

11881

RECORDATION NO. Filed 1425

JUN 9 1980 - 3 15 PM

INTERSTATE COMMERCE COMMISSION No. 161A193

June 9, 1980

50 (1)

Interstate Commerce Commission
Washington, D. C.

Date JUN 9 1980

Fee \$ 50.00

Gentlemen:

ICC Washington, D. C.

Enclosed for recordation under the provisions of 49 U.S.C. 11303 (formerly Section 20(c)) of the Interstate Commerce Act, as amended, are the original and 12 counterparts of an Equipment Lease dated as of May 15, 1980.

A general description of the railroad rolling stock covered by the enclosed documents is set forth in Exhibit A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Lessor: Continental Illinois National Bank
and Trust Company of Chicago,
as Trustee under Consumers Power
Trust No. 80-1
30 North LaSalle Street
Chicago, Illinois 60693

Lessee: Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201

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

Please return the original and 11 copies of the Equipment Lease to Robert C. Nash, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Enclosed is a check in the amount of \$50.00 covering the filing fee.

Very truly yours,

CONTINENTAL ILLINOIS NATIONAL
BANK AND TRUST COMPANY OF
CHICAGO, as Trustee under
Consumers Power Trust No. 80-1

By

[Signature]
TRUST OFFICER

Enclosures

RECEIVED
JUN 9 3 09 PM '80
I.C.C.
FEE OPERATION BR.

[Handwritten signature]
- C. T. Kemler

DESCRIPTION OF UNITS OF EQUIPMENT

Manufacturer of Equipment:	Pullman Incorporated (Pullman Standard Division)
Description and Mark and Number of Units of Equipment:	Seven hundred (700) 4,100 cubic foot, 54'7" long, high side, flat bottom, open top, gondola cars marked and numbered CPOX 1200 to CPOX 1899, both inclusive
Maximum Aggregate Lessor's Cost of Equipment:	\$43,000 per Unit (\$30,100,000 for 700 Units)
Place of Delivery:	Kentucky
Outside Delivery Date:	December 1, 1980

Interstate Commerce Commission
Washington, D.C. 20423

6/9/80

OFFICE OF THE SECRETARY

Robert C. Nash, Esq.
Chapman & Cutler
111 West Monroe Street
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **6/9/80** at **3:15pm**, and assigned re-
recording number(s). **11881**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

11881 ✓

RECORDATION NO. Filed 1425

JUN 9 1980 - 3 15 PM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE

Dated as of May 15, 1980

Between

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST
COMPANY OF CHICAGO,
as Trustee under Consumers Power Trust No. 80-1
Lessor

and

CONSUMERS POWER COMPANY
Lessee

(Consumers Power Trust No. 80-1)
(700 Gondola Cars)

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EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of May 15, 1980 (the "Lease") between CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not individually but solely as trustee (the "Lessor") under a Trust Agreement dated as of May 15, 1980 (the "Trust Agreement") with THIRTEENTH HFC LEASING CORPORATION, a Delaware corporation (the "Owner") and CONSUMERS POWER COMPANY, a Michigan corporation (the "Lessee").

W I T N E S S E T H:

SECTION 1. DEFINITIONS.

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

"Affiliate" shall mean any Person which, directly or indirectly, through one or more intermediaries controls, or is controlled by, or is under common control with, another Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Assignee" shall mean any Person or Persons to whom this Lease and the rights of the Lessor hereunder have been assigned, whether any such Person has accepted such assignment directly in its capacity as an Institutional Investor or in trust for the benefit of any Institutional Investor or Investors and any Person who or which is claiming by, through or under any such trust. Any reference in this Lease to the successors and assigns of the Lessor shall be deemed to include any such Assignee.

"Business Day" shall mean any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Detroit, Michigan, Chicago, Illinois, New York, New York or Baltimore, Maryland are authorized or obligated to remain closed.

"Casualty Occurrence" with respect to any Unit shall mean any of the following events: (a) the Unit shall be destroyed, (b) the Unit shall be irreparably damaged so as to be unfit for its intended purpose, provided that the determination of such damage or irreparability shall have been made in good faith by the President, any Vice President, the Secretary or the Treasurer of the Lessee within 90 days after the damage occurs, (c) the Unit shall become lost or stolen, or (d) the Unit shall be requisitioned or taken over by the power of eminent domain or otherwise by the United States government for a period which exceeds the then remaining term of this Lease for such Unit or by any other governmental entity resulting in loss of possession by the Lessee for a period of one year or more.

any bank, trust company, national banking association or investment advisor registered under the Investment Advisors Act of 1940, as amended, is acting as trustee or agent, (d) any finance company or leasing company, or (e) any Affiliate of any of the foregoing.

"Interchange Rules" shall mean the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads, as the same or any successor rules or regulations may be in effect from time to time.

"Lessor's Cost" of a particular Unit of Equipment shall mean the purchase price thereof certified as correct by the Lessee on the invoice covering such Unit delivered by the Manufacturer; provided that such invoice price shall include prepaid freight charges, if any, to the place of delivery designated in Exhibit A to this Lease and, provided, further, that in no event shall the purchase price of all of the Units of Equipment exceed \$30,100,000 or the purchase price of any Unit exceed \$43,000.

"Liabilities" is defined in Section 6(a) hereof.

"Manufacturer" shall mean Pullman Incorporated (Pullman Standard Division).

"Parts" is defined in Section 8(d) hereof.

"Permitted Contest" shall mean, so long as no Default or Event of Default has occurred and is continuing, a contest in good faith by appropriate proceedings by the Lessee, in a manner which will not result in the imposition of any criminal penalty on, or materially and adversely affect the title, interest or rights of, the Lessor, its successors and assigns, of the legality, validity or applicability of any of the taxes, assessments, levies, fees or other governmental charges, or other claims, liens or impositions (collectively referred to in this paragraph as "charges") which, under the terms of this Lease, are required to be paid by the Lessee. No contest which would otherwise be a Permitted Contest shall be carried on or maintained by the Lessee after the date on which the payment of any such charges is due unless the Lessee, at its option, (a) shall pay the amount involved under protest, or (b) shall procure and maintain a stay of all proceedings to enforce any collection of such charges, together with all penalties, interest, costs and expenses, by a deposit of a sufficient sum of money or by a good and sufficient undertaking as may be required or permitted by law to accomplish such stay, or (c) shall deposit with the Lessor, as security for the performance by the Lessee of its obligations hereunder with respect to such charges, an amount equal to the principal of the contested charges, plus such further amounts as the Lessor may reasonably require from time to time to cover all penalties, interest, costs and expenses that may accrue during the period of the contest. In the event any such contest is made by the Lessee, the Lessee shall, after final determination thereof adversely to the Lessee, fully pay when due and discharge the amount involved in or affected by any such contest, together with

all penalties, fines, interest, costs or expenses that may have accrued thereon or that may result from any such action by the Lessee, whereupon the Lessor shall return to the Lessee all amounts, if any, deposited by the Lessee in accordance with clause (c) of the second sentence of this paragraph. Nothing within this definition of Permitted Contest shall be deemed to prohibit or otherwise limit any contest by the Lessee against the Manufacturer involving any representation, warranty, patent, covenant, agreement or other undertaking of the Manufacturer in respect of any Unit or Units.

"Permitted Encumbrances" shall mean with respect to any Unit of Equipment, but only to the extent applicable to such Unit, (a) the leasehold interest of the Lessee hereunder and the lien which may attach thereto by reason of the existence of an after-acquired property clause in any indenture pursuant to which any indebtedness for borrowed money of the Lessee is issued; (b) any liens thereon for taxes, assessments, levies, fees and other governmental and similar charges not due and payable, or the amount or validity of which is being contested by a Permitted Contest; (c) any liens of mechanics, suppliers, materialmen and laborers for work or service performed or materials furnished in connection with such Unit which are not due and payable, or the amount or validity of which is being contested by a Permitted Contest; (d) rights reserved to or vested in any government or public authority to condemn or appropriate such Unit or control or regulate such Unit or the use of such Unit in any manner; and (e) the security interest in any Unit of Equipment granted by the Lessor to the Assignee.

