-deductibility of such item or such Fees, Taxes and Other Charges from the taxable income of such Indemnified Party, or (iii) the anticipated realization by such party in a different year of tax benefits resulting from the transaction giving rise to such item or such Fees, Taxes and Other Charges, the amount of the indemnity to be paid by the Lessee shall be adjusted to an amount which (after taking into account all tax effects on such Indemnified Party, any loss of use of money resulting from differences in timing between the inclusion of such indemnity in the taxable income of such Indemnified Party and the anticipated realization by such Indemnified Party of tax benefits resulting from the transaction to which such indemnity is related, and the present value of any anticipated future tax benefits to be realized by such party as a result of deducting such item or such Fees, Taxes and Other Charges or as a result of the transaction giving rise thereto) will be sufficient to place the Indemnified Party in the same position such party would have been in had such item or such Fees, Taxes and Other Charges not been imposed. All computations for purposes hereof shall be based on tax rates in effect on the date payment pursuant to Section 10 hereof or this Section 11(a) is made. Computations involving the loss of use of money or calculations of present value shall be based on a rate of interest of 10.75% per annum as adjusted for applicable income tax effects and compounded quarterly on the Rental Payment Dates. Each Indemnified Party shall in good faith use reasonable efforts in filing its tax returns and in dealing with taxing authorities to seek and claim all tax benefits available with respect to items referred to herein.

(b) *Indemnification for Loss of Certain Tax Benefits.* (1) Each installment of Basic Rent and each of the Stipulated Loss Value and Termination Value percentages specified in Schedule I and each Schedule II and each Schedule III hereof with respect to each Item of Equipment has been computed by Citicorp Leasing, Inc. on the basis that each of the items of income, gain, loss, deduction, and credit of the entity created by the Trust Agreement and each Owner Participant's distributive share of each of such items will be computed, for purposes of determining each Owner Participant's liability for federal income tax and for

Fees, Taxes and Other Charges on, or measured solely by, net income and imposed by the state and any local taxing authority of the jurisdiction where the principal place of business of each such Owner Participant is located, on the following basis: (i) the tax benefits specified in paragraphs 1 through 12 of the Ruling Request shall be available; (ii) the credit allowed by Section 38 of the Code with respect to each Item of Equipment shall be in an amount equal to 7% of the Capitalized Cost for such Item of Equipment, (iii) if the Applicable Quarter is either the first or the second calendar quarter such Items of Equipment shall be treated as placed in service on January 1 of that calendar year and if the Applicable Quarter is either the third or the fourth calendar quarter the Items of Equipment shall be treated as placed in service on July 1 of that year; (iv) the salvage value of each Item of Equipment required to be taken into account for purposes of computing the depreciation deductions with respect to such Item of Equipment, is zero; (v) the Capitalized Cost for each Item of Equipment constitutes the basis of such Item of Equipment under Section 1012 of the Code; (vi) if any Owner Participant is a member of an affiliated group of corporations making a consolidated return, such Owner Participant shall be an includable corporation and for purposes of determining the tax liability of the affiliated group, such Owner Participant's distributive share of each of the items of income, gain, loss, deduction, and credit of the entity created by the Trust Agreement shall be fully taken into account; (vii) each of the items of income, gain, loss, deduction, and credit of the entity created by the Trust Agreement and each Owner Participant's distributive share of each of such items will be computed for purposes of determining each Owner Participant's liability for Fees, Taxes and Other Charges on, or measured solely by, net income and imposed by the state and any local taxing authority of the jurisdiction where the principal place of business of each such Owner Participant is located, shall be computed on each of the bases as set forth in clauses (i) through (vi) of this paragraph (b)(1) except that no investment credit will be allowed with respect to any Item of Equipment and (viii) the effective cumulative federal, state and local rate of tax is 54.2374%, computed without giving effect to any credits against tax.

(2) In the event that (i) on the Closing Date any Owner Participant shall determine, such determination to be substantiated by an opinion of special counsel to the Owner Participants (which counsel will take into consideration any memoranda submitted by, or on behalf of, the Lessee), that the tax benefits available to the Owner Participants in respect of the Overall Transaction are other than the tax benefits referred to or specified in clauses (i) through (viii) of paragraph (b)(1) of this Section 11, as a result of any reason whatsoever (including, without limitation, a change in law, regulation or policy), or (ii) the Lessee shall have exercised its right, under paragraph (h) of this Section 11, to require that the Lessor elect to treat the Lessee as having acquired the Equipment for purposes of any investment credit allowable with respect thereto, then the Basic Rent payable for each Item of Equipment during the Original Term for each Item of Equipment shall be increased or decreased, and the amounts of Stipulated Loss Value and Termination Value for each Item of Equipment during the Original Term for each Item of Equipment shall be increased or decreased, by such amount as shall be required in order that, after giving effect to the occurrence of such event, the after-tax yield to the Owner Participants in respect of the Overall Transaction (as computed by Citicorp Leasing, Inc. in accordance with the same method and assumptions used by it in computing the original Basic Rent specified in Schedule I and each of the Stipulated Loss Value and Termination Value percentages specified in each Schedule II and each Schedule III hereof), measured, in the case of each Item of Equipment, from the Closing Date to the end of the Original Term for such Item of Equipment, shall be the same as such after-tax yield would have been if such event had not occurred. In making any computation pursuant to this paragraph (b)(2), an investment credit in an amount in excess of 10% of the Capitalized Cost of any Item of Equipment or the allowance of which is dependent upon the establishment of a plan for the benefit of employees, shall not be taken into account. If Citicorp Lescaman, Inc. is not the sole Owner Participant, in respect of the assumption set forth in clause (viii) of paragraph (b)(1) of this Section 11, no adjustments will be made pursuant to this paragraph (b)(2) which would not have been made if Citicorp Lescaman, Inc. were the sole Owner Participant. Notwithstanding the foregoing, no increase in the Basic Rent and in the amounts of Stipulated Loss Value and Termination Value shall be made pursuant to this paragraph (b)(2) unless the Lessor shall have so elected by written notice to the Lessee.

(3) In the event that after the Closing Date any Owner Participant shall not be allowed, or shall lose the benefit of, all or any portion of the tax benefits referred to or specified in clauses (i) through (vii) of paragraph (b)(1) of this Section 11 (after giving effect to any increase or decrease pursuant to paragraph (b)(2) of this Section 11), as a result of any of the Causes defined in paragraph (b)(5) of this Section11, then, but only at the option of the Lessor upon notice to the Lessee, the Basic Rent payable for each Item of Equipment during the Original Term for each Item of Equipment shall be increased, and the amounts of Stipulated Loss Value and Termination Value for each Item of Equipment during the Original Term for each Item of Equipment shall be increased or decreased, by such amount as shall be required in order that, after giving effect to the occurrence of such event, the after-tax yield of the Owner Participants in respect of the Overall Transaction (as computed by Citicorp Leasing, Inc. in accordance with the same method and assumptions used by it in computing the original Basic Rent specified in Schedule I and each of the Stipulated Loss Value and Termination Value percentages specified in each Schedule II and each Schedule III hereof), measured, in the case of each Item of Equipment, from the Closing Date to the end of the Original Term for such Item of Equipment, shall be the same as such after-tax yield would have been if such event had not occurred. The Lessee shall have the right, upon demand, to have a firm of certified public accountants approved by Citicorp Leasing, Inc., such approval not to be unreasonably withheld, review each computation made by Citicorp Leasing, Inc. of any increase or decrease in Basic Rent and/or any increase or decrease in the amounts of Stipulated Loss Value and Termination Value pursuant to this paragraph (b)(3) and paragraph (b)(2) and paragraph (b)(7) of this Section 11 to determine the consistency of the method and assumptions used and the accuracy of such computations based on such method and assumptions.

(4) In the case of (i) each increase or decrease in Basic Rent pursuant to paragraph (b)(2) of this Section 11, (ii) each increase in Basic Rent pursuant to paragraph (b)(3) of this Section 11, (iii) each decrease in Basic Rent pursuant to paragraph (b)(7) of this Section 11 and (iv) each increase or decrease in the amounts of Stipulated Loss Value and Termination Value pursuant to paragraph (b)(2), paragraph (b)(3) or paragraph (b)(7) of this Section 11, subject to paragraph (c) of this Section 11, such increase or decrease shall be effective for each Rental Payment Date (whether occurred or to occur) during the Original Term for each Item of Equipment. However, payments in respect of any such increase or decrease in Basic Rent shall commence (a) in the case of an increase or decrease pursuant to paragraph (b)(2) of this Section 11, on the first Rental Payment Date, (b) in the case of an increase pursuant to paragraph (b)(3) of this Section 11, on the first Rental Payment Date occurring 30 days or more after the date on which any taxes attributable to such loss of tax benefits are payable and (c) in the case of a decrease pursuant to paragraph (b)(7) of this Section 11, on the first Rental Payment Date occurring 30 days or more after the date on which a reduction in taxes attributable to such additional tax benefits is realized (each such date herein in this Section 11 called the "Adjustment Date"). In the case of each increase in Basic Rent pursuant to paragraph (b)(3) and each decrease in Basic Rent pursuant to paragraph (b)(7) of this Section 11, on the Adjustment Date with respect to such increase or decrease, (A) the Lessee shall pay to the Lessor (x) the excess of the amounts of Basic Rent which would have been payable on each of the preceding Rental Payment Dates by reason of such increase but for the occurrence of such Adjustment Date subsequent to such Rental Payment Dates, (y) the amount of any interest or penalties (including any additions to tax because of underpayment of estimated tax) which may be payable in connection with the disallowance or loss of tax benefits giving rise to such increase in Basic Rent, and (z) the instalment of Basic Rent, as increased or decreased, payable on such Rental Payment Date or (B) the Lessor shall pay to the Lessee the excess of the amounts of Basic Rent paid on each of the preceding Rental Payment Dates over the amounts of such Basic Rent which would have been payable on each of such Rental Payment Dates by reason of such decrease but for the occurrence of such Adjustment Date subsequent to such Rental Payment Dates. In the case of each increase or decrease in the amounts of Stipulated Loss Value or Termination Value, if any payment of Stipulated Loss Value or Termination Value shall have been paid prior to the Adjustment Date for Basic Rent applicable to such increase or decrease, (x) the Lessee shall pay to the Lessor, on such Adjustment Date, the excess amount which would have been payable on the due date of such payment of Stipulated Loss Value or Termination Value, as the case may be, by reason of

such increase but for the occurrence of such Adjustment Date subsequent to the due date of such payment or (y) the Lessor shall pay to the Lessee, on such Adjustment Date, the amount of such payment of Stipulated Loss Value or Termination Value, as the case may be, in excess of the amount of such payment which would have been payable on the due date of such payment by reason of such decrease but for the occurrence of such Adjustment Date subsequent to the due date of such payment. If any event shall occur which would require an increase in Basic Rent and/or in the amounts of Stipulated Loss Value and/or Termination Value with respect to any Item of Equipment pursuant to paragraph (b)(3) or paragraph (b)(7) of this Section 11 and such event shall occur or come to the attention of the Owner Participants after the thirtieth day preceding the termination of the Original Term for such Item of Equipment, then, in such case, the Lessee shall pay to the Lessor (or directly to the Owner Participants if the Trust Agreement shall have been terminated), upon demand, an amount equal to the increase in the amounts of Basic Rent and/or the increase in the amounts of Stipulated Loss Value and/or Termination Value which the Lessee would have been required to pay under this Lease but for the fact that such event occurred or came to the attention of the Owner Participants after the thirtieth day preceding the termination of such Original Term. If any event shall occur which would require a decrease in Basic Rent and/or in the amounts of Stipulated Loss Value and/or Termination Value with respect to any Item of Equipment pursuant to paragraph (b)(3) or paragraph (b)(7) of this Section 11 and such event shall occur or come to the attention of the Owner Participants after the thirtieth day preceding termination of the Original Term for such Item of Equipment, then, in such case, the Owner Participants shall pay to the Lessee, upon demand, an amount equal to the excess of Basic Rent and/or the amounts of Stipulated Loss Value and/or Termination Value paid by the Lessee over the amounts of such payments which the Lessee would have been required to pay under this Lease but for the fact that such event occurred or came to the attention of the Owner Participants after the thirtieth day preceding the termination of such Original Term.