"Person" shall mean an individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

"Purchase Order" shall mean that certain Purchase Order dated July 9, 1979 between the Lessee and the Manufacturer.

"Purchase Order Assignment" shall mean that certain Purchase Order Assignment dated May 15, 1980 between the Lessee and the Lessor.

"Rent Payment Dates" in respect of a Unit of Equipment shall mean the rent payment dates specified in Section 4 hereof.

"Security" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

"Subsidiary" shall mean, with respect to any corporation, any corporation, trust or association of which more than 50% (by number of votes) of the Voting Stock at the time outstanding shall be owned, directly or indirectly, by such corporation or by any other corporation, association or trust which is itself a Subsidiary within the meaning of this definition, or collectively by such corporation and any one or more such Subsidiaries.

"Supplemental Rent" shall mean all amounts, liabilities and obligations (excluding Fixed Rent but including any sums payable by the Lessee to the Lessor pursuant to Section 8(b)(11) and any premium or penalty payable in connection with the prepayment of interim Securities issued by the Lessor to finance a portion of the Lessor's Cost of the Equipment) which the Lessee is obligated to pay hereunder to the Lessor or others.

"Tax Indemnitee" is defined in Section 5(a) hereof.

"Term Lease Commencement Date" shall mean January 1, 1981.

"Unit Train" shall mean any group of not less than fifty (50) Units.

"Voting Stock" shall mean Securities of any class or classes of a corporation, the holders of which are ordinarily, in the absence of contingencies, entitled to elect the corporate directors.

SECTION 2. LEASE AND DELIVERY OF EQUIPMENT.

(a) Intent to Lease and Hire. Pursuant to the Purchase Order Assignment, the Lessee has assigned and the Lessor has acquired the Lessee's rights and interests under the Purchase Order as the same relate to the Equipment and the Manufacturer has consented thereto pursuant to the Manufacturer's Consent and Agreement in the form attached to the Purchase Order Assignment. Upon delivery of each Unit of Equipment by the Manufacturer, the Lessee shall lease and let and the Lessor shall hire to the Lessee such Unit of Equipment for the Fixed Rent and on and subject to the terms and conditions herein set forth.

(b) Inspection and Acceptance. The Lessor shall cause each Unit of Equipment to be tendered to the Lessee at the place of delivery set forth in Exhibit A hereto. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same and, if such Unit of Equipment is found to be in good order, to accept delivery of such Unit of Equipment and to execute and deliver to the Lessor and the Manufacturer a Certificate of Acceptance with respect to such Unit of Equipment; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to lease any Unit of Equipment: (i) delivered after the outside delivery date set forth in Exhibit A hereto, (ii) if the Lessor's Cost of such Unit shall exceed the maximum Lessor's Cost per Unit, or if after giving effect to the acceptance of such Unit, the aggregate Lessor's Cost of all Units then and theretofore accepted under the Lease shall exceed the maximum aggregate Lessor's Cost, in each such case, as set forth in Exhibit A hereto, or (iii) if an Event of Default has occurred and is continuing.

(c) Certificate of Acceptance. The Lessee's execution and delivery of a Certificate of Acceptance with respect to each

Unit of Equipment pursuant to Section 2(b) hereof shall conclusively establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against the Manufacturer thereof, such Unit of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Unit of Equipment is in good order and condition and conforms to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to new railroad equipment of the character of the Equipment as of the date of this Lease.

SECTION 3. LEASE TERM.

The lease term for each Unit of Equipment shall commence on the date the Unit is delivered to and accepted by the Lessee and, subject to the provisions of Sections 13, 15 and 18 hereof, shall terminate fifteen (15) years and one day following the Term Lease Commencement Date. In the case of any obligation of the Lessee which is expressed herein to be subject to a survival provision specifically designated as applicable thereto, the duration and survival of such obligation shall be governed in the manner so provided. Where no such specific provision is contained herein, any obligation of the Lessee which accrues or arises or results from acts or events occurring prior to the expiration of the term hereof shall continue and survive the termination of this Lease until performed in full but obligations of the Lessee otherwise provided herein shall cease and terminate and be of no further force and effect upon the termination of this Lease.

SECTION 4. RENT PAYMENTS AND PAYMENT DATES.

The Lessee agrees to pay the Lessor the following rents for the Equipment:

(a) Fixed Rent and Payment Dates.

(i) For each Unit of Equipment, the Lessee agrees that it will, subject to clause (ii) of this Section 4(a), pay the Lessor fifteen (15) annual installments of Fixed Rent, each in an amount equal to 10.52663% of the Lessor's Cost thereof, payable on January 1, 1982 and each January 1 thereafter to and including January 1, 1996.

(ii) Without limiting clause (i) of this Section 4(a), the Lessee understands and agrees that if for any reason the Lessor fails to make any payment on July 1 of any year in respect of the Securities issued by the Lessor to finance a portion of the Lessor's Cost of the Equipment, that amount not so paid shall be and is hereby deemed to constitute Fixed Rent the payment of which

shall be made by the Lessee on the due date of such payment in respect of such Securities. Such amount having been so paid, the Lessor agrees with the Lessee that the Lessee may, notwithstanding any other provision of this Lease, including, without limitation, Sections 4(f) and 14(b) hereof, deduct from Fixed Rent such amount and any interest thereon (calculated as provided below), to the extent that the same is not otherwise recovered by the Lessee from the Lessor or the Owner as contemplated by the last sentence of this Section 4(a)(11); provided, however, that any such deductions shall be made from the amount of Fixed Rent payable by the Lessee on the earliest succeeding Rent Payment Date or Dates; and provided, further, that on any such Rent Payment Date or Dates, the amount of Fixed Rent payable, after giving effect to any such deduction or deductions, shall be sufficient to pay fully any amounts becoming due and owing on such Date or Dates in respect of the Securities issued by the Lessor to Institutional Investors to finance a portion of the Lessor's Cost of the Equipment. Interest on any such unpaid amount shall be calculated in respect of the period from and including the date the Lessee pays such amount to but not including the date the same is deducted from Fixed Rent, and at a rate equal to the higher of 11.75% per annum or 3% above the rate of interest charged by Citibank, N.A., New York, New York, to its prime commercial customers on short-term unsecured borrowings. The Lessor understands and agrees that nothing contained in this Section 4(a)(11) shall be deemed to obligate the Lessee to make the deduction or deductions from Fixed Rent as herein contemplated but that in lieu thereof the Lessee may exercise such other legal rights and remedies as it may have against the Lessor or the Owner, as the case may be, for damages suffered by the Lessee as the result of a default by the Lessor or its obligations as contemplated by this Section 4(a)(11).

(b) Adjustment of Rentals. The Lessee and the Lessor agree that the Fixed Rent rate hereunder and the Casualty Value percentages set forth in Exhibit C hereto will be adjusted in the event that:

(1) the Units of Equipment shall have been delivered to and accepted by the Lessee under this Lease or the Lessor's Cost thereof is paid to the Manufacturer other than in accordance with the following schedule:

<u>Date on Which Units are to be Delivered and Paid For</u>	<u>Number of Units to be Delivered and Paid For</u>
June 20, 1980	180
July 15, 1980	310
August 5, 1980	210

(ii) the effective interest rate payable by the Lessor in respect of any interim or long-term Securities which it issues to finance a portion of the Lessor's Cost of the Equipment is other than 12.5% per annum, with daily interest computed on the basis of a 360-day year of twelve 30-day months and with the daily interest factor applied to 30 days for a full calendar month and applied to actual days elapsed for a partial month;

(iii) the interest payable in respect of the Securities issued by the Lessor to finance a portion of the Lessor's Cost of the Equipment is not payable semiannually in advance on January 1 and July 1 in each year commencing on January 1, 1981;

(iv) the actual initial and ongoing fees and expenses paid, including but not limited to the fees and direct expenses of Connell Leasing Company but excluding the fees of counsel for the Owner, in connection with the transactions contemplated by this Lease and related documents, and any interest accrued thereon are other than 1.5% of the Lessor's Cost of the Equipment leased hereunder;

(v) any amendment to, or change in the Code or income tax regulations thereunder, or published administrative or judicial interpretations of the Code or such regulations is enacted or adopted or has an effective date on or prior to December 31, 1980, the effect of which is to change the net after-tax rate of return or the net after-tax cash flow of the Owner based on the same assumptions and methods of calculation utilized by the Owner in originally evaluating the transactions contemplated by this Lease;

(vi) interest payable by the Lessor in respect of any Securities which it issues prior to December 30, 1980 to finance a portion of the Lessor's Cost of the Equipment is paid prior to such date;

(vii) the portion of the Lessor's Cost of the Equipment advanced by the Lessor on behalf of the Owner is other than 27.21875% of the aggregate Lessor's Cost of the Equipment or as may otherwise be agreed to in writing by the Lessor and the Lessee; and

(viii) the schedule of payment in respect of any Securities which the Lessor issues to finance a portion of the Lessor's Cost of the Equipment is other than as set forth in documents related to this Lease, including, without limitation, if payments of principal are required to be made thereunder on a semiannual basis (in which

case at the Lessor's option Fixed Rent shall be paid semiannually).

Any such adjustment shall be effective as of the first Rent Payment Date following the event giving rise to such adjustment and shall be made in such manner as will, in the Owner's reasonable judgment, preserve the net after-tax rate of return and the net after-tax cash flow that would have been realized by the Owner had such event not occurred, based on the same assumptions and methods of calculation utilized by the Owner in originally evaluating the transactions contemplated by this Lease and related documents. Notwithstanding the foregoing, the rentals payable and the Casualty Value percentages will never be less than those amounts and percentages required to enable the Lessor to satisfy its obligations in respect of any Securities which it issues to finance a portion of the Lessor's Cost of the Equipment nor for purposes of Section 4.(6) of I.R.S. Rev. Proc. 75-21 shall there be less cash available to the Owner after giving effect to any such rental rate adjustment than would have been available to the Owner prior to any such adjustment. The Lessor agrees to furnish the Lessee or an independent public accounting firm of recognized national standing selected by the Lessee such information, including, without limitation, any such information relating to any rental rate adjustment in respect of which Section 4.(6) of I.R.S. Rev. Proc. 75-21 has been directly taken into consideration by the Lessor, as the Lessee may reasonably request in order to verify that the rental rate adjustment has been made in accordance with the terms of this Section 4(b); provided that any such information relating to a rental rate adjustment in respect of Section 4.(6) of I.R.S. Rev. Proc. 75-21 may, at the Lessee's direction, be furnished to Connell Leasing Company rather than any such independent accountants. The Lessee agrees that any information furnished to it pursuant to this Section 4(b) shall be treated as confidential.

(c) Supplemental Rent. The Lessee also agrees to pay to the Lessor, its successors and assigns, 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 as in the case of nonpayment of Fixed Rent.

(d) Place and Time of Payment. All payments of Fixed Rent and Casualty Values shall be made to the Lessor at such place as the Lessor shall specify to the Lessee in writing from time to time; provided that in the event either the Lessor or any assignee of the Lessor pursuant to Section 14(a) hereof shall notify the Lessee in writing that the right to receive payment of an installment or installments of Fixed Rent and payment of any Casualty Value has been assigned in accordance

with said Section 14(a), the Lessee shall make such payment to any such assignee or assignees at the place designated in such notice. All payments of Supplemental Rent and any other payments hereunder payable to the Lessor (including payments under Section 19 hereof) shall be made directly to the Lessor, the Owner, the Assignee or their respective successors and assigns, as the case may be, to the extent that any such Supplemental Rent is due and owing to any such Person at such place as the Lessor, the Owner or their respective successors and assigns, as the case may be, shall specify to the Lessee in writing from time to time. All payments to be made by the Lessee hereunder shall be paid by wire transfer of Federal or other funds current and immediately available by 11:00 A.M. Eastern Standard Time on the date of payment to the Person to whom such payment is to be made.

If any Rent Payment Date or other date on which a Supplemental Rent payment becomes due and owing, is not a Business Day, the rent otherwise payable on such Rent Payment Date shall be payable on the next following Business Day.

(e) Overdue Payments. The amount of any installment of Fixed Rent or the amount of any Supplemental Rent remaining unpaid, after the due date thereof, shall bear interest at a rate one percentage point over the rate of interest payable by the Lessor in respect of the then outstanding Securities issued to finance a portion of the Lessor's Cost of the Equipment (or at the maximum lawful rate, whichever is less) from the first day after the due date of such installment and such interest shall be payable upon written demand from the party to whom the overdue installment of Fixed Rent or Supplemental Rent is payable.

(f) Net Lease; Non-Terminability. This Lease is a net lease and, subject to Section 4(a)(ii), the Lessee shall not be entitled to any abatement of Fixed Rent or Supplemental Rent, or setoff against or recoupment or reduction of Fixed Rent or Supplemental Rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease, or against the Owner, the Manufacturer or otherwise. The Lessee's obligations hereunder, including its obligations to pay all Fixed Rent, Supplemental Rent and other rents hereunder, shall be absolute and unconditional under any and all circumstances, and, except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor, the Owner or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any Person,

the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rent or other payment made by the Lessee hereunder shall be final and the Lessee, subject to Section 4(a)(ii), shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. Nothing contained in this Lease, including, without limitation, this Section 4(f), shall prevent the Lessee from exercising such other legal rights and remedies as it may have against the Lessor, the Owner and their respective successors and assigns for damages suffered by the Lessee as a result of a violation of its rights under this Lease.

SECTION 5. TAXES AND MAINTENANCE.

Notwithstanding the provisions of Section 6 hereof, in addition to the Fixed Rent payable by the Lessee under the provisions of Section 4(a) hereof:

(a) Taxes. The Lessee agrees to pay or cause to be paid punctually as and when the same shall become due and payable and to indemnify, protect, save and keep harmless the Lessor and the Owner, the Assignee and their respective successors and assigns and their respective agents and servants (collectively referred to in this Section 5 as the "Tax Indemnitees") from and against any and all license, registration, filing and recording fees and any and all governmental charges and taxes (including, without limitation, income, franchise, sales, use, occupational and personal or real property taxes (including the Michigan Single Business Tax but upon the terms and conditions hereinafter set forth), levies, imposts, duties, charges or withholdings of any nature, together with any penalties, fines, additions to tax or interest thereon (collectively, called "Impositions")), imposed upon, incurred by or asserted against any Tax Indemnitee or any Unit of Equipment by any foreign, Federal, state or local government or taxing authority, payable on or relating to:

(i) the manufacture, purchase, acquisition, rejection, delivery or non-delivery of any of the Units of Equipment,

(ii) the ownership, leasing, re-leasing, subleasing, possession, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Equipment or any Unit thereof during the term of this Lease and after its termination arising out of an Event of Default and during the period the Lessor, the Owner and their respective successors and assigns are enforcing or exercising any of their rights or remedies in connection therewith, or the issuance of the Securities by the Lessor to finance payment of a portion of the Lessor's Cost of the Equipment, or any rentals, receipts, earnings, or gains in respect of the Equipment earned by and payable to the Lessee,

(iii) the storage, shipping and return of the Equipment pursuant to Section 16 hereof, or