(5) Causes referred to in paragraph (b)(3) of this Section 11 with respect to any Owner Participant shall be the following:

(i) a disposition by the Lessor of title to any Item of Equipment or a disposition by such Owner Participant of its respective interest in the Trust Estate or the cessation of any Item of Equipment as "section 38 property" within the meaning of Section 47(a)(1) of the Code, if such transfer or cessation shall occur at any time (A) as a result of a request made by the Lessee or (B) while an Event of Default shall have occurred and be continuing under this Lease and the Lessor or the Owner Participants shall not be claiming, or shall not be entitled to, liquidated damages under the remedial provisions of this Lease;

(ii) the failure of any Item of Equipment to qualify, at any time, as "new section 38 property", within the meaning of Section 48(b) of the Code, except if such failure is the direct result of a disposition by the Lessor of title to such Item of Equipment or a disposition by such Owner Participant of its respective interest in the Trust Estate prior to the time when an Event of Default shall have occurred and be continuing under the Lease;

(iii) the "original use", withing the meaning of Section 167(c) of the Code, of any Item of Equipment not being deemed to have commenced with the Lessor;

(iv) the removal or substitution of, or the alteration, modification or addition to, any Item of Equipment, or any part thereof for any reason; except if such removal, substitution, alteration, modification or addition is made voluntarily by the Lessor or such Owner Participant, is not consented to by the Lessee and is made prior to the time when an Event of Default shall have occurred and be continuing under this Lease;

(v) any representation, warranty, fact, estimate, opinion or other statement by the Lessee, or any officer, employee, agent or counsel thereof contained in any of the documents contemplated by the Overall Transaction or made in connection with the obtaining of the Ruling Letter (including, without

limitation, any statement made jointly with the Owner Participants or the Lessor or their respective officers, employees, agents or counsel) being, or in the opinion of the Internal Revenue Service or the state or local taxing authorities being, inaccurate or insufficient in whole or in part, or the Lessee, or any officer, employee, agent or counsel thereof failing to state, or in the opinion of the Internal Revenue Service or the state or local taxing authorities failing to state, any fact in connection with the obtaining of the Ruling Letter;

(vi) any representation, estimate, opinion or other statement as to the estimated useful lives and residual values of the Items of Equipment proving to be, or in the opinion of the Internal Revenue Service or the state or local taxing authorities proving to be, inaccurate or insufficient in whole or in part;

(vii) the Lessee, or any officer, employee, agent or counsel thereof, taking any action whatsoever (including, without limitation, any action with respect to the Lessee's income tax returns) inconsistent with or in contravention of any of the matters set forth in the Ruling Request or in the Ruling Letter;

(viii) the failure of any Item of Equipment to qualify, at any time, as "section 1245 property", within the meaning of Section 1245(a)(3) of the Code;

(ix) any Item of Equipment being deemed to be governed by the provisions of Section 167(1) of the Code;

(x) any Item of Equipment being deemed to constitute "public utility property", within the meaning of Section 46(c)(3) of the Code;

(xi) the shortest life over which the depreciation deductions with respect to any Item of Equipment may be computed, shall be determined to be longer than 8 years;

(xii) any amount included in the Capitalized Cost of any Item of Equipment being deemed not properly includable in the basis of such Item of Equipment under Section 1012 of the Code;

(xiii) the salvage value for any Item of Equipment, reduced by application of Section 167(f) of the Code, required to be taken into account for purposes of computing the depreciation deductions with respect to such Item of Equipment, being deemed to be in an amount in excess of zero;

(xiv) if the Applicable Quarter is either the first or the second calendar quarter, a determination that the Items of Equipment may not be treated as having been placed in service on January 1 of that calendar year, or if the Applicable Quarter is either the third or the fourth calendar quarter, a determination that the Items of Equipment may not be treated as having been placed in service on July 1 of that year (other than a determination by reason of any modification, repeal or revocation of any of the Sections and/or the Income Tax Regulations promulgated under any of said Sections excluded from subparagraph (b)(5)(xvii) of this Section 11 pursuant to clause (A) thereof);

(xv) a determination that the entity created by the Trust Agreement, if such entity is treated as a partnership, is not entitled to compute its items of income, gain, loss, deduction and credit on the cash receipts and disbursements method of accounting, pursuant to Section 461 of the Code;

(xvi) any action of the Internal Revenue Service contrary to any of the matters set forth in the Ruling Letter, except any such action taken directly as the result of: (A) any representation, fact, estimate, opinion or other statement made or stated by such Owner Participant, or any officer, employee, agent or counsel of such Owner Participant (excluding any statement as to the estimated useful lives and residual values of the Equipment and any statement made jointly with the Lessee, or any officer, employee, agent or counsel of the Lessee), in connection with the obtaining of the Ruling Letter proving to be, or in the opinion of the Internal Revenue Service or the state or local taxing authorities proving to be, fraudulent, untrue, incorrect or inaccurate, in whole or in part, (B) such Owner Participant, or any officer, employee, agent or counsel of such Owner Participant, failing to state, or in the opinion of the Internal Revenue Service or the state or local taxing authorities failing to

state, any material fact, known to such person and not known to the Lessee, or any officer, employee, agent or counsel of the Lessee, in connection with the obtaining of the Ruling Letter, (C) such Owner Participant, or any officer, employee, agent or counsel of such Owner Participant, taking or failing to take, or being deemed by the Internal Revenue Service or the state or local taxing authorities to have taken, or to have failed to take, any action whatsoever (including, without limitation, any action in respect of any Owner Participant's income tax returns), which is, or in the opinion of the Internal Revenue Service is, inconsistent with or in contravention of any of the matters set forth in the Ruling Request or in the Ruling Letter or (D) any modification, repeal or revocation of any of the Sections and/or the Income Tax Regulations promulgated under any of said Sections excluded from subparagraph (b)(5)(xvii) of this Section 11 pursuant to clause (A) thereof; or

(xvii) the enactment of any law or the promulgation of any regulation or the amendment, repeal or revocation of any law or regulation in effect on the Closing Date, except (A) the modification, repeal or revocation of Section 38, 46-50, 162 or 167 of the Code and/or the Income Tax Regulations promulgated under any of said Sections, (other than any modification of said Sections or Regulations the effect of which is to impose any tax or to limit, mitigate or offset the economic benefits to such Owner Participant from the Overall Transaction, as a result of the allowance to such Owner Participant of the tax benefits allowed by any such Sections or Regulations), (B) the enactment of any law or the promulgation of any regulation or the amendment, repeal or revocation of any law or regulation the effect of which is to cause this Lease to be characterized other than as a "true lease" (unless the event described in clauses (i) and (ii) of the first paragraph of Section 14(c) hereof shall have occurred), or (C) the amendment or modification of any law increasing directly, without regard to the allowance of tax benefits pursuant to any of the Sections and/or Regulations specified in clause (A) above, the rate of tax imposed under Section 11 or 1201 of the Code, as in effect on the Closing Date, or on net income under the laws, in effect on the Closing Date, of the state and any local taxing authorities where the principal place of business of such Owner Participant is located.

(6) Irrespective of the terms of paragraphs (b)(2), (b)(3) and (b)(7) of this Section 11, no increase in Basic Rent and no increase or decrease in the amounts of Stipulated Loss Value and Termination Value shall be made pursuant to said paragraphs with respect to any Owner Participant if the unavailability, disallowance or loss of all or any portion of the tax benefits referred to therein is the direct and sole result of the occurrence of any of the following events:

(i) such Owner Participant shall fail to have sufficient liability for tax or sufficient taxable income;

(ii) a voluntary transfer by the Lessor of title to any Item of Equipment (except as contemplated by the terms of this Lease) or a voluntary transfer by such Owner Participant of all or part of its respective interest in the Trust Estate to anyone if such transfer shall both (A) occur at any time while this Lease is in effect and no Event of Default shall have occurred and be continuing under this Lease and (B) not be requested or consented to by the Lessee;

(iii) the failure of such Owner Participant to claim such tax benefits in its income tax returns for the appropriate year or to follow the proper procedure in claiming such tax benefits in such tax returns for such year; or

(iv) the filing of a consent by such Owner Participant pursuant to Sections 108 and 1017 of the Code other than in the exercise of its remedies during the continuance of an Event of Default under this Lease.

(7) If any Owner Participant shall not be allowed, or lose the benefit of, all or any portion of the tax benefits referred to or specified in clauses (i) through (vii) of paragraph (b)(1) of this Section 11 under circumstances which shall have required an increase in Basic Rent and an increase or decrease in the amounts of Stipulated Loss Value and Termination Value for any Item of Equipment pursuant to paragraph (b)(2) or paragraph (b)(3) of this Section 11 and if at any time or from time to time

thereafter such Owner Participant shall be allowed and shall have the benefit of all or any portion of the tax benefit the disallowance or loss of which gave rise to such increase in Basic Rent and in the amounts of Stipulated Loss Value and Termination Value, then, in each such case, the Basic Rent payable for each Item of Equipment during the Original Term for each Item of Equipment shall be decreased and the amounts of Stipulated Loss Value and Termination Value during the Original Term for each Item of Equipment shall be increased or decreased, by such amount as shall be required in order that, after giving effect to such additional tax benefits, the after-tax yield of such Owner Participant in respect of the Overall Transaction (as computed by Citicorp Leasing, Inc. in accordance with the same method and assumptions used by it in computing the original Basic Rent specified in Schedule I and each of the Stipulated Loss Value and Termination Value percentages specified in each Schedule II and each Schedule III hereof), measured, in the case of each Item of Equipment, from the Closing Date to the end of the Original Term for such Item of Equipment, shall be the same as such after-tax yield would have been if such additional tax benefit had not been allowed and of benefit to such Owner Participant. For purposes of determining whether any Owner Participant shall be allowed and shall have the benefit of all or any portion of any additional tax benefit referred to in this paragraph (b)(7), all tax benefits in respect of all transactions other than the Overall Transaction shall be deemed to be allowed before any such additional tax benefit is allowed. Any decrease in the Basic Rent and any increase or decrease in the amounts of Stipulated Loss Value and Termination Value as the result of this paragraph (b)(7) shall not exceed the increase in Basic Rent and the increase or decrease in the amounts of Stipulated Loss Value and Termination Value pursuant to paragraph (b)(2) or paragraph (b)(3) of this Section 11 in respect of the original disallowance or loss of such tax benefit. If in any year subsequent to the year in which any decrease in Basic Rent and any increase or decrease in the amounts of Stipulated Loss Value and Termination Value pursuant to this paragraph (b)(7), all or any portion of the additional tax benefit which shall have required such increase or decrease shall be lost or if the allowance to such Owner Participant of such additional tax benefits results in the loss or unavailability of any other tax benefits which would have been allowed to such Owner Participant but for the allowance of such additional tax benefits, such loss or unavailability shall be governed by paragraph (b)(3) of this Section 11.

(8) Irrespective of the terms of paragraphs (b)(2), (b)(3) and (b)(7) of this Section 11, no decrease in Basic Rent or in the amounts of Stipulated Loss Value and Termination Value shall become effective to the extent that (i) such decrease would cause the amount of the investments made by the Owner Participants in the beneficial ownership of the Items of Equipment pursuant to Section 3(n) of the Participation Agreement to be more than the amount by which (A) the sum of the aggregate Basic Rent payable under this Lease for all Items of Equipment during their respective Original Terms and the aggregate amount of the investment credit allowed for the Items of Equipment exceeds (B) the sum of the aggregate original principal amounts of the Loan Certificates and all interest accrued and to accrue on the aggregate unpaid principal amounts of the Loan Certificates from the date of issuance thereof to the stated maturity thereof (assuming that the instalment payments due and payable thereon were paid on the due date thereof); or (ii) a default or an Event of Default shall have occurred and be continuing under this Lease.