(iv) the execution and delivery of this Lease and related documents and the consummation of transactions hereunder and the issuance of Securities by the Lessor to finance payment of the Lessor's Cost of the Equipment in connection therewith;

provided, however, that the Lessee shall have no obligations to pay the following Impositions:

(1) any Impositions included in the Lessor's Cost of any Unit;

(2) Federal taxes based on or measured by net income of any Tax Indemnitee, except to the extent that tax indemnification is provided for in Section 19 of this Lease;

(3) Impositions imposed by (A) the state, county or city in which any respective Tax Indemnitee has its principal place of business based on or measured by net income or (B) any other state, county or city to the extent such taxes are actually credited against taxes described in clause (A), or Impositions imposed by the state, county or city in which such Tax Indemnitee has its principal place of business in the nature of franchise or similar capital based taxes payable by any Tax Indemnitee, except to the extent indemnification is provided in Section 19 of this Lease;

(4) Impositions based on or measured by compensation received by the Lessor or any Assignee for its respective services as trustee; and

(5) Impositions otherwise subject to this Section 5 payable by reason of any transfer or reduction by a Tax Indemnitee of any interest in some or all of the Equipment including any Imposition arising in connection with any assignment pursuant to Section 14(a) hereof of all or substantially all of the Lessor's interest in and to this

Lease and any Unit or Units of Equipment leased hereunder whether or not such assignment is absolute or for collateral purposes (other than an assignment for collateral purposes of this Lease and the grant of a security interest by the Lessor in and to any Unit of Equipment as contemplated by this Lease and related documents bearing the same date as this Lease); provided, however, that if such transfer or reduction occurs as a result of a termination of this Lease based on an Event of Default or a termination which occurs by reason of an event which requires payment of Casualty Value pursuant to Section 13 of this Lease, the Lessee shall pay such Imposition.

Notwithstanding the preceding sentence, the Lessee shall pay all such Impositions which are in lieu of, in substitution for or relieve the Lessee from the payment of Impositions which the Lessee would otherwise be obligated to pay as herein provided, but only to the extent of the amount which would otherwise be payable by the Lessee (it being understood and agreed that such Impositions which are in lieu of, in substitution for or relieve the Lessor from the payment of Impositions or Federal taxes which the Lessor would otherwise be obligated to pay as provided in this Section 5(a) shall be and remain the obligation of the Lessor, but only to the extent of the amount which would otherwise be payable by the Lessor).

The Lessee's agreement to indemnify, protect, save and keep harmless each Tax Indemnitee from and against the Michigan Single Business Tax shall be limited to the amount of any such Tax which arises directly in respect of any Unit of Equipment leased hereunder and shall not apply or pertain to the amount of any such Tax arising in respect of any other property belonging to such Tax Indemnitee or arising out of any business activity of such Tax Indemnitee in the State of Michigan not directly related to this Lease. Each Tax Indemnitee shall promptly furnish the Lessee all such information as the Lessee may reasonably require to determine if any amount of the Michigan Single Business Tax for which such Tax Indemnitee is seeking indemnification hereunder does in fact directly relate to a Unit or Units of Equipment leased hereunder and further hereby authorizes the Lessee to act in the name and on behalf of such Tax Indemnitee with the Michigan taxing authorities in requesting and obtaining any information from such taxing authorities related to the determination of the applicability of the Michigan Single Business Tax to the Equipment leased hereunder. Anything in this Section 5(a) contained to the contrary notwithstanding, the Lessee shall not be required to file Michigan Single Business Tax reports with respect to the Units or with respect to the interest of any Tax Indemnitee therein, which shall be and remain the obligation of such Tax Indemnitee. The Lessee shall be obligated to reimburse any Tax Indemnitee which has made a payment of such Tax for which the Lessee is obligated hereunder and such Tax Indemnitee shall treat such reimbursement and all other Fixed Rent payable and paid to such Tax Indemnitee as income to the extent the same is required to be included as income in such Tax Indemnitee's Michigan Single Business Tax returns.

The Lessee agrees to pay all amounts due under this Section 5(a) free of any Impositions and to indemnify each Tax Indemnitee against any Impositions imposed by reason of any payment made by the Lessee so that the Tax Indemnitee to whom or for whose benefit the payment is made shall receive an amount which, net of any Impositions or other charges required to be paid by such Tax Indemnitee in respect thereof, shall be equal to the amount of payment otherwise required hereunder. Without limiting the foregoing, the amount which the Lessee shall be required to pay with respect to any Impositions subject to indemnification under this Section 5(a) shall be an amount sufficient so that, after considering the tax and other effects of the Impositions in question and the receipt of indemnification payments hereunder, the Tax Indemnitee will be restored to the same after-tax rate of return and after-tax cash position as such Tax Indemnitee would have been in had such impositions not been incurred or imposed.

The Lessee agrees to comply with all state and local laws requiring the filing of ad valorem tax returns on the Equipment if and to the extent failure to so comply would materially and adversely affect the title, interest or rights of the Lessor, its successors and assigns in and to any Unit of Equipment. Any statements for Impositions or for ad valorem taxes received by the Lessor shall be promptly forwarded to the Lessee by the Lessor.

In the event any reports with respect to Impositions are required to be made on the basis of individual Units of Equipment, the Lessee will either prepare and file such reports (other than reports relating to any Michigan Single Business Tax payable by a Tax Indemnitee) in such manner as to show as required the interests of each Tax Indemnitee in such Units of Equipment or, if it shall not be permitted to file the same, it will notify each Tax Indemnitee of such reporting requirements, prepare such reports (other than reports relating to any Michigan Single Business Tax payable by a Tax Indemnitee) in such manner as shall be satisfactory to each Tax Indemnitee and deliver the same to each Tax Indemnitee within a reasonable period prior to the date the same is to be filed. In the case of reports relating to the Michigan Single Business Tax, the Lessee will furnish such information relating to the Units of Equipment as is necessary to permit such Tax Indemnitee to prepare and file such reports.

If any Impositions shall have been charged or levied against any Tax Indemnitee directly and paid by such Tax Indemnitee, the Lessee shall reimburse such Tax Indemnitee on presentation of invoices therefor. Prior to making such payment, such Tax Indemnitee shall promptly notify the Lessee of the Impositions charged or levied, and the Lessee shall have the opportunity to contest the same by means of a Permitted Contest.

The Lessee shall not be responsible for any governmental fines or penalties which are imposed as a result of (1) the willful misconduct or gross negligence of a Tax Indemnitee, or (2) a knowing failure by such Tax Indemnitee to take reasonable action requested

by the Lessee in writing which prevents the Lessee from diligently fulfilling its obligations under this Section. Nothing contained in this paragraph shall be deemed to otherwise relieve the Lessee of its obligations for indemnification under this Section 5(a).

The Lessee shall be under no obligation to pay any Imposition of any kind so long as the Lessee is contesting such Imposition in good faith in a Permitted Contest.

If the Lessee has reimbursed a Tax Indemnitee for any Imposition pursuant to this Section 5(a) (or if the Lessee has made a payment to the appropriate taxing authority for an Imposition which it is required to pay hereunder), the Lessee may, at its sole cost and expense take such steps (in the name of the Lessee or in the name of such Tax Indemnitee) as are reasonably necessary or appropriate to seek such a refund of such Imposition and such Tax Indemnitee shall cooperate with the Lessee in seeking such a refund. Notwithstanding the preceding sentence, the Lessee shall not take any action in the name of any Tax Indemnitee unless it shall have first agreed to indemnify such Tax Indemnitee in a manner reasonably satisfactory to such Tax Indemnitee for any liability or loss, including, without limitation, reasonable costs and attorneys' fees, which such Tax Indemnitee may incur as a result of the Lessee's action. In the event that a Tax Indemnitee receives a refund of any tax paid by it for which it has received a payment from the Lessee pursuant to this Section 5(a), such Tax Indemnitee shall first apply such refund (and any interest thereon paid by the United States Government or state or local taxing authority) to any amounts then due and owing to such Tax Indemnitee under the terms of this Lease and any excess shall be promptly paid to the Lessee.

The Lessee shall, whenever reasonably requested by any Tax Indemnitee, submit to such Tax Indemnitee evidence reasonably satisfactory to such Tax Indemnitee of the Lessee's performance of its duties under this Section 5(a). The Lessee shall also furnish promptly upon request such data relating to the transactions contemplated by this Lease as any Tax Indemnitee reasonably may require to permit such Tax Indemnitee's compliance with the requirements of taxing jurisdictions.

(b) Maintenance and Servicing. Subject to clause (ii) of Section 8(b), the Lessee agrees to pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Equipment during the term hereof, including but not limited to repairs, maintenance, storage and servicing as provided in Section 8 hereof. Except as contemplated by clause (ii) of Section 8(b), neither the Lessor nor its successors or assigns shall have any obligation or duty with respect to any of such matters during the term of this Lease and any applicable storage period provided for herein. The Lessor agrees that, so long as no Event of Default has occurred and is continuing, the Lessee shall have the benefit of and shall be entitled to enforce, either in its own name or in the name of the Lessor for the use and benefit of the Lessee, any

and all warranties (whether express or implied) and obligations of the Manufacturer in respect of the Equipment and the Lessor agrees to execute and deliver such further instruments as may be necessary to enable the Lessee to obtain service furnished for the Equipment by the Manufacturer.

(c) Duration. In the event that, during the continuance of this Lease, an event occurs which gives rise to a liability of the Lessee for any payment or reimbursement of any Imposition pursuant to this Section or for the payment by a Tax Indemnitee to the Lessee (including, without limitation, payments described in paragraph (a) of this Section), such liability shall continue, notwithstanding the expiration or termination of this Lease, until all such payments or reimbursements are made by the Lessee or the Tax Indemnitee, as the case may be.

SECTION 6. INDEMNITY APART FROM TAX INDEMNITY.

(a) General. Except as otherwise expressly stated herein, the Lessee hereby assumes liability for, and hereby agrees to indemnify, protect, defend, save and keep harmless the Lessor and the Owner, the Assignee and their successors and assigns and their respective agents and servants (herein a "General Indemnitee") from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including, without limitation, reasonable legal 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 of this Lease or any renewal thereof) on any General Indemnitee or a Unit of Equipment and in any way relating to or arising out of, or alleged to in any way relate to or arise out of, (i) this Lease, or (ii) the manufacture, purchase, acquisition, ownership, acceptance, rejection, delivery, nondelivery, possession, use, operation, leasing, subleasing, replacement, condition, maintenance, repair, sale, return or other application or disposition of the Equipment or any Unit thereof, including, without limitation, any Liabilities arising as the result of latent, patent or other defects, whether or not discoverable by any General Indemnitee, any claim for patent, trademark or copyright infringement, any tort claim (including strict liability in tort and whether for active or passive negligence) or claim for damages, any violation, or alleged violation of any provision of any law, rule, regulation, ordinance or restriction affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; provided, however, that the foregoing indemnity with respect to any General Indemnitee shall not extend to any Liabilities (A) resulting from the willful misconduct or gross negligence of such General Indemnitee, (B) resulting from acts or events giving rise to such Liabilities with respect to the Equipment or any Unit thereof which occur after the expiration of any applicable storage period and after the possession thereof has been redelivered to the Lessor in accordance with the terms of Section 16 at a time when an Event of Default has not occurred and is continuing, (C)

arising from the breach of any express duty or express representation or warranty to the Lessee of the Lessor contained herein, (D) otherwise expressly stated herein to be borne by such General Indemnitee, (E) resulting from the transfer of any interest of a General Indemnitee in the Equipment and/or this Lease, unless such transfer was made at the request of the Lessee or occurred following an Event of Default, or a substitution or appointment of a new Trustee occurs in accordance with the provisions of the Trust Agreement, or (F) with respect to any expenses incurred by the Lessor or the Assignee in connection with the execution of this Lease and with the financing of the Lessor's Cost of any Unit of Equipment. If at any time any General Indemnitee has actual knowledge of a Liability or a potential Liability that would be indemnified against hereunder, such General Indemnitee 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 General Indemnitee 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.

Any amount paid by the Lessee to a General Indemnitee under this Section 6(a) shall be an amount sufficient so that, after considering the tax and other effects of the Liabilities in question and the receipt of indemnification payments hereunder, such General Indemnitee will be restored to the same after-tax position as such General Indemnitee would have been in had such Liabilities not been incurred, imposed upon or asserted against such General Indemnitee.

(b) Duration. The obligations of the Lessee under this Section 6 shall survive the expiration or earlier termination of this Lease as to any Unit or Units of Equipment and are expressly made for the benefit of, and shall be enforceable by, each General Indemnitee separately or together without necessity of declaring this Lease in default and any General Indemnitee seeking to enforce the indemnification may initially proceed directly against the Lessee under this Section 6 without first resorting to any other rights of indemnification it may have. All payments required to be paid pursuant to this Section 6 shall be made directly to, or as otherwise requested by, the General Indemnitee entitled thereto, upon written demand by such General Indemnitee. All such written demands shall specify the amounts payable and the facts upon which the right to indemnification is based.

(c) No Guarantee of Residual Value or Securities. The indemnities and assumptions of liabilities set forth in this Lease do not guarantee a residual value in any Unit or Units nor do they guarantee the payment of principal or interest on any Securities issued by the Lessor to finance any portion of the Lessor's Cost of any Unit or Units.

SECTION 7. INSURANCE.

(a) Required Casualty Insurance Coverage. The Lessee agrees that it will at all times during the term of this Lease and during any storage period and at its own cost and expense keep each Unit of Equipment insured against loss by fire, and perils covered under the extended coverage endorsement, and against such other risks of physical loss (excluding, however, business interruption) as are customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged in by the Lessee at not less than the from time to time applicable Casualty Value thereof; provided that in no event shall the Lessee be required to carry such insurance in an amount in excess of 100% of the Lessor's Cost of the Equipment. Any such insurance need not cover the first portion of such loss as is usually retained by the Lessee in respect of similar equipment owned or leased by the Lessee, with the result that the Lessee may be its own insurer to such extent, and insurance policies maintained by the Lessee pursuant to this Section 7(a) may have applicable thereto deductible provisions to no greater extent than in effect for insurance coverage for equipment owned by the Lessee similar to the Units and may be carried under blanket policies maintained by the Lessee so long as such policies otherwise comply with the provisions of this Section 7. All such insurance shall cover the interest of the Lessor and the Owner and the Lessee in the Equipment and shall provide that losses, if any, in respect of the Equipment shall be payable to the Owner, the Lessee and the Lessor as their respective interests may appear; provided, however, that upon receipt by the Lessee of notice of the assignment of this Lease and the rent payable hereunder to the Assignee, as provided in Section 14 hereof, the Lessee shall cause the insurance on the Equipment in respect of which the rentals have been so assigned to provide that losses, if any, shall be payable to the Lessee, the Lessor and the Assignee, as their interests may appear, under a lender's loss payable clause.