(c) *Contests.* In the event a claim shall be made which, if successful, would result (i) in the payment of or indemnity for any Fees, Taxes and Other Charges by the Lessee pursuant to paragraph (a) of this Section 11 or (ii) in an increase in Basic Rent or in the amounts of Stipulated Loss Value and Termination Value pursuant to paragraph (b)(3) of this Section 11, the appropriate Indemnified Party shall, if the amount of (A) such Fees, Taxes and Other Charges or (B) the amount of Basic Rent to be paid on the Adjustment Date with respect to such increase and the aggregate amount of the increase in Basic Rent to be payable by the Lessee over the balance of the Original Terms with respect to such increase discounted to such Adjustment Date quarterly on the Rental Payment Dates at a rate of 10% per annum, as the case may be, exceeds $1,000,000, take such action in connection with contesting such claim as the Lessee shall reasonably request in writing from time to time, *provided, however,* that (w) within 30 days after notice by such Indemnified Party to the Lessee of such claim, the Lessee shall request that such claim be contested; (x) such Indemnified Party, at its sole option, may forego any and all administrative or judicial appeals,

proceedings, hearings and conferences in respect of such claim and may, at its sole option, contest the claim in any permissible forum considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to preceed; (y) prior to taking such action, the Lessee shall have furnished such Indemnified Party with an opinion of independent tax counsel acceptable to such Indemnified Party to the effect that a meritorious defense exists to such claim; and (z) the Lessee shall have indemnified such Indemnified Party in a manner satisfactory to it for any liability or loss which such Indemnified Party may incur as the result of contesting such claim and shall have agreed to pay such Indemnified Party on demand all costs and expenses which such Indemnified Party may incur in contesting such claim, including, without limitation, reasonable attorneys', accountants' and investigatory fees and disbursements and the amount of any interest or penalty which may ultimately be payable as a result of contesting such claim. In the event that such Indemnified Party shall elect to contest such claim by paying the tax deficiency asserted and then seeking a refund thereof, such Indemnified Party shall notify the Lessee of such election and the Lessee shall pay to such Indemnified Party as interest an amount equal to 10.75% per annum on the amount of such tax deficiency paid by such Indemnified Party for the period commencing on the date such tax deficiency is paid to the date of final determination of the refund proceeding, such amounts to be payable on the Rental Payment Dates occurring during such period. Upon the receipt by such Indemnified Party of a refund of any tax deficiency in respect of which the Lessee has paid an amount equal to interest at the rate of 10.75% per annum while such tax deficiency was contested, such Indemnified Party shall pay to the Lessee any interest on such refund paid to such Indemnified Party for the period interest was paid by the Lessee to such Indemnified Party. The Lessee shall be notified of any conference, hearing or proceeding relating to any such claim, shall be provided with any relevant information and shall be provided the opportunity to submit briefs and memoranda of law relating thereto. If any such claim referred to in this paragraph (c) shall be made and the Lessee shall have reasonably requested such Indemnified Party to contest such claim as above provided and shall have duly complied with all of the terms of this paragraph (c), the Lessee's liability with respect to such claim shall become fixed upon final determination of such claim but in all other cases the liability of the Lessee shall become fixed and determinable at the time specified in paragraph (a) and in paragraph (b)(4) of this Section 11, as the case may be.

(d) *Refunds.* If any Indemnified Party shall obtain a refund of all or any part of any Fees, Taxes and Other Charges payment of or indemnity for which shall have been made by the Lessee pursuant to paragraph (a) of this Section 11, such Indemnified Party shall promptly pay to the Lessee the amount of such refund plus all tax benefits realized by such Indemnified Party as the result of such payment provided that no Event of Default shall have occurred and be continuing under this Lease. In the event that any Owner Participant shall obtain a refund in respect of any disallowance or loss of tax benefits which shall have resulted in an increase in Basic Rent and an increase or decrease in the amounts of Stipulated Loss Value and Termination Value pursuant to paragraph (b)(2) or paragraph (b)(3) of this Section 11, such refund shall be treated as an additional tax benefit realized by such Owner Participant and shall be governed by the provisions of paragraph (b)(7) of this Section 11 except that the second sentence thereof shall not be applicable.

(e) *Affiliated Group.* For purposes of this Section 11 (exclusive of clause (z) of paragraph (a)(2)(i)), the term "Owner Participant" shall mean and include the affiliated group of corporations making a consolidated return of which such Owner Participant is a member. For purposes of clause (z) of paragraph (a)(2)(i) of this Section 11, the term "Participant" shall have the meaning specified in Section 1 hereof.

(f) *Survival.* The obligations of the Lessee under this Section 11 shall survive the termination of this Lease and are expressly made for the benefit of, and shall be enforceable by, the Lessor and any Indemnified Party, separately or together, without declaring this Lease in default and notwithstanding any assignment by the Lessor of this Lease or any of its rights hereunder or any disposition by any Owner Participant of all or any part of its respective interest in the Trust Estate. The extension of any applicable

statute of limitations by any Indemnified Party or the Lessee shall not affect the survival of the Lessee's or any Indemnified Party's obligations, as the case may be, under this Section 11. The obligations of the Indemnified Parties shall survive the termination of this Lease.

(g) *Adjustment of Stipulated Loss Values and Termination Values.* The Stipulated Loss Value and Termination Value percentages specified in each Schedule II and each Schedule III hereof with respect to each Item of Equipment for the first 27 Rental Payment Dates have been computed by Citicorp Leasing, Inc. on the basis that upon the occurrence of an Event of Loss with respect to any Item of Equipment or upon the termination of this Lease pursuant to Section 14 with respect to any Item of Equipment the investment credit allowed by Section 38 of the Code with respect to such Item of Equipment will be recaptured and, therefore, have included therein an amount which, after deduction of all Fees, Taxes and/or Other Charges required to be paid in respect of the receipt of such amount, shall be equal to the amount of investment credit anticipated to be recaptured. In the event that upon the occurrence of an Event of Loss with respect to any Item of Equipment or upon the termination of this Lease pursuant to Section 14 with respect to any Item of Equipment, the amount of Stipulated Loss Value or Termination Value, as the case may be, required to be paid by the Lessee in respect of such Event of Loss or termination shall include an amount which represents reimbursement for the recapture of investment credit which is less than or greater than the amount required, and to which the Owner Participants are entitled, to reimburse the Owner Participants in full on an after-tax basis for such recapture, for any reason whatsoever, including without limitation, (i) the investment credit with respect to such Item of Equipment shall have been previously recaptured and the Lessor shall not have been entitled to increase the Basic Rent and increase or decrease the amounts of Stipulated Loss Value and Termination Value in respect of such recapture, (ii) such Event of Loss or termination shall not result in recapture of the investment credit, (iii) a change in law, including a change in or modification of Sections 38, 46-50 of the Code or (iv) an error in the original calculation of the Stipulated Loss Value or Termination Value percentages specified in any Schedule II or any Schedule III hereof, or in making any increase or decrease therein pursuant to paragraph (b)(2), (b)(3) or (b)(7) of this Section 11, then to the extent that such amount is less than the amount required, and to which the Owner Participants are entitled, to reimburse the Owner Participants in full for the recapture, if any, of the investment credit with respect to such Items of Equipment, the Lessee shall pay to the Lessor the amount of such deficiency and, to the extent that such amount includes an amount which is greater than the amount required to reimburse the Owner Participants in full for the recapture, if any, of the investment credit with respect to such Items of Equipment, the amount of Stipulated Loss Value or Termination Value, as the case may be, shall be reduced by such excess or, if the Stipulated Loss Value or Termination Value shall have already been paid, the Lessor shall pay to the Lessee the amount of such excess.

(h) *Investment Credit Election.* The Lessee shall have the right, by giving written notice to the Lessor not less than 180 days prior to the first day of the Applicable Quarter, to require that the Lessor make an election under Section 48(d) of the Code to treat the Lessee as having acquired all, but not less than all, the Equipment leased under this Lease for purposes of any investment credit allowable with respect thereto under Section 38 of the Code. In the event that the Lessee shall have exercised its right under this paragraph (h), (i) the Basic Rent payable for each Item of Equipment during the Original Term for each Item of Equipment and the amounts of Stipulated Loss Value and Termination Value for each Item of Equipment during the Original Term for each Item of Equipment shall be increased or decreased at the time and in the manner provided in paragraph (b)(2) of this Section 11 and (ii) the Lessor shall, if requested by the Lessee, furnish or cause to be furnished to the Lessee all statements and make or cause to be made all filings, as are required to be furnished or made by the Lessor or the Owner Participants to effect the election under Section 48(d) of the Code in accordance with the provision of said Section and the Treasury Regulations promulgated thereunder.

SECTION 12. *Events of Default.* The following events shall constitute Events of Default (whether any such event 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 Termination Value or Stipulated Loss Value when due or shall fail to make any payment of Basic Rent within 10 days after the same shall have become due; or

(b) the Lessee shall fail to maintain insurance as required in Section 9 hereof; or

(c) an Event of Default (as defined therein) shall have occurred and be continuing under any of the Other Leases; or

(d) except as otherwise provided in Section 2(e) hereof, any representation or warranty of the Lessee or the Lease Guarantor, or any officer thereof, made herein, in the Participation Agreement, in any of the other Operative Documents (as defined in the Participation Agreement) or in any agreement, document or certificate executed or delivered by the Lessee or the Lease Guarantor or any officer thereof in connection herewith or therewith or pursuant hereto or thereto shall prove to be incorrect in any material respect as of the date made and such condition shall continue unremedied for a period of 30 days after written notice thereof by the Lessor or the Indenture Trustee to the Lessee and the Lease Guarantor; or

(e) a default or an event of default under any mortgage, indenture of trust, purchase contract or other agreement evidencing the indebtedness of the Lessee or the Lease Guarantor, as the case may be, for borrowed money or deferred purchase prices or pursuant to which such indebtedness is issued, or under any lease of real or personal property under which the Lessee or the Lease Guarantor is lessee, shall have occurred, the effect of which is to cause (or permit any holder of such indebtedness, or a trustee or agent on its behalf, to cause) such indebtedness to become or to be declared payable before it would otherwise have become payable, or the effect of which is to cause (or permit any lessor under such lease to cause) such lease to be in default, and if the aggregate of the indebtedness so becoming or declared or so permitted to become or permitted to be declared to be payable and the rentals under the leases so declared or so permitted to be declared to be in default exceeds (i) in the case of the Lessee, $500,000 in the aggregate or (ii) in the case of the Lease Guarantor, $10,000,000 in the aggregate, *provided* that the Lessor or the Indenture Trustee shall have given written notice to the Lessee and the Lease Guarantor that such condition constitutes an Event of Default; or

(f) the Lessee or the Lease Guarantor shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder or under the Participation Agreement, the Easement Agreement, the Lease Assignment, the Interest Guaranty or the Lease Guaranty or any other instrument pursuant to which the Lessee or the Lease Guarantor undertakes obligations or makes agreements for the benefit of the Lessor, the Indenture Trustee or any Participant, and such failure shall continue unremedied for a period of 30 days after written notice thereof by the Lessor or the Indenture Trustee to the Lessee and the Lease Guarantor; or

(g) any material obligation of the Lessee or the Lease Guarantor under this Lease, the Lease Guaranty, the Interest Guaranty, the Lease Assignment, the Easement Agreement or the Participation Agreement shall cease to be valid and enforceable (except as expressly permitted by such agreement or instrument and by the Indenture) or the Lessee or the Lease Guarantor shall so claim in writing, and the effect thereof shall not have been remedied for a period of 30 days after written notice thereof by the Lessor or the Indenture Trustee to the Lessee and the Lease Guarantor; or

(h) the Lessee or the Lease Guarantor shall consent to the appointment of a receiver, trustee or liquidator (or other similar official) of itself or of a substantial part of its property, or the Lessee or the Lease Guarantor shall admit in writing its inability to pay its debts generally as they become due, or shall make a general assignment for the benefit of creditors; or

(i) the Lessee or the Lease Guarantor shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws (as now or

hereafter in effect) or an answer admitting the material allegations of a petition filed against the Lessee or the Lease Guarantor in any such proceeding, or the Lessee or the Lease Guarantor shall by voluntary petition, answer or consent seek relief under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors or shall take any corporate action in furtherance of any of the foregoing; or

(j) an order, judgment or decree shall be entered in any proceeding by any court of competent jurisdiction appointing a receiver, trustee or liquidator (or other similar official) of the Lessee or the Lease Guarantor or of any substantial part of its property, or sequestering any substantial part of the property of the Lessee or the Lease Guarantor, and any such order, judgment or decree of appointment or sequestration shall remain in force undismissed, unstayed or unvacated for a period of 90 days after the date of entry thereof; or

(k) a petition against the Lessee or the Lease Guarantor in a proceeding under the federal bankruptcy laws or other insolvency laws as now or hereafter in effect, shall be filed and shall not be withdrawn or dismissed within 90 days thereafter, or if, under the provisions of any law providing for reorganization or winding-up of corporations which may apply to the Lessee or the Lease Guarantor, any court of competent jurisdiction shall assume jurisdiction, custody or control of the Lessee or the Lease Guarantor or of any substantial part of their respective properties and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 60 days; or

(l) final judgment for the payment of money in excess of $100,000 shall be rendered against the Lessee or the Lease Guarantor and the same shall remain undischarged for a period of 60 days during which execution of such judgment shall not be effectively stayed; or

(m) the Lessee shall make or permit any unauthorized assignment or transfer of its rights under this Lease or any unauthorized transfer of possession of the Equipment or any Item or Items, and any such condition shall continue unremedied for a period of 30 days after written notice thereof by the Lessor or the Indenture Trustee to the Lessee and the Lease Guarantor; or

(n) the interest of the Lessor or the Lessee in the Equipment or any Item or Items, the interest of the Lessor in and to this Lease and the Rents payable hereunder, or the interest of the Lessee in any sublease thereof, shall be subject to any Lessor's Liens or any Lien not permitted by Section 5(a) hereof unless such Lien is the subject of a Permitted Contest or is bonded, or, the Lessor shall at any time not be the legal owner of, or not hold lawful title to, the Equipment or any Item or Items which have not been released from the lien of the Indenture as permitted thereby, or if the Indenture shall not constitute a valid first Lien on the Indenture Estate subject only to Liens permitted by Section 5(a) hereof other than Lessor's Liens, and any such condition shall continue unremedied for a period of 30 days after written notice thereof by the Lessor or the Indenture Trustee to the Lessee and the Lease Guarantor.