(b) Required Liability Insurance Coverage. The Lessee agrees that it will at all times during the term of this Lease and any renewal period thereof and during any storage period and at its own cost and expense maintain bodily injury (including death) and property damage liability insurance with respect to the Equipment, in such amounts as are customary for similar companies similarly situated, but in no event in an amount less than \$8,000,000 under combined single limit liability for any one accident or occurrence. Any such insurance need not cover the first portion of such loss as is usually retained by the Lessee in respect of similar equipment owned by the Lessee, with the result that the Lessee may be its own insurer to such extent, and insurance policies maintained by the Lessee pursuant to this Section 7(b) may have applicable thereto deductible provisions to no greater extent than in effect for insurance coverage for equipment owned by the Lessee similar to the Equipment and may be carried under blanket policies maintained by the Lessee so long as such policies otherwise comply with the provisions of this Section 7. All such insurance

shall protect the Lessor and the Owner and their respective successors and assigns and the Lessee in respect of risks arising out of the condition, maintenance, use, ownership or operation of the Equipment, and shall designate such parties as named insureds thereunder or, as the case may be, contain a provision to the effect that liability of the Lessee under any agreements with any Person whereby the Lessee has agreed to assume responsibility or liability for bodily injuries or damage to property notwithstanding that claims may be made or suits commenced against such other Person, is covered under such insurance.

(c) Nature of Coverage; Settlement. The loss, if any, under any policy covering the Equipment required by Section 7(a) shall be adjusted with the insurance companies by the Lessee and the adequacy of the amount payable in respect of any such loss may be contested by the Lessee in any reasonable manner which does not materially adversely affect the title of the Lessor to, or the lien of the Assignee on, the Unit or Units in respect of which such amount is payable. Any loss payable under any business interruption coverage with respect to the operation of any Unit of Equipment shall be separately adjusted and shall be paid directly to the Lessee without approval of the Lessor or the Assignee. If the amount under any deductible clause of any policy applies to both a property loss and a business interruption loss, the amount thereof shall, for the purposes of this paragraph (c), be allocated solely to the business interruption claim. Each policy under this Section 7 shall provide (i) that the loss, if any, thereunder shall be adjusted and paid as provided in this Lease and (ii) that thirty days' prior written notice of cancellation or of any material alteration thereof shall be given to the Lessor, the Owner and the Assignee. Upon receipt of notification from the applicable insurer of any material alteration in any such policy, the Lessee will promptly notify the Lessor, the Owner and the Assignee. Each such policy shall also, to the extent such provisions are obtainable, (x) include effective waivers by the insurers of all claims for insurance premiums against the Lessor, the Owner and the Assignee, (y) not require contributions from other policies held by the Lessor, the Owner or the Assignee, and (z) if available without unreasonable increase in expense to the Lessee, provide that any losses shall be payable notwithstanding (A) any act of negligence of the Lessee, the Lessor, the Owner or the Assignee, (B) the occupation or use of any Unit of Equipment for purposes more hazardous than permitted by the terms of such policies, (C) any other breach or violation by the Lessor, the Owner, the Lessee or the Assignee of any warranties, declarations or conditions contained in such policies, (D) any foreclosure or other proceedings or notice of sale relating to any Unit of Equipment or this Lease, and (E) any change in the title to or ownership of any Unit of Equipment. The Lessee shall furnish the Lessor and the Owner and their respective successors and assigns with certificates of the Lessee with respect to maintenance of the insurance required hereunder.

(d) Approved Insurers. All insurance provided for in this Section 7 shall be effected with insurance companies of

recognized standing among companies owning property of a character similar to the Equipment and engaged in a business similar to that engaged in by Lessee.

(e) Application of Insurance Proceeds. All insurance proceeds payable and paid to the Lessor, its successors and assigns or the Lessee on account of any damage to or destruction of any Unit of Equipment or any part thereof shall be applied or dealt with as follows:

(i) All such proceeds actually received on account of any such damage or destruction other than a Casualty Occurrence shall be paid over to the Lessee upon reasonable proof that any damage to any Unit with respect to which such proceeds were paid has been fully repaired.

(ii) All such proceeds received or payable on account of a Casualty Occurrence shall be paid over or assigned to the Lessor or if there has been an assignment of an interest in such Unit, to the Assignee; provided that if the Lessee shall have paid to the Lessor or the Assignee, as the case may be, the Casualty Value of such Unit or Units and all other amounts then due and owing under this Lease, then the Lessee shall be entitled to receive and the Lessor or the Assignee, as the case may be, shall pay to the Lessee such proceeds.

Notwithstanding the preceding provisions of this paragraph 7(e), if a Default or an Event of Default shall have occurred and be continuing at the time that any such proceeds are to be applied, such proceeds shall be applied in accordance with the terms and provisions of this Lease to the payment of any unpaid Fixed Rent, Supplemental Rent, Casualty Value or other sums then due under this Lease and the remainder, if any, shall be paid to the Lessee.

SECTION 8. RISK OF LOSS; MAINTENANCE; ALTERATIONS, MODIFICATIONS AND ADDITIONS; PARTS.

(a) Risk of Loss, Repairs, Damage and Destruction. Throughout the term of this Lease and any renewal period thereof and thereafter until the expiration of any applicable storage period and return thereof pursuant to Section 15 or 16, as the case may be, the Lessee shall bear the risk of damage, loss, theft or destruction, partial or complete, of the Equipment from whatsoever source arising (whether or not any insurance proceeds are payable in respect of, or are sufficient to cover, such damage, loss, theft or destruction).

(b) Maintenance. (i) The Lessee, at its sole cost and expense, shall maintain, service and repair the Equipment to the same extent as similar equipment is customarily maintained, serviced and repaired by companies owning or leasing equipment of a similar character and engaged in a business similar to that engaged in by

the Lessee and in any event to the same extent as the Lessee would maintain, service and repair similar property owned by the Lessee, but in all events shall maintain the Equipment in good repair, order and condition, ordinary wear and tear excepted, and suitable for use in interchange in accordance with the Interchange Rules. In so doing the Lessee shall comply with the manufacturer's operating or repair standards and periodic maintenance inspections, including, without limitation, those required to enforce warranty claims in respect of any Unit of Equipment or those which are required by any governmental commission, board or other authority (including, without limitation, the United States Department of Transportation and the Interstate Commerce Commission) having jurisdiction over any Unit of Equipment if and to the extent the failure to so maintain, service, repair and comply with any thereof would materially and adversely affect the title, interest or rights of the Lessor, its successors and assigns in and to such Unit.

(ii) Notwithstanding the requirements of Section 8(b)(i) hereof, the Lessor agrees that it will pay pursuant to any maintenance agreement in form and substance satisfactory to the Lessor any expenses incurred by the Lessee in performing its obligations to maintain the Equipment pursuant to Section 8(b)(i) and Section 9(a) hereof if and to the extent that the Lessor receives on or prior to the date any such expenses become due and owing pursuant to any such maintenance agreement, Supplemental Rent from the Lessee in an amount equal to the amount of such expenses so due and owing. The Lessee understands and agrees that the obligation of the Lessor to pay any such expenses shall be limited to the amount of Supplemental Rent received by the Lessor from the Lessee pursuant to this Section 8(b)(ii). The Lessee further understands and agrees that whether or not the Lessor performs its obligations as contemplated by this Section 8(b)(ii) and such maintenance agreement, the Lessee shall continue to perform each and every one of its obligations hereunder, including, without limitation, the payment of Fixed and Supplemental Rent, upon the terms and conditions contemplated by this Lease, but that the Lessee shall otherwise retain the right to exercise any rights or remedies which it may have against the Lessor for damages suffered by the Lessee as a result of a violation of the Lessor's obligations as contemplated by this Section 8(b)(ii).

(c) Alterations, Modifications and Additions. The Lessee, at its sole cost and expense, shall with reasonable promptness make such alterations, modifications and additions to each Unit of Equipment as may be required from time to time to meet the requirements of Section 8(b)(i) hereof or the requirements of applicable laws and regulations if and to the extent the failure to do so would materially and adversely affect the title, interest or rights of the Lessor, its successors and assigns in and to such Unit. In addition, at any time throughout the term of this Lease, the Lessee shall have the right to make any alterations, modifications or additions to any Unit of Equipment as the Lessee may deem desirable in the proper conduct of its business, provided that (i) no such alteration, modification or addition diminishes the value or utility

of such Unit of Equipment below the value and utility thereof immediately prior to such alteration, modification or addition, assuming such Unit of Equipment was then in the condition required to be maintained by the terms of this Lease, and (ii) the improvements or additions comprising such modifications or alterations shall be readily removable from the affected Units of Equipment without materially damaging such Units of Equipment or diminishing the value and utility which such Unit would have had at such time had such alteration, modification or addition not occurred.

(d) Parts. Title to all components, parts, accessories and appliances (hereinafter collectively referred to as "Parts") installed in or attached to the Equipment shall vest and remain in the Lessor if (i) such Part is required pursuant to repairs or maintenance performed under subsection (b)(i) or the first sentence of subsection (c) above, or (ii) such Part cannot be readily removed from the Equipment without materially damaging the Equipment or diminishing or impairing the value or utility which the Equipment would have had at such time had such Part not been installed in or attached to the Equipment. In all other cases title to Parts installed in or attached to the Equipment shall vest in the Lessee. All Parts installed in or attached to the Equipment shall be free and clear of all liens and rights of others except Permitted Encumbrances and shall be in as good operating condition as, and shall have a value and 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.

All Parts owned by the Lessor at any time removed from the Equipment shall remain the property of the Lessor, no matter where located, until such time as such Parts shall be replaced by Parts to which the Lessor is to have title in accordance with the terms and conditions of this Lease (such substituted Parts, title to which vests in the Lessor as hereinabove provided, are sometimes referred to herein as "Replacement Parts"). Immediately upon any Replacement Part becoming incorporated or installed in or attached to the Equipment as above provided, without further act: (A) title to the removed Part shall thereupon vest in such Person as shall be designated by the Lessee, free and clear of all rights of the Lessor; (B) title to such Replacement Part shall thereupon vest in the Lessor; and (C) such Replacement Part shall become subject to this Lease and be deemed part of the Equipment for all purposes hereof to the same extent as the Parts originally incorporated or installed in the Equipment.

Without limiting the foregoing provisions of this Section 8(d), the Lessor understands and agrees that in addition to purchasing the Equipment from the Manufacturer and leasing the same to the Lessee, the Lessor has also purchased and is leasing to the Lessee hereunder such spare parts as are more fully described in the Purchase Order. The Lessee covenants and agrees to use its reasonable best efforts to use such spare parts in connection with the satisfaction of its obligations to maintain the Equipment pursuant to this Section 8. If for any reason any such spare parts

are not so used by the Lessee, the same shall be returned to the Lessor at the expiration of the term of this Lease, including any applicable renewal period, substantially in the manner contemplated by Section 16 hereof.

SECTION 9. USE OF THE EQUIPMENT; ASSIGNMENT BY LESSEE.

(a) Use of the Equipment. The Lessee agrees that each Unit of Equipment will be used for the purpose and in the manner for which it was designed solely in the conduct of the business of the Lessee or as otherwise permitted pursuant to the terms of this Lease. Subject to Section 9(b) hereof, the Lessee agrees that each Unit of Equipment will at all times be and remain in the possession and control of the Lessee or any of its Affiliates. The Lessee warrants that each Unit of Equipment will at all times be used and operated in compliance with all governmental laws, regulations, requirements and rules (including, without limitation, the Interchange Rules and the regulations of the United States Department of Transportation and the Interstate Commerce Commission), if and to the extent failure to so comply would materially and adversely affect the title, interest or rights of the Lessor, its successors and assigns in and to any Unit of Equipment; provided, however, that the Lessee shall have the opportunity to contest the applicability of the same by means of a Permitted Contest. The Lessee shall use or permit the use of each Unit of Equipment predominantly within the continental United States; provided that any use of any Unit of Equipment outside the continental United States shall be de minimus and in no event to an extent which would result in a loss by or recapture to the Owner of investment credit under Section 38 and related sections of the Code in respect of any Unit.

(b) Assignment by Lessee. The Lessee agrees that it will not assign, transfer or sublease its rights under this Lease or in respect of any Unit of Equipment or permit its rights or interest hereunder or in respect of any Unit of Equipment to be subject to any lien, charge or encumbrance other than Permitted Encumbrances without the prior written consent of the Lessor and the Assignee; provided, that without the prior written consent of the Lessor, the Owner or any successor thereto or Assignee thereof, the Lessee may: (i) during the original term of this Lease assign or sublease its rights under this Lease in respect of any Unit or Units of Equipment to any Subsidiary of the Lessee or any responsible shipper, railroad or public utility located within the continental United States, if the term of any such sublease shall expire not less than six months prior to the expiration of the original term of this Lease, unless the Lessee is no longer in the business of transporting coal or unless the sublessee is a Subsidiary of the Lessee, in either of which cases the term of any sublease may run to the expiration of the term of this Lease, including any applicable renewal period; and (ii) during any applicable renewal period of this Lease (but in such case, only if the Lessee has exercised its renewal option hereunder) assign or sublease its rights under this

Lease in respect of any Unit or Units of Equipment to any Subsidiary of the Lessee or, as long as the Lessee remains in the business of transporting coal, to any responsible shipper, railroad or public utility located within the continental United States which utilizes such Unit or Units of Equipment to transport coal on behalf of the Lessee in connection with the regular operation of the Lessee's business. The Lessee agrees that the excess of any rental in respect of any subleased Equipment by any sublessee pursuant to any such sublease over the sum of the Fixed Rent in respect of such Equipment payable by the Lessee pursuant hereto and the Lessee's reasonable costs of administering such sublease shall be paid to and retained by the Lessor for its own account. No assignment or sublease shall relieve the Lessee of any of its obligations, liabilities or duties hereunder, which shall remain those of a principal and not a guarantor. Nothing in this Section 9(b) shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any solvent corporation (which shall have duly assumed in writing the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired all or substantially all of the assets of the Lessee, provided that, upon the effectiveness of such merger or consolidation or acquisition of properties, no Default or Event of Default shall have occurred and be continuing and such assignee, successor or transferee shall have assumed in writing the obligations of the Lessee hereunder.

(c) Mileage. Subject to the proviso hereto, it is contemplated that the Lessee shall receive, insofar as applicable law and regulations allow, all mileage allowance, rentals and/or other compensation (hereinafter referred to as "Mileage") payable by carriers by reason of the use of a Unit of Equipment and if for any reason the Lessor shall receive any Mileage, then the Lessor shall remit such Mileage to the Lessee promptly after the Lessee shall furnish to the Lessor, at the Lessee's sole expense, either (i) a ruling of the Interstate Commerce Commission to the effect that the remittance thereof to the Lessee will not constitute a rebate within the meaning of 49 U.S.C., §41, as amended, or (ii) an opinion of counsel to the same effect; provided, that in no event shall the Lessor be required to remit any Mileage payments to the Lessee (A) if a Default or an Event of Default shall have occurred and be continuing, or (B) if the Lessee is in default in respect of its obligations to store the Equipment pursuant to Section 16(b) hereof.

SECTION 10. LIENS.

(a) Covenant of Lessee. The Lessee agrees that it will keep each Unit of Equipment free and clear of any and all liens, charges and encumbrances (including, without limitation, the lien of the Indenture dated as of September 1, 1945 between the Lessee and Citibank, N.A., as from time to time supplemented or amended) other than (i) Permitted Encumbrances, (ii) liens, charges or

encumbrances of any Persons claiming by, through or under the Lessor, and (iii) liens, charges or encumbrances created pursuant to the Lessor's right to assign this Lease to the Assignee pursuant to Section 14(a) hereof and grant a security interest in the Equipment in connection therewith.

(b) Covenant of Lessor. The Lessor agrees that it will keep each Unit of Equipment free and clear of any and all liens, charges or encumbrances of any Persons claiming by, through or under the Lessor other than (i) Permitted Encumbrances and (ii) liens, charges or encumbrances which are permitted or contemplated by Section 14(a) hereof.