It is agreed that performance by the Lease Guarantor on behalf of the Lessee of any of the Lessee's obligations under this Lease or any other of the Operative Documents shall be deemed performance by the Lessee of such obligations for the purposes of this Lease and, in such event, no default or Event of Default shall be deemed to have occurred by reason of any failure on the part of the Lessee to perform such obligations.

SECTION 13. *Remedies.* Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, the Lessor or the Indenture Trustee may, at its option, declare this Lease to be in default by giving written notice to the other and to the Lessee and the Lease Guarantor; and at any time thereafter, so long as the Lessee shall not have remedied all outstanding Events of Default, the

Lessor may do one or more of the following with respect to any or all Items of Equipment as the Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, applicable law then in effect:

(a) demand that the Lessee, and the Lessee shall upon written demand of the Lessor and at the Lessee's expense, return promptly the Items of Equipment specified in such demand to the Lessor in the manner and condition required by, and otherwise in accordance with all the provisions of, Section 4 hereof as if the Items of Equipment specified in such demand were being returned at the end of their Term; or the Lessor, at its option, may enter upon the premises where the Equipment or any Item thereof is located and take immediate possession of and remove the same by summary proceedings or otherwise, all regardless of the manner in which any Item of Equipment may be attached or connected to any real property and regardless of any damages that might occur in the removal of any Item, and all without liability to the Lessor for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise;

(b) sell any Item of Equipment at public or private sale, as the Lessor may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle any Item of Equipment, as the Lessor in its sole discretion may determine, all free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds with respect thereto except to the extent required by Section 13(d) hereof in the event the Lessor elects to exercise its rights under Section 13(d) hereof in lieu of its rights under Section 13(c) hereof; subject to the foregoing, the Lessee may seek to obtain bids for the purchase of any Item of Equipment at public or private sale or to arrange for the sale of any Item of Equipment in any other manner or the lease thereof to others (whether for a period greater or less than the balance of what would have been the Term of any such Item of Equipment), but the Lessor shall have no obligation to accept any such bids obtained by the Lessee and shall have no liability for its failure to do so;

(c) whether or not the Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under Section 13 (a) or (b) hereof, the Lessor, by written notice to the Lessee and the Lease Guarantor designating a payment date (herein called the "Designated Payment Date") which shall be a Rental Payment Date not earlier than 10 days from the date of such notice, may with respect to any Item or Items of Equipment specified in such notice, demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the Designated Payment Date, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent for such Item or Items of Equipment due for all Lease Periods beginning on and after the Designated Payment Date), any unpaid Basic Rent for such Item or Items of Equipment due for periods prior to the Designated Payment Date (including Basic Rent due on such date) plus whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice (together with interest on such amount at the Overdue Interest Rate from the Designated Payment Date to the date of actual payment): (i) an amount equal to the excess, if any, of the Stipulated Loss Value for such Item or Items of Equipment, computed as of the Designated Payment Date, over the fair market rental value (computed as hereafter in this Section 13 provided) of such Item or Items of Equipment for the remainder of the Term after discounting such fair market rental value quarter-annually (effective on the Rental Payment Dates) to present worth as of the Designated Payment Date at the Overdue Interest Rate on the Designated Payment Date; or (ii) an amount equal to the excess, if any, of the Stipulated Loss Value for such Item or Items of Equipment as of the Designated Payment Date over the fair market sales value of such Item or Items of Equipment (computed as hereafter in this Section 13 provided) as of such date;

(d) in the event the Lessor, pursuant to Section 13 (b) hereof, shall have sold any Item or Items of Equipment, the Lessor, in lieu of exercising its rights under Section 13 (c) hereof with respect to such Item or Items, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent for such Item or Items due for all Lease Periods beginning on and after the Rental Payment Date next following the date on which such sale occurs), any unpaid Basic Rent for such Items due for periods up to and including the Lease Period during which such sale occurs plus the

amount of any deficiency between the net proceeds of such sale and the Stipulated Loss Value of such Item or Items, computed as of the Rental Payment Date next succeeding the date on which such sale occurs, together with interest at the Overdue Interest Rate on the amount of such deficiency from such Rental Payment Date until the date of actual payment; and/or

(e) the Lessor may exercise any other right or remedy which may be available to it under applicable law or proceed by appropriate court action to enforce the provisions hereof or to recover damages for the breach hereof or to rescind or terminate this Lease.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before or during the exercise of any of the foregoing remedies and for all reasonable legal fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including costs and expenses incurred in connection with the return of any Item of Equipment in accordance with the terms of Section 4 hereof or in placing any Item of Equipment in the condition as required by such Section. For the purpose of Section 13(c) hereof, the "fair market rental value" or the "fair market sales value" of an Item of Equipment shall be determined by the appraisal procedure described in Section 15(c) hereof. At any sale of any Item of Equipment pursuant to this Section 13, the Lessor, the Indenture Trustee or any Participant may bid for and purchase such property. Except as otherwise expressly provided above, no remedy referred to in this Section 13 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; and the exercise or beginning of exercise by the Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by the Lessor of any of or all such other remedies. No express or implied waiver by the Lessor and the Indenture Trustee of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default. To the extent permitted by applicable law, the Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require the Lessor to sell, lease or otherwise use any Item of Equipment in mitigation of the Lessor's damages as set forth in this Section 13 or which may otherwise limit or modify any of the Lessor's rights or remedies under this Section 13 except as otherwise specifically set forth therein.

SECTION 14. *Early Termination.*

(a) *Termination for Obsolescence.* So long as a default or an Event of Default shall not have occurred and be continuing, the Lessee shall have the right to terminate this Lease with respect to any Item of Equipment which in the good faith opinion of the Lessee is obsolescent or no longer useful in the business of the Lessee on any Rental Payment Date which is on or after the sixth anniversary of the Closing Date in the case of Class A Items of Equipment and which is on or after the seventh anniversary of the Closing Date in case of Class B and C Items of Equipment and which is on or after the tenth anniversary of the Closing Date in the case of Class D Items of Equipment. To exercise this right of termination the Lessee shall give the Lessor at least 90 days' prior written notice specifying the Item of Equipment as to which this Lease is to be terminated and the Rental Payment Date on which the termination is to occur (the "Termination Date").

During the period from the giving of such notice until the Termination Date, the Lessee, as agent for the Lessor, shall use its best efforts to, and any Owner Participant may, obtain bids for the purchase of such Item of Equipment. The Lessee shall, and such Owner Participant may, certify to the Lessor in writing the amount of each bid received and the name and address of the party (who shall not be the Lessee or any person that controls, is controlled by or is under common control with the Lessee but who may be a Participant) submitting such bid. On the Termination Date the Lessor shall, without recourse, representation or warranty whatsoever except as to the non-existence of Lessor's Liens, sell such Item of Equipment for cash to whomsoever shall have submitted the highest bid prior to such date, and thereupon the Lessee shall deliver such Item of Equipment to the Lessor in accordance with the terms of Section 4 hereof, *provided, however,* that if in respect of any Item of Equipment no acceptable bid is received for an amount greater than its Termination Value, the Lessee may instruct the Lessor at least 15 days prior to the

Termination Date to reject all bids for such Item of Equipment and the Lessor shall do so. If no sale of such Item of Equipment takes place on the Termination Date, the Lessee shall not deliver such Item of Equipment to the Lessor and this Lease shall continue in full force and effect as to such Item of Equipment.

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 sum of (w) the excess, if any, of (i) the Termination Value for such Item of Equipment computed as of the Termination Date over (ii) the proceeds of such sale less all expenses incurred by the Lessor in connection with such sale and with the collection or distribution of such payment, (x) the premium, if any, payable on the Equipment Trust Certificates (and to be credited upon the Loan Certificates) required pursuant to the Indenture to be redeemed in connection with such termination, (y) all other Rent with respect to such Item of Equipment due on or prior to the Termination Date (including the installment of Basic Rent due on such date) and (z) any reimbursement for Fees, Taxes and Other Charges required by Section 11 hereof. In the event of such sale and upon compliance by the Lessee with the provisions of this Section 14(a), the obligation of the Lessee to pay all Basic Rent hereunder with respect to such Item of Equipment in respect of Lease Periods after the Termination Date shall cease and the Term for such Item of Equipment shall end effective as of the Termination Date. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action in connection with any such sale other than as expressly provided in this Section 14(a).

(b) *Purchase Option on Indemnity Payments.* (1) So long as a default or an Event of Default shall not have occurred and be continuing, the Lessee shall have the right during a Purchase Notice Period (as defined in Section 14(b)(2) hereof) to elect to purchase all, but not less than all, the Equipment leased under this Lease and the equipment leased under all Other Leases. To exercise such right the Lessee shall give during such Purchase Notice Period to the Lessor and to each of the Other Lessors written notice specifying a Rental Payment Date not less than 30 nor more than 130 days after the date of such notice on which the purchase is to occur (herein called the "Purchase Date").

On the Purchase Date, the Lessee will pay to the Lessor the greater of (A) the fair market value of each Item of Equipment or (B) the sum of (i) the Stipulated Loss Value of each Item of Equipment computed as of the Purchase Date and the following additional amounts of Rent, (ii) the premium, if any, payable on the Equipment Trust Certificates (and to be credited upon the Loan Certificates) required pursuant to the Indenture to be redeemed in connection with such purchase, (iii) all other Rent with respect to each Item of Equipment due on or prior to the Purchase Date (including the installment of Basic Rent due on such date), and (iv) any reimbursement for Fees, Taxes and Other Charges required by Section 11 hereof, and the Lessor will convey to the Lessee, without recourse, representation or warranty whatsoever except with respect to the non-existence of Lessor's Liens, all of the Lessor's right, title and interest in and to the Items of Equipment.

Upon compliance by the Lessee with this Section 14(b), the obligation of the Lessee to pay Basic Rent hereunder for all Lease Periods after the Purchase Date shall cease and the Term for each Item of Equipment shall end effective as of the Purchase Date. The Lessor shall not be required to sell Items of Equipment unless on the Purchase Date it receives in cash the full amount payable pursuant hereto. If no sale takes place, this Lease will continue in full force and effect.

(2) As used in this Section 14(b) the following terms have the meaning indicated:

"Indemnifiable Event" means (i) any event or circumstance which would permit the Lessor at its option to increase the Basic Rent under this Lease or the lessor under any Other Lease to increase the basic rent under such Other Lease, pursuant to Section 11 (b)(2) or (b)(3) of this Lease or such Other Lease, and (ii) the Lessor or such Other Lessor, as the case may be, shall have either (A) elected to increase such rent or (B) failed for a period of 60 days after notice by the Lessee describing such event or circumstance, to waive its option to increase such rent as a result of such event or circumstance, *provided, however,* that any option by the Lessor to increase Basic Rent as a result of the

incorrectness of any representation or warranty at the time when made by the Lessee pursuant to Section 2(d) hereof or Section 2 of Lease Supplement No. 1 shall not be an Indemnifiable Event.

"Purchase Notice Period" means the 60-day period following an Indemnifiable Event if the total amount paid and reasonably anticipated to be paid (after discounting quarter-annually amounts reasonably anticipated to be paid in respect of future periods to present value at the rate of 10% per annum) as a result of such Indemnifiable Event and all previous Indemnifiable Events as Basic Rent under this Lease and basic rent under all Other Leases (after deducting any reduction in the payment of Basic Rent incurred or reasonably anticipated to be incurred [in the case of reductions in respect of future periods discounted as aforesaid] as a result of Section 11(b)(2) and (b)(7) of this Lease and the Other Leases) shall exceed $1,300,000; *provided, however,* that if the Lessor or the Lessee shall in good faith be in doubt whether the $1,300,000 figure has been exceeded and shall give prompt notice to the other, the Purchase Notice Period shall be the 60-day period following the date on which Citicorp Leasing, Inc. shall have delivered to the Lessee and the Lessor its results indicating that the $1,300,000 figure has been exceeded.

(c) *Purchase Option for Changes in Law.* In the event that (i) on the Closing Date a bill shall have been pending before the Congress of the United States for the amendment, modification, addition or change in or to any law or regulation and any Owner Participant shall have determined, such determination to have been evidenced by written notice given by such Owner Participant to the Lessee on or prior to the Closing Date, that the effect of such amendment, modification or change would be likely to preclude any Owner Participant from being entitled to the tax treatment contemplated by the specific rulings set forth in paragraphs 1, 2, 11 and 12 of the Ruling Letter, and (ii) at any time during the Original Term for any Item of Equipment, such bill shall be enacted into law and have the effect of precluding any Owner Participant from being entitled to the tax treatment contemplated by the specific rulings set forth in the paragraphs referred to in clause (i) of this paragraph (c), the Lessee shall have the right, with the prior written consent of the Indenture Trustee, to purchase all, but not less than all, the Equipment leased under this Lease on a Rental Payment Date occurring not less than 30 days nor more than 130 days after the date on which the Lessor or any Owner Participant shall have given written notice to the Lessee of the enactment and effect of such law (the "Purchase Date").

On the Purchase Date, the Lessee will pay to the Lessor the greater of (A) the fair market value of each Item of Equipment, or (B) the sum of (i) the Stipulated Loss Value of each Item of Equipment computed as of the Purchase Date and the following additional amounts of Rent, (ii) the premium, if any, payable on the Equipment Trust Certificates (to be credited upon the Loan Certificates) required to be redeemed in connection with such purchase, (iii) all other Rent with respect to each Item of Equipment due on or prior to the Purchase Date (including the installment of Basic Rent due on such date), (iv) any reimbursement for Fees, Taxes and Other Charges required by Section 11 hereof, and (v) such amount as shall be required in order that, after giving effect to the enactment of such law, the after-tax yield to the Owner Participants in respect of the Overall Transaction (as computed by Citicorp Leasing, Inc. in accordance with the same method and assumptions used by it in computing each of the Stipulated Loss Value and Termination Value percentages specified in each Schedule II and each Schedule III hereto), measured, in the case of each Item of Equipment, from the Closing Date to the end of the Original Term for such Item of Equipment, shall be the same as such after-tax yield would have been if such law had not been enacted and the Lessor will convey to the Lessee, without recourse, representation or warranty whatsoever, except with respect to the non-existence of Lessor's Liens, all of the Lessor's right, title and interest in and to the Items of Equipment.

Upon compliance by the Lessee with this Section 14(c), the obligations of the Lessee to pay Basic Rent hereunder for all Lease Periods after the Purchase Date shall cease and the Term for each Item of Equipment shall end effective as of the Purchase Date. The Lessor shall not be required to sell Items of Equipment unless on the Purchase Date it receives in cash the full amount payable pursuant hereto.

SECTION 15. *Renewal Option.*

(a) *Right to Renew.* Subject to the restrictions contained in Section 15(b) hereof, the Lessee may, by giving not less than 365 days' prior written notice to the Lessor, elect to renew this Lease in respect of any Item of Equipment at the end of its Original Term or any Renewal Term for the period specified in such notice. The terms and conditions provided for herein shall continue to apply during such Renewal Term except that Basic Rent shall be equal to the fair market rental value of such Item of Equipment at the date of renewal and the Stipulated Loss Value and Termination Value of such Item of Equipment on the first day of the Renewal Term shall be equal to its fair market sales value on such date and thereafter such values shall be reduced on a straight line basis on each Rental Payment Date over the estimated remaining useful life of such Item of Equipment; *provided, however,* that in no case shall such values be less than 5% of the Capitalized Cost of such Item of Equipment. If requested by the Lessor, the Lessee agrees that it will promptly enter into a separate lease agreement in respect of such Item of Equipment containing substantially the terms and conditions which would be applicable hereunder during the Renewal Term; *provided, however,* that so long as such Item of Equipment shall be subject to the lien of the Indenture, the Lessor and the Lessee shall not enter into such separate Lease Agreement without the prior written consent of the Indenture Trustee.

(b) *Restrictions on Renewal.* The Lessee may not exercise its right to renew:

(i) for a period of less than one year;

(ii) for a period that does not end on a Rental Payment Date;

(iii) with respect to any Item of Equipment for a period that extends beyond the estimated remaining useful life of such Item of Equipment;

(iv) for a period which extends beyond October 15, 2013; or

(v) at a time when a default or an Event of Default shall have occurred and be continuing.

(c) *Appraisal.* For the purposes of this Section 15 and Section 13 hereof the "fair market rental value", "fair market sales value" and "estimated remaining useful life" of an Item of Equipment shall be determined by the following procedure: Each party shall select an independent appraiser within 15 Business Days of the date on which either party has requested the other party to appoint an appraiser. If one party shall fail to appoint an appraiser within the required time, the decision of the appraiser appointed by the other party shall be final. If two appraisers are appointed, they shall confer and agree upon "fair market rental value", "fair market sales value" and "estimated remaining useful life". If they do not so agree within 30 Business Days after the latter of them is appointed, then such two appraisers shall within 10 Business Days after such thirtieth Business Day agree upon a third independent appraiser who shall independently determine "fair market rental value", "fair market sales value" and "estimated remaining useful life" within 30 Business Days of his acceptance of his appointment, and his determination shall be final. If such two appraisers do not agree upon such third appraiser within the time prescribed then either party may within 10 Business Days thereafter request the American Arbitration Association to appoint such a third appraiser within 30 Business Days after such request is made. If no such appraiser shall have been appointed within 30 Business Days of such request to the American Arbitration Association, either party may apply to any court having jurisdiction to make such appointment. Any appraiser appointed pursuant to the foregoing procedure shall be instructed to determine, within 30 Business Days after his appointment, the "fair market rental value", "fair market sales value", and "estimated remaining useful life" of any Item or Items of Equipment, and his determination thereof shall be final. The "fair market rental value", "fair market sales value" and "estimated remaining useful life" of any Item of Equipment shall be determined upon the assumption that such Item of Equipment shall have been maintained in accordance with the provisions hereof. If the appraisal shall not be completed by the termination or other expiration of the Term of the relevant Item of Equipment, such Term shall be extended until the appraisal shall have been completed and the Lessee shall compensate the Lessor for the

use of any such Item of Equipment at a rate equal to the Basic Rent hereunder during the Original Term if there has been no Renewal Term or, if there has been any Renewal Term, during the last Renewal Term. All expenses and costs relating to the appraisal procedure shall be borne by the Lessee.

SECTION 16. *No Set-off or Counterclaim.* This Lease is a net lease and the Lessee's obligation to pay all Rent payable hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any set-off, counterclaim, recoupment, deduction, abatement, suspension, diminution, reduction, defense (other than the payment of Rent in accordance with the terms hereof) or other right which the Lessee may have against the Lessor, any Participant, the Indenture Trustee, any Manufacturer or anyone else for any reason whatsoever, (ii) any defect in the title, condition, design, operation, or fitness for use of, or any damage to or loss or destruction of, any Item of Equipment, or any interruption or cessation in the use or possession thereof by the Lessee or for any reason whatsoever, or the existence of any Liens with respect thereto, (iii) any insolvency, bankruptcy, reorganization or similar proceedings by or against the Lessee or the Lessor, (iv) any default by the Lessor under this Lease or under any other instrument to which the Lessor and the Lessee may be parties, (v) except as expressly set forth herein, any change in tax or other laws of the United States, any state thereof, or any political subdivision of any of them, (vi) the invalidity or unenforceability of, or any other infirmity in, the Participation Agreement, this Lease, the Lease Assignment, the Lease Guaranty, the Interest Guaranty, the Easement Agreement, the Indenture or any other document, instrument or agreement or any lack of power of the Lessee, the Lease Guarantor or the Lessor to enter into any of the foregoing, or (vii) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, it being the intention of the parties hereto that the obligations of the Lessee shall be absolute and unconditional and shall be separate and independent covenants and agreements and shall continue unaffected unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision of this Lease. The Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. Except to the extent expressly provided to the contrary herein or in the Participation Agreement, each Rent payment made by the Lessee shall be final and the Lessee will not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

SECTION 17. *Subordination of Lease; No Merger.*

(a) *Subordination of Lease.* This Lease shall always be subject and subordinate to any and all security interests created in favor of the Indenture Trustee, *provided* that so long as no Event of Default shall be continuing, the Lessee shall not be disturbed in its possession, use, management, operation and quiet enjoyment of the Equipment or any Item or Items thereof or the exercise of any of its rights hereunder by virtue of any action taken with respect to any such security interests.

(b) *No Merger.* There shall be no merger of this Lease or of any leasehold interest hereby created with the title to or any other estate or interest in the Equipment or any Item or Items by reason of the fact that the same person may acquire or hold directly or indirectly this Lease or any leasehold interest or estate created hereby.

SECTION 18. *Inspection and Information.*

(a) *Inspection.* The Lessee agrees that the Lessor, each Participant, and/or the Indenture Trustee or their respective authorized representatives may, at their sole cost and expense, at all reasonable times, on reasonable prior notice and subject to all safety and operating regulations of the Lessee, inspect the Items of Equipment and the books and records of the Lessee relative thereto, but that neither the Lessor, the Participants nor the Indenture Trustee shall have any duty to make any such inspection or shall incur any liability by reason of not making same.

(b) *Information Concerning Equipment.* The Lessee shall promptly furnish the Lessor, any Participant, and/or the Indenture Trustee from time to time such information as any such party shall

reasonably request concerning the Items of Equipment including, without limitation, information concerning their condition, maintenance, use and location. To the extent that such information consists of information contained in or derivable from records kept (or which in accordance with good business practice should be kept) by the Lessee, it shall be furnished without cost to the person requesting the information. Otherwise, unless an Event of Default shall have occurred and be continuing, the person requesting the information shall compensate the Lessee for its reasonable costs in assembling such information.

(c) *Biannual Report.* Within the six months preceding April 30, 1978 and April 30 of each second year thereafter, the Lessee will at its own expense cause a physical inspection to be made of each Item of Equipment and will prepare and deliver, or cause to be prepared and delivered, to the Lessor and the Indenture Trustee a brief report concerning the manner of such inspection (including identification of the person or persons making it and the date or dates on which it was made and if it was not possible to inspect any Item of Equipment the reasons therefor), the condition of each such Item of Equipment, its location, the legibility of the marking required by Section 6(e) hereof and such further information as the Lessor, the Indenture Trustee or any Participant may reasonably request. The person or persons making such inspection shall be professional members of the engineering or accounting staff of the Lessee or of either of its shareholders, *provided* that at the request of the Lessor, the Indenture Trustee or any Participant, which request may not be made by any such person prior to November 30, 1979 or the end of the fourth year next following any such request, the person or persons making such inspection and preparing such report shall be independent engineers or independent public accountants of recognized standing.

SECTION 19. *Further Assurances.* The Lessee will promptly and duly execute and deliver to the Lessor such further documents and assurances and take such further action as the Lessor or the Indenture Trustee may from time to time reasonably request in order to carry out more effectively the intent and purpose of this Lease and to establish and protect the rights and remedies created or intended to be created in favor of the Lessor and the Indenture Trustee hereunder.

SECTION 20. *The Lessor's Right to Perform for the Lessee.*

(a) *Advances by the Lessor.* Subject to Section 18 of the Participation Agreement, if the Lessee fails to make any payment of Rent required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, the Lessor or the Indenture Trustee may, with notice to but without demand upon the Lessee and without waiving any default or Event of Default or releasing the Lessee from any obligation, itself make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the reasonable expenses of the Lessor and/or the Indenture Trustee incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Overdue Interest Rate, shall be deemed Supplemental Rent, payable by the Lessee upon demand.

(b) *The Lessor as Agent.* Without in any way limiting the obligations of the Lessee hereunder, the Lessee hereby irrevocably appoints the Lessor as its agent and attorney-in-fact, with full power and authority at any time at which the Lessee is obligated to deliver possession of the Equipment or any Item or Items to the Lessor, to demand and take possession of such Equipment or Item or Items in the name and on behalf of the Lessee from whomsoever shall be at the time in the possession thereof.

SECTION 21. *Liabilities of Trustee; Successor Trustee.*

(a) *Liabilities of Trustee.* It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Lessor, while in form purporting to be the representations, covenants, undertakings and agreements of First National Bank of Louisville are nevertheless each and every one of them, made and intended not as representations, covenants, undertakings and agreements of it in its individual corporate capacity or for the purpose or with the intention of binding it in its individual corporate capacity, but are made and intended for the purposes of binding only the trust created by the Trust Agreement and the Trust Estate; such trust is the Lessor

hereunder, and this Lease is executed and delivered by the Trustee not in its own right but solely in the exercise of the powers conferred upon it as such Trustee; and no liability or responsibility in its individual corporate capacity is assumed by nor shall at any time be asserted or enforceable against such corporation or any incorporator or any past, present or future subscriber to the capital stock of the Trustee, on account of this Lease or on account of any representation, covenant, undertaking or agreement of such corporation in this Lease contained, either expressed or implied, all such individual corporate liability, if any, being expressly waived and released by the Lessee herein and by all persons claiming by, through or under said Lessee; *excepting, however,* that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to the said trust and the Trust Estate for satisfaction of the same; *and excepting further, however,* that the Lessee or the Lease Guarantor may pursue against the First National Bank of Louisville, or any institution which shall be acting as a successor Trustee, in its individual capacity any claim for damages which have been sustained by the Lessee or the Lease Guarantor if, but only if, those damages have resulted solely from a breach by such Trustee of the Lessor's agreements set forth in Section 2(h) hereof, or solely from acts of wilful or fraudulent misconduct committed by such institution or any of its officers or employees. In no case whatsoever shall any Owner Participant be personally liable, on or for any loss in respect of, any of the representations, warranties, agreements or obligations of the Lessor hereunder.

(b) *Successor Trustee.* The Lessee agrees that in the case of the appointment of any successor Trustee pursuant to the terms of the Trust Agreement, such successor Trustee shall, upon written notice by such successor Trustee to the Lessee, succeed to all the rights, powers and titles of the Lessor hereunder and shall be deemed to be the Lessor and the owner of the Equipment for all purposes hereof, without the necessity of any consent or approval by the Lessee and without in any way altering the terms of this Lease or the Lessee's obligations and liabilities hereunder. One such appointment and designation of a successor Trustee shall not exhaust the right to appoint and designate further successor Trustees pursuant to the Trust Agreement, but such right may be exercised repeatedly as long as this Lease shall be in effect. As used in this Lease, the term "First National Bank of Louisville" shall be deemed to refer to any successor Trustee in its individual capacity.

SECTION 22. *Assignment.* Except to the extent permitted by Section 6(c) hereof, the Lessee will not, without the prior written consent of the Lessor and the Indenture Trustee, assign any of its rights hereunder or in the Equipment, sublet the Equipment or otherwise permit the Equipment to be operated or used by or in the possession of, anyone but the Lessee; *provided, however,* that the Lessee may enter into such arrangement or arrangements with third persons as it may deem desirable or convenient and under which the Equipment may be operated or otherwise employed in the Lessee's business or operations by the Lessee, such third person or persons, or both the Lessee and such third person or persons. The Lessor agrees that prior to the occurrence of an Event of Default it will not assign or convey its right, title or interest in and to this Lease or any Item of Equipment except as contemplated by or provided in the Trust Agreement, the Participation Agreement, the Lease Assignment or the Indenture; *provided, however,* Lessor may without restriction assign its rights in respect of any Renewal Term or in respect of any separate Lease Agreement entered into pursuant to the last sentence of Section 15(a) hereof. The rights and obligations of the Lessor and the Lessee hereunder shall inure to the benefit of, and be binding upon, the permitted successors and assigns of the Lessor and the Lessee, respectively, except that the assignment made to the Indenture Trustee pursuant to the Lease Assignment and the Indenture shall not in any way impair or diminish any obligations of the Lessor under this Lease nor impose any of such obligations on the Indenture Trustee.

SECTION 23. *The Equipment Trust Certificates.*

(a) *Security for the Equipment Trust Certificates.* In order to secure the indebtedness evidenced by the Equipment Trust Certificates, the Lessor in the Indenture assigns and in the Lease Assignment will assign to the Indenture Trustee upon the terms and with the exceptions therein set forth all of its right, title and interest in and to this Lease and grants to the Indenture Trustee a security interest in all the Items of Equipment. To the extent, if any, that this Lease or any supplement hereto constitutes "chattel paper" or

other "collateral" (as such terms are defined in the Uniform Commercial Code of any jurisdiction) no security interest in this Lease or such supplement may be created through the transfer or possession of any counterpart other than the original counterpart which shall be stamped or marked "Counterpart Number 1" thereon and shall be further identified as the counterpart containing the receipt therefor executed by the Indenture Trustee on the signature pages hereof or thereof. The Lessee acknowledges receipt of an executed counterpart of the Indenture and hereby accepts and consents to the assignment of this Lease and agrees to pay directly to the Indenture Trustee (except as otherwise provided in Sections 10 and 11 hereof and until it shall have received notice from the Indenture Trustee of the discharge of the Indenture) all amounts of Rent due or to become due hereunder. The Lessee further consents to the grant of a security interest in the Items of Equipment, and the Lessee agrees that it will not change the location of any Item of Equipment unless the conditions set forth in Section 26 hereof shall have been fulfilled at the expense of the Lessee. The Lessor agrees to cooperate with the Lessee in causing such conditions to be fulfilled.

(b) *Refinancing of the Equipment Trust Certificates.* If the Lessor is able to refinance the Equipment Trust Certificates by prepaying them pursuant to Section 6.04 of the Indenture from the proceeds of the issuance of other new debt obligations bearing a lower rate of interest and repayable as to principal at the same times and in the same amounts as the Equipment Trust Certificates, the Lessor agrees to reduce each quarterly installment of Basic Rent thereafter payable by an amount equal to the reduction in interest payable on the indebtedness attributable to this Lease. If requested by the Lessee, the Lessor agrees to attempt to so refinance the Equipment Trust Certificates on or after April 15, 1989 provided the following conditions are met: (i) it shall have received a commitment from one or more responsible and substantial financial institutions willing and able to purchase such new debt obligations on terms not less favorable to Lessor and the Owner Participants than the terms relating to the Equipment Trust Certificates; (ii) all expenses of every kind and all Fees, Taxes and Other Charges resulting from such refinancing or attempted refinancing shall be borne by the Lessee (including, without limitation, reasonable compensation to be agreed at that time for the time and efforts required of the Owner Participants); (iii) such refinancing shall not reduce the after-tax yield of the Owner Participants; (iv) no default or Event of Default shall be continuing; and (v) such refinancing will not otherwise adversely affect in any respect or subject to any risk any Owner Participant or the Owner Trustee in its individual capacity. In connection with any such refinancing the Lessor and the Lessee agree to enter into such amendments to this Lease and the other documents in connection with the Overall Transaction as shall be appropriate in the circumstances and do not adversely affect the Lessor in any respect. If the foregoing conditions are not met, the Lessor shall have no obligation to attempt or agree to any such refinancing.

(c) *Interest Guaranty.* The Lessee agrees for the benefit of the Lessor and the Owner Participants that it will comply with all the provisions of the Interest Guaranty, and that it will not amend, modify or terminate or permit to be amended, modified or terminated the Interest Guaranty without the prior written consent of the Lessor.

SECTION 24. *Notices.* All notices required or permitted under the terms and provisions hereof shall be in writing, and any such notice shall become effective when received at the party's address specified below; (i) if to the Lessee, at 1100 Superior Avenue, Cleveland, Ohio 44114, Attention: Secretary, or at such other address as the Lessee shall from time to time designate in writing to the Lessor, with copies to the Lease Guarantor at its address set forth in the Lease Guaranty, or such other address as the Lease Guarantor shall from time to time designate in writing to the Lessor, (ii) if to the Lessor, at First National Tower, Louisville, Kentucky 40202, Attention: Corporate Trust Department, or at such other address as the Lessor shall from time to time designate in writing to the Lessee, with copies to each Owner Participant at its address for notices provided for in the Participation Agreement, or at such other address as such Owner Participant shall from time to time designate in writing to the Lessee and if to the Indenture Trustee, as provided in the Indenture.

SECTION 25. *Merger or Consolidation of the Lessee.* The Lessee will not (i) consolidate with or merge into any other person, (ii) convey or transfer all or substantially all of its assets to any other person, or (iii) permit any other person to consolidate with or merge into it, *provided,* that the Lessee may so consolidate, merge, convey or transfer if (A) the person that results therefrom expressly and unconditionally assumes,

by written agreement all obligations of the Lessee hereunder and under each other of the Operative Documents to which the Lessee is a party or by which the Lessee is bound and (B) the Lease Guarantor reaffirms, by written agreement its obligations under the Lease Guaranty, and *provided, further,* that no such consolidation, merger, conveyance or transfer shall affect or reduce any obligations of such person as the Lessee hereunder or under any other of the Operative Documents to which the Lessee is a party or by which the Lessee is bound or any rights of the Lessor or the Indenture Trustee hereunder or under any other of the Operative Documents, and all obligations of such person hereunder shall continue in full effect as if such person had originally executed this Lease and such other of the Operative Documents as the Lessee.

SECTION 26. *Recording; Opinions of Counsel.*

(a) *Recording.* Promptly following the execution of this Lease and in any event prior to the delivery and acceptance hereunder of any Item and prior to each change in location outside of Pike County, Kentucky (except as provided in the last sentence of Section 6(c) for a period of four months or less) of any Item of Equipment, the Lessee at its own expense will cause all UCC financing statements and all other documents and instruments necessary to create and perfect any security interests in the Equipment and in and to the Lessor's rights under this Lease, the Lease Guaranty and the Easement Agreement in favor of the Indenture Trustee and to establish and perfect the Lessor's title in and to the Equipment to be filed in all necessary places as required by law or reasonably requested by the Lessor or the Indenture Trustee. The Lessee will further duly file and record or deposit as aforesaid all periodic continuation statements with respect to all UCC financing statement filings as and when required and refile and re-record or re-deposit any of the foregoing as may be necessary.

(b) *Annual Counsel Opinion.* The Lessee at its own expense will promptly furnish to the Lessor and the Indenture Trustee annually after the execution thereof (but not later than March 31 of each year), commencing with the year 1976, certificates or other evidences of the filings and recordings or deposits and refilings and re-recordings or re-deposits referred to in Section 26(a) hereof and an opinion reasonably satisfactory to the Lessor and the Indenture Trustee of counsel for the Lessee acceptable to the Lessor and the Indenture Trustee either (i) to the effect that such filings and recordations (or re-filings and re-recordations) have been duly made and that all other action has been taken, as is necessary to comply with the requirements of Section 26(a) hereof, or (ii) that no such additional filings, recordings, deposits, re-filings, re-recordings, re-deposits or other actions are necessary to comply with the requirements of Section 26(a) hereof. In addition, the Lessee shall do and perform any other acts and will execute, acknowledge, deliver, file, register, deposit and record (and will re-file, re-deposit and re-record whenever necessary) the Easement Agreement, the Indenture, this Lease and any and all further instruments required by law or reasonably requested by the Lessor or the Indenture Trustee for the purpose of the proper protection (to the reasonable satisfaction of the Lessor and the Indenture Trustee and their respective counsel) of their respective title to and interest in the Equipment or any Item and their respective rights under this Lease, the Lease Guaranty and the Easement Agreement or for the purpose of carrying out the intention of this Lease. The Lessee shall promptly furnish to the Lessor and the Indenture Trustee evidences of any of the foregoing.

SECTION 27. *Miscellaneous.* Any provision of this Lease which is 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 and the Lessor, hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect. No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. All payments of Rent hereunder shall be paid in United States Dollars in Immediately Available Funds by 11:00 A.M. New York City time on the date of payment. Any payment of Rent if stated to be due hereunder on a day which is not a Business Day, shall be payable on the Business Day next preceding

such day. 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 any Item of Equipment except as lessee only. To prevent the application to the Equipment of Kentucky Revised Statute 378.050, a description of all equipment leased or to be leased to the Lessee by the Lessor and the Other Lessors, respectively, is set forth in Schedule IV to this Lease. The table of contents and captions in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. Nothing in this Lease shall be deemed to create any right in any person not a party hereto (except as hereinafter in this sentence provided) and this Lease shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party other than an Indemnified Party and a person for whose benefit the Lessee has agreed specifically in a separate written agreement to perform obligations herein contained. This Lease shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.

IN WITNESS WHEREOF the Lessor and the Lessee have each caused this Lease to be duly executed as of the day and year first above written.

[CORPORATE SEAL]

FIRST NATIONAL BANK OF LOUISVILLE,
As Trustee, Lessor

ATTEST:

By.....
Vice President and Trust Officer

.....
Assistant Secretary

[CORPORATE SEAL]

LESLIE COAL MINING COMPANY,
Lessee

ATTEST:

By.....
President

.....
~~Assistant~~ Secretary

THE RIGHTS OF THE LESSOR IN AND TO THIS LEASE HAVE BEEN ASSIGNED, MORTGAGED AND PLEDGED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, THE INDENTURE TRUSTEE UNDER THE TRUST INDENTURE AND SECURITY AGREEMENT DATED AS OF SEPTEMBER 30, 1975, BETWEEN FIRST NATIONAL BANK OF LOUISVILLE, AS OWNER TRUSTEES, AND THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION), AS INDENTURE TRUSTEE, AS SAID TRUST INDENTURE AND SECURITY AGREEMENT MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME AS PERMITTED THEREBY. THIS LEASE HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS OF WHICH THIS IS COUNTERPART NUMBER 1 . SEE SECTION 23 FOR INFORMATION CONCERNING THE RIGHTS OF THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF AND SEE THE DISCLAIMER OF REPRESENTATIONS AND WARRANTIES IN SECTION 2(g).

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On this 30th day of October, 1975, before me personally came Dennis W. Weike, to me known, who, being by me duly sworn, did depose and say that he resides at ~~Castleton~~ 3401 Eastern Dr. Louisville, Ky, that he is a V. P. and T.O. of FIRST NATIONAL BANK OF LOUISVILLE, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Mildred Spiro
Notary Public

[NOTARIAL SEAL]

MILDRED SPIRO
NOTARY PUBLIC, State of New York
No. 24-9131250
Qualified in Kings County
Certificate Filed in N. Y. County
Commission Expires March 30, 1976

My commission expires

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On this 30th day of October, 1975, before me personally came R. H. CHISHOLM, 2105 Superior Avenue, Cleveland, Ohio, to me known, who, being by me duly sworn, did depose and say that he resides at , that he is a President of LESLIE COAL MINING COMPANY, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Mildred Spiro
Notary Public

[NOTARIAL SEAL]

MILDRED SPIRO
NOTARY PUBLIC, State of New York
No. 24-9131250
Qualified in Kings County
Certificate Filed in N. Y. County
Commission Expires March 30, 1976

My commission expires

EXHIBIT A
TO LEASE

LEASE SUPPLEMENT NO. 1

(No. 8)

LEASE SUPPLEMENT NO. 1 (NO. 8), dated , 197 , between FIRST NATIONAL BANK OF LOUISVILLE, a national banking association organized and existing under the laws of the United States of America, as Trustee under the Trust Agreement (No. 8) dated as of September 30, 1975, between Citicorp Lescaman, Inc., a Delaware corporation, and such Trustee (such Trustee in its capacity as such Trustee, being herein called the "Lessor"), and LESLIE COAL MINING COMPANY, a Delaware corporation (the "Lessee").

The Lessor and the Lessee have heretofore entered into that certain Lease Agreement (No. 8) dated as of September 30, 1975 (herein called the "Lease" and the defined terms therein being hereinafter used with the same meaning). The Lease provides for the execution and delivery of this Lease Supplement No. 1 in substantially the form hereof on the date hereof. This Lease Supplement No. 1 is a supplement to the Lease and shall be construed as such and not as a separate agreement.

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, the Lessor and the Lessee hereby agree as follows:

1. The Lessee hereby represents, warrants and confirms to the Lessor that each Item of Equipment listed on Schedules 1A, 1B, 1C, and 1D hereto has been unconditionally and irrevocably accepted by Lessee in Pike County, Kentucky for all purposes of the Lease and each such Item of Equipment either (A) is in good working order and repair and without defect or inherent vice in condition, design, operation or fitness for use, or (B) in the good faith opinion of Lessee is capable of being put in the state described in clause (A) promptly (in any case within one year) without substantial additional work and expense and Lessee covenants at its own expense to use its best efforts promptly to put each such Item of Equipment in the state described in clause (A); *provided, however,* that nothing contained herein or in the Lease shall in any way diminish or otherwise affect any right the Lessee or the Lessor may have with respect to any Item of Equipment against the Manufacturer thereof, or any third person.

2. The Lessee represents, warrants and confirms to the Lessor with respect to each Item of Equipment listed on Schedules 1A, 1B, 1C and 1D hereof:

(i) that such Item of Equipment meets the specifications for an Item of Equipment set forth in Section 2(a) of the Lease;

(ii) that such Item of Equipment is accurately described on the applicable Schedule;

(iii) that such Item of Equipment falls within the Class of the Schedule on which it is listed;

(iv) that the Capitalized Cost of such Item of Equipment has been properly computed in accordance with Section 2(b) of the Lease;

(v) that such Item of Equipment has been marked in accordance with Section 6(e) of the Lease if required by such Section;

(vi) that such Item of Equipment prior to its acquisition shall not have been put to any use by either the Lessee or any other person, and upon acquisition and use of such Item of Equipment by the Lessor, the original use of such Item of Equipment will be considered to have commenced with the Lessor;

(vii) such Item of Equipment constitutes to the Lessor an item of property (A) with respect to which (x) an investment credit of at least 7% is allowable to the Lessor under Section 38 of the Internal Revenue Code of 1954, as amended, for "new section 38 property", within the meaning of

Section 48(b) of such Code, and (y) the allowance for depreciation may be computed pursuant to either the double declining balance method, using a rate equal to twice the straight-line rate, or the sum of the years-digits method, as provided in Sections 167(b)(2) and (3) of such Code and (B) which can be depreciated over an asset depreciation period of 8 years pursuant to Revenue Procedure 72-10, 1972-1 Cum. Bull. 721; and

(viii) the Lessee has delivered to the Lessor an Instrument of Transfer and Acceptance covering such Item of Equipment and such Instrument of Transfer and Acceptance duly vests in the Lessor good and valid title to such Item of Equipment, free and clear of all Liens and rights of others except only Liens and other rights of the types referred to in clauses (i) through (viii) of Section 5(a) of the Lease.

3. The Lessor and the Lessee agree that the Capitalized Cost of each Item of Equipment, its Class and its date of delivery under the Lease are as indicated in the respective Schedules annexed hereto.

This Lease Supplement No. 1 shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease Supplement No. 1 to be duly executed as of the day and year first above written.

[CORPORATE SEAL]

ATTEST:

.....
Assistant Secretary

FIRST NATIONAL BANK OF LOUISVILLE,
as Trustee, Lessor

By.....
Vice President and Trust Officer

[CORPORATE SEAL]

ATTEST:

.....
Assistant Secretary

LESLIE COAL MINING COMPANY,
Lessee

By.....

*Receipt of this original counterpart of the foregoing Lease Supplement No. 1 is hereby acknowledged on this day of , 197 .

THE CHASE MANHATTAN BANK
(National Association),
As Indenture Trustee

By.....

* This language contained in the original counterpart only.

THE RIGHTS OF THE LESSOR IN AND TO THE LEASE, INCLUDING THIS LEASE SUPPLEMENT NO. 1, HAVE BEEN ASSIGNED, MORTGAGED AND PLEDGED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, THE INDENTURE TRUSTEE UNDER THE TRUST INDENTURE AND SECURITY AGREEMENT DATED AS OF SEPTEMBER 30, 1975, BETWEEN FIRST NATIONAL BANK OF LOUISVILLE, AS OWNER TRUSTEES, AND THE CHASE MANHATTAN BANK (NATIONAL ASSOCIATION), AS INDENTURE TRUSTEE, AS SAID TRUST INDENTURE AND SECURITY AGREEMENT MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME AS PERMITTED THEREBY. THIS LEASE SUPPLEMENT NO. 1 HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS OF WHICH THIS IS COUNTERPART NUMBER . SEE SECTION 23 OF THE LEASE FOR INFORMATION CONCERNING THE RIGHTS OF THE HOLDERS OF THE VARIOUS COUNTERPARTS OF THE LEASE AND OF THIS LEASE SUPPLEMENT NO. 1 AND SEE THE DISCLAIMER OF REPRESENTATIONS AND WARRANTIES IN SECTION 2(g) OF THE LEASE.

COUNTY OF } ss.:

On this day of 197 , before me personally came , to me known, who, being by me duly sworn, did depose and say that he resides at ; that he is a of FIRST NATIONAL BANK OF LOUISVILLE, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

.....

Notary Public

[NOTARIAL SEAL]

My commission expires

COUNTY OF } ss.:

On this day of 197 , before me personally came , to me known, who, being by me duly sworn, did depose and say that he resides at , that he is a of LESLIE COAL MINING COMPANY, one of the corporations described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

.....

Notary Public

[NOTARIAL SEAL]

My commission expires

SCHEDULE 1A
to
Lease Supplement No. 1

CLASS A ITEMS OF EQUIPMENT

Item No.	Description of Item of Equipment	Manufacturer	Serial No. (or other means of identification)	Date of Delivery (197)	Capitalized Cost
					$

Total ..... $

SCHEDULE 1B
to
Lease Supplement No. 1

CLASS B ITEMS OF EQUIPMENT

Item No.	Description of Item of Equipment	Manufacturer	Serial No. (or other means of identification)	Date of Delivery (197)	Capitalized Cost
					$

Total ..... $

SCHEDULE 1C
to
Lease Supplement No. 1

CLASS C ITEMS OF EQUIPMENT

Item No.	Description of Item of Equipment	Manufacturer	Serial No. (or other means of identification)	Date of Delivery (197)	Capitalized Cost
					$

Total ..... $

SCHEDULE 1D
to
Lease Supplement No. 1

CLASS D ITEMS OF EQUIPMENT

Item No.	Description of Item of Equipment	Manufacturer	Serial No. (or other means of identification)	Date of Delivery (197)	Capitalized Cost
					$

Total ..... $

This instrument was prepared by the undersigned, , attorney at law, whose address is c/o Shearman & Sterling, 399 Park Avenue, New York, New York 10022.

.....

EXHIBIT B
TO LEASE

INSTRUMENT OF TRANSFER AND ACCEPTANCE

(No. 8)

, 19

FOR VALUABLE CONSIDERATION, the undersigned does on the date hereof, in Pike County, Kentucky, grant, convey, transfer, bargain and sell, deliver and set over unto First National Bank of Louisville, as Trustee under Trust Agreement (No. 8) dated as of September 30, 1975, between said Trustee and Citicorp Lescaman, Inc., and to said Trustee's successors and assigns forever, all of its right, title and interest in and to the equipment described on the Schedule annexed hereto together with (a) all appliances, parts, instruments, appurtenances, accessories, furnishings and other property incorporated or installed in or on or attached to said equipment, and (b) all warranties, guaranties and indemnities, whether those warranties, guaranties and indemnities are express or implied, and all similar rights which the undersigned may have against any manufacturer or supplier of said equipment or against any seller, engineer, contractor or builder, in respect of said equipment.

In addition the undersigned acknowledges delivery of said equipment under the Lease Agreement (No. 8) dated as of September 30, 1975 between the undersigned and said Trustee and hereby unconditionally and irrevocably accepts said equipment for all purposes of said Lease Agreement.

This Instrument of Transfer and Acceptance is delivered pursuant to said Lease Agreement and the undersigned hereby makes the representations, warranties and agreements set forth in Section 2(d) of said Lease Agreement to the same effect as if they were set forth in full herein.

To whatever extent the said equipment might be considered a part of any realty to which the said equipment is now attached, the undersigned intends that (a) the transfer effected by this Instrument shall constitute a severence of said equipment from the realty regardless of the manner in which it may be attached to the realty; (b) as a result of that severance said equipment shall become personal property to whatever extent it was not personal property before the severance; (c) said equipment shall remain personal property regardless of its continued attachment to any realty and regardless of the manner in which it may be attached to the realty; and (d) the ownership of said equipment as personal property shall be separate and distinct from the ownership of the realty as real property.

The real property which is or may be affected by this Instrument is located in Pike County, Kentucky, and is the same real property that was conveyed by Pickands Mather & Co. to Leslie Coal Mining Company by deed dated May 14, 1974, and recorded in Deed Book 527, page 1, in the Pike County, Kentucky, County Court Clerk's office.

This Instrument of Transfer and Acceptance shall in all respects be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the undersigned has caused these presents to be duly executed and delivered on the day and year first above written.

LESLIE COAL MINING COMPANY

By.....

COMMONWEALTH OF KENTUCKY
COUNTY OF PIKE } SS.:

The foregoing instrument was acknowledged before me by of Leslie Coal Mining Company, a Delaware corporation, on behalf of the corporation, on , 197 .

.....
Notary Public
Commission expires: .....

SCHEDULE TO INSTRUMENT OF TRANSFER AND ACCEPTANCE

Item No.*	Description of Item of Equipment	Manufacturer	Serial No. (or other means of identification)	Class	Estimated Capitalized Cost
					$

* This number should be prefixed by the Lease No. and Class of Equipment and then should follow in chronological order of delivery. Thus the second item of Class D Equipment delivered under the fourth lease would be numbered 4 D-2.

SCHEDULE I

TO LEASE AGREEMENT

(No. 8)

1. Applicable Quarter: July 1, 1977 through September 30, 1977.

2. Basic Rent during Original Term:

Class of Equipment	% of Capitalized Cost	No. of Installments
Class A	3.9985%	32
Class B	3.3833%	40
Class C	2.8228%	52
Class D	2.0300%	92

SCHEDULE II A
TO LEASE AGREEMENT
(No. 8)

STIPULATED LOSS VALUE
CLASS A EQUIPMENT

Rental Payment Date	% of Capitalized Costs	Rental Payment Date	% of Capitalized Costs
1	112.460864	17	75.275218
2	112.223344	18	72.344412
3	111.597824	19	69.358140
4	110.219280	20	66.311565
5	108.599728	21	58.091870
6	106.732730	22	54.894881
7	104.941308	23	51.636147
8	103.025008	24	48.325109
9	100.929444	25	44.940055
10	98.649826	26	41.479119
11	96.363162	27	37.949672
12	93.947512	28	34.375829
13	86.280802	29	25.629163
14	83.619546	30	21.905210
15	80.908680	31	18.105430
16	78.189438	32	15.000000

SCHEDULE II B
TO LEASE AGREEMENT
(No. 8)

STIPULATED LOSS VALUE
CLASS B EQUIPMENT

Rental Payment Date	% of Capitalized Costs	Rental Payment Date	% of Capitalized Costs
1	112.424716	21	72.643784
2	112.805960	22	70.270320
3	112.827274	23	67.855868
4	112.134624	24	65.397372
5	111.227502	25	62.881347
6	110.100472	26	60.306484
7	109.041500	27	57.685925
8	107.828328	28	55.030009
9	106.447922	29	47.219394
10	104.896030	30	44.450235
11	103.353148	31	41.630345
12	101.668438	32	38.783754
13	94.742090	33	35.882620
14	92.795440	34	32.925440
15	90.816408	35	29.912122
16	88.775910	36	26.880711
17	86.674112	37	23.795875
18	84.509854	38	20.655991
19	82.309036	39	17.448740
20	80.055466	40	15.000000

SCHEDULE II C
TO LEASE AGREEMENT
(No. 8)

STIPULATED LOSS VALUE
CLASS C EQUIPMENT

Rental Payment Date	% of Capitalized Costs	Rental Payment Date	% of Capitalized Costs
1	112.119708	27	75.558294
2	113.106762	28	73.713618
3	113.753564	29	66.729458
4	113.708170	30	64.802483
5	113.469144	31	62.846006
6	113.031724	32	60.871025
7	112.660908	33	58.858212
8	112.112672	34	56.806629
9	111.407394	35	54.722215
10	110.541198	36	52.628697
11	109.701098	37	50.500115
12	108.710258	38	48.335479
13	102.486704	39	46.129088
14	101.224670	40	43.912186
15	99.953566	41	41.660061
16	98.573182	42	39.371633
17	97.143048	43	37.032146
18	95.662382	44	34.675208
19	94.161294	45	32.279851
20	92.613706	46	29.844876
21	85.920658	47	27.354433
22	84.278892	48	24.844802
23	82.613808	49	22.293216
24	80.911514	50	19.698349
25	79.165560	51	17.043131
26	77.375096	52	15.000000

SCHEDULE II D
TO LEASE AGREEMENT
(No. 8)

STIPULATED LOSS VALUE
CLASS D EQUIPMENT

Rental Payment Date	% of Capitalized Costs	Rental Payment Date	% of Capitalized Costs
1	112.665586	47	80.008094
2	114.588728	48	79.025354
3	116.083844	49	78.029636
4	116.986116	50	77.020592
5	117.726944	51	75.991744
6	118.302572	52	74.957270
7	118.947450	53	73.908766
8	119.394938	54	72.845852
9	119.705102	55	71.761702
10	119.874744	56	70.671328
11	120.096762	57	69.565770
12	120.166188	58	68.444600
13	115.021700	59	67.300620
14	114.858172	60	66.149760
15	114.714854	61	64.982440
16	114.423752	62	63.798190
17	114.027930	63	62.589385
18	113.524932	64	61.372988
19	113.034302	65	60.138723
20	112.445666	66	58.886071
21	106.726960	67	57.606939
22	106.075404	68	56.319430
23	105.422238	69	55.012504
24	104.740070	70	53.685583
25	104.031036	71	52.330051
26	103.294814	72	50.965286
27	102.555898	73	49.579390
28	101.798082	74	48.171723
29	95.919132	75	46.733092
30	95.116292	76	45.284285
31	94.309744	77	43.312454
32	93.494504	78	42.316893
33	92.661498	79	40.787761
34	91.810430	80	39.247419
35	90.954702	81	37.681961
36	90.100602	82	36.090606
37	89.233406	83	34.462796
38	88.352834	84	32.822638
39	87.461314	85	31.155053
40	86.571034	86	29.459174
41	85.669598	87	27.723647
42	84.756720	88	25.974523
43	83.826506	89	24.195414
44	82.891716	90	22.385361
45	81.944904	91	20.532124
46	80.985754	92	19.098750

SCHEDULE III A
TO LEASE AGREEMENT
(No. 8)

TERMINATION VALUE
CLASS A EQUIPMENT

Rental Payment Date	% of Capitalized Costs	Rental Payment Date	% of Capitalized Costs
1	100.301210	17	61.724051
2	99.981068	18	58.701168
3	99.272366	19	55.622192
4	97.810072	20	52.482283
5	96.106200	21	44.168620
6	94.154314	22	40.877026
7	92.277422	23	37.523044
8	90.275072	24	34.116110
9	88.092874	25	30.634507
10	85.726034	26	27.076368
11	83.351556	27	23.449058
12	80.847494	28	19.776686
13	73.091772	29	10.930820
14	70.340900	30	7.106995
15	67.539808	31	3.206665
16	64.669726	32	.000000

SCHEDULE III B
TO LEASE AGREEMENT
(No. 8)

TERMINATION VALUE
CLASS B EQUIPMENT

Rental Payment Date	% of Capitalized Costs	Rental Payment Date	% of Capitalized Costs
1	100.906284	21	59.454754
2	101.209262	22	56.991673
3	101.151778	23	54.486996
4	100.379796	24	51.937661
5	99.392802	25	49.330179
6	98.185356	26	46.663239
7	97.045422	27	43.949976
8	95.750740	28	41.200727
9	94.288270	29	33.296145
10	92.653754	30	30.432380
11	91.027688	31	27.517241
12	89.259228	32	24.574754
13	82.248562	33	21.577072
14	80.217022	34	18.522689
15	78.152520	35	15.411508
16	76.025976	36	12.281568
17	73.837544	37	9.097533
18	71.586064	38	5.857776
19	69.297430	39	2.549974
20	66.955448	40	.000000

SCHEDULE III C
TO LEASE AGREEMENT
(No. 8)

TERMINATION VALUE
CLASS C EQUIPMENT

Rental Payment Date	% of Capitalized Costs	Rental Payment Date	% of Capitalized Costs
1	101.500266	27	62.894407
2	102.415160	28	60.963683
3	102.989316	29	53.892890
4	102.870780	30	51.878692
5	102.558116	31	49.834400
6	102.046558	32	47.771007
7	101.601100	33	45.669182
8	100.977714	34	43.527982
9	100.196776	35	41.353343
10	99.254408	36	39.168985
11	98.337614	37	36.948948
12	97.269564	38	34.692233
13	90.968272	39	32.393139
14	89.627970	40	30.082904
15	88.278070	41	27.736812
16	86.818352	42	25.353778
17	85.308346	43	22.919042
18	83.747266	44	20.466209
19	82.165218	45	17.974304
20	80.536118	46	15.442126
21	73.761004	47	12.853818
22	72.036616	48	10.245658
23	70.288348	49	7.594874
25	68.502304	50	4.900134
25	66.672033	51	2.144365
26	64.796677	52	.000000

SCHEDULE III D
TO LEASE AGREEMENT
(No. 8)

TERMINATION VALUE
CLASS D EQUIPMENT

Rental Payment Date	% of Capitalized Costs	Rental Payment Date	% of Capitalized Costs
1	102.352784	47	65.926192
2	104.145852	48	64.847769
3	105.630418	49	63.755717
4	106.461662	50	62.649684
5	107.130978	51	61.523189
6	107.634608	52	60.390402
7	108.207000	53	59.242921
8	108.581508	54	58.080354
9	108.818198	55	56.895876
10	108.913866	56	55.704492
11	109.061406	57	54.497236
12	109.055848	58	53.273679
13	103.835868	59	52.026613
14	103.596334	60	50.771970
15	103.376494	61	49.500161
16	103.008350	62	48.210711
17	102.534962	63	46.895993
18	101.953872	64	45.572962
19	101.384620	65	44.231339
20	100.716826	66	42.870599
21	94.918424	67	41.482645
22	94.186632	68	40.085574
23	93.452682	69	38.668342
24	92.689184	70	37.230365
25	91.898266	71	35.763024
26	91.079604	72	34.285690
27	90.257688	73	32.786458
28	89.416308	74	31.264686
29	83.453226	75	29.711175
30	82.565682	76	28.146707
31	81.673856	77	26.558430
32	80.772758	78	24.945631
33	79.853310	79	23.298464
34	78.915212	80	21.639286
35	77.971864	81	19.954185
36	77.029548	82	18.242372
37	76.073536	83	16.493287
38	75.103546	84	14.731029
39	74.121998	85	12.940515
40	73.141080	86	11.120872
41	72.148390	87	9.260740
42	71.143638	88	7.386163
43	70.120926	89	5.480750
44	69.093010	90	3.543534
45	68.052438	91	1.562270
46	66.998890	92	.000000

SCHEDULE IV TO LEASE AGREEMENT

All equipment and structures in Pike County, Kentucky, that are now in the possession of the Lessee or subsequently come into possession of the Lessee are owned, or will be owned, by the Lessor and the other Lessors, respectively, and leased to the Lessee, except the following items in the Lessee's possession and except items acquired by the Lessee after January 1, 1979:

(1) Purchased coal facility, excluding scales

(2) Hand tools

(3) Multi-purpose buildings, including mine office, warehouse, bathhouse and shop and small storage shop

(4) Elevator housing and headframe

(5) Yard lighting equipment

(6) Entrance fence and gate

(7) Dump trucks

(8) Flatbed trucks

(9) Four-wheel drive personnel cars

(10) Automobiles

(11) Light trucks

(12) Backhoes

(13) Shop and yard hand tools

This instrument was prepared by the undersigned, Alexander C. Bancroft, attorney at law, whose address is c/o Shearman & Sterling, 399 Park Avenue, New York, New York 10022.

A. C. Bancroft