SECTION 11. OWNERSHIP AND MARKING.

(a) Ownership. The Lessee acknowledges and agrees that it has not, and by the execution hereof it does not and will not have or obtain, any title to the Equipment, nor any property right or interest, legal or equitable, therein, except solely as the Lessee hereunder and subject to all the terms hereof.

(b) Marking. The Lessee covenants and warrants that prior to or concurrently with the delivery of a Unit of Equipment it will cause each Unit of Equipment to be kept numbered with its road number as set forth in Exhibit A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Unit of Equipment in letters not less than one inch in height as follows:

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

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Unit of Equipment, its rights under this Lease and the rights of any assignee under Section 14 hereof. The Lessee will not place any such Unit of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit of Equipment (i) except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, and (ii) unless and until (A) such statement shall have been delivered to the Lessor and any Assignee by the Lessee and, at the Lessee's expense, filed, recorded or deposited in all public offices where this Lease and any instrument or agreement pursuant to which the Lessor has granted a security interest in the Equipment shall have been filed, recorded or deposited, and (B) the Lessee shall have furnished the Lessor and any Assignee an opinion of counsel to the effect that such statement

has been so filed, recorded and deposited, that such filing, recordation and deposit will protect the Lessor's and any such Assignee's respective interests in such Unit and that no filing, recording or giving of notice with or to any other public office is necessary to protect the respective interests of the Lessor and any such Assignee in such Unit.

(c) Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any Person to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its Affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

SECTION 12. WARRANTIES.

EXCEPT AS SET FORTH IN THIS SECTION 12, THE LESSOR NEITHER MAKES, HAS MADE NOR SHALL BE DEEMED TO MAKE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. Notwithstanding any other provisions of this Section 12, the Lessor warrants and agrees not to wrongfully interfere with the Lessee's quiet enjoyment of the Units, provided that the Lessee is otherwise in compliance with the terms of this Lease.

SECTION 13. CASUALTY OCCURRENCES.

(a) Casualty Occurrence. In the event that any Unit of Equipment suffers a Casualty Occurrence, the Lessee shall promptly and fully inform the Lessor, its successors and assigns in regard thereto and the Lessee, on the semiannual Casualty Value payment date next following the date of said Casualty Occurrence, shall pay to the Lessor an amount equal to the sum of (i) the Casualty Value of such Unit of Equipment computed as of the semiannual Casualty Value payment date immediately following said Casualty Occurrence, (ii) that portion of the then current installment of Fixed Rent in respect of such Unit which has accrued to but not including said date in the case of any such payment made or to be made on January 1 of any year, and (iii) any Supplemental Rent in respect of such Unit then due and owing. If for any reason the President, any Vice President, the Secretary or the Treasurer of the Lessee has not become aware of such Casualty Occurrence prior to the semiannual Casualty Value

payment date on which such Casualty Value would otherwise be payable, then such Casualty Value shall become due and payable and shall be paid not later than ten Business Days after the date on which such officer of the Lessee has become aware of such Casualty Occurrence, together with interest at the rate contemplated by Section 4(e) hereof from and including the semiannual Casualty Value payment date next following the date of such Casualty Occurrence to but not including the date such Casualty Value is actually paid. Upon receipt by the Lessor of such payment, together with any other sums then due and owing in respect of such Unit, this Lease shall terminate with respect to such Unit, subject to the requirements of Section 16 hereof regarding the disposition of such Unit of Equipment and subject to any Permitted Contest and rights of the Lessee arising in respect thereof.

(b) Rent Termination. Fixed Rent in respect of any Unit of Equipment which has suffered a Casualty Occurrence shall cease to accrue on the semiannual Casualty Value payment date in respect of such Unit but the obligation of the Lessee to pay accrued but unpaid Fixed Rent and all other sums then due and owing in respect of such Unit shall continue until the same has been paid. The Lessee shall continue to pay rent for all Units of Equipment which have not suffered a Casualty Occurrence.

(c) Certain Government Requisitions. In the event that during the term of this Lease the use of any Unit of the Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise under circumstances which do not constitute a Casualty Occurrence in respect of such Unit, the Lessee's duty to pay rent shall continue for the duration of such requisitioning or taking. Unless an Event of Default shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession. If an Event of Default shall have occurred and be continuing, the Lessee shall be deemed to the extent of any such compensation so received to be the agent of the Lessor in collecting and receiving the same and shall segregate and hold in trust and promptly remit any such compensation so received to the Lessor for crediting against any sums then due and owing hereunder to the Lessor, its successors or assigns. A requisition or taking by the government of the United States for an indefinite period of time shall not be deemed to exceed the remaining term of this Lease unless and until the period of such requisition or taking does in fact exceed the remaining term and a requisition or taking by any other governmental entity for an indefinite period of time shall not be deemed to exceed one year unless and until the period of such requisition or taking does in fact exceed one year.

(d) Disposition Following Casualty Occurrence. The Lessee shall, as agent for the Lessor, dispose of any Unit of Equipment with respect to which a Casualty Occurrence has occurred as promptly as possible for the best price obtainable. Any such disposition shall be on an "as-is," "where-is" basis specifically disclaiming

any representation or warranty express or implied. The proceeds of such disposition shall be allocated and applied in the manner provided in Section 13(e) hereof. During the period from the date of the Casualty Occurrence with respect to any Unit until final disposition of such Unit, the Lessee shall, as agent for the Lessor, use its best efforts to obtain cash bids for the purchase of such Unit at the best price available. The costs and expenses of any such sale shall be borne by the Lessee. The Lessee shall continue to remain obligated under this Lease in respect of each such Unit until the date of disposition thereof pursuant hereto and the payment of Fixed Rental and any Supplemental Rent in respect of such Unit shall have been made.

(e) Application of Proceeds. (i) In the case of a Casualty Occurrence in respect of which any proceeds or other recovery is paid or received from any source other than a governmental authority, the Lessor shall be entitled to receive the same, including any proceeds from the disposition of any Unit; provided that unless an Event of Default shall have occurred and be continuing (A) the Lessee shall be entitled to credit for the amount of such proceeds so received by the Lessor against the Lessee's obligation to pay the Casualty Value in respect of such Unit, and (B) following the payment of such Casualty Value, the Lessee shall be entitled to receive any such proceeds. Any insurance proceeds payable on account of a Casualty Occurrence shall be paid and applied in accordance with Section 7(e) of this Lease.

(ii) In the case of a Casualty Occurrence in respect of which any proceeds or other recovery is paid or received from any governmental authority, such proceeds or recovery will be applied as follows:

(A) so much of such proceeds or recovery as shall not exceed the Casualty Value required to be paid pursuant to Section 13(a) shall be applied in reduction of the Lessee's obligation to pay such Casualty Value, if not already paid by the Lessee, or, if already paid by the Lessee, shall be applied to reimburse the Lessee for its payment of such Casualty Value, and following such application there shall be paid to the Lessee so much of the balance, if any, remaining thereafter as is equal to the excess, if any, of (1) the present value (at a discount rate of 10% of the Fair Rental Value (determined at the expense of the Lessee) for such Unit for the balance of the term of this Lease for such Unit over (2) the present value (discounted at such rate) of all remaining Fixed Rent for such Unit, and

(B) any remaining balance after such application and such payment to the Lessee to be thereafter paid over to, or retained by, the Lessor.

Notwithstanding the provisions of Section 18(a)(iii) hereof, if the Lessor and the Lessee are unable to agree, for purposes of this Section, on the Fair Rental Value of a Unit or Units of Equipment,

the same shall be determined by Janney Montgomery Scott Inc., or such other independent appraiser as may be mutually acceptable. If Janney Montgomery Scott Inc. refuses or is unable to act, and the parties are unable to agree on a mutually acceptable appraiser, then Fair Rental Value shall be determined in accordance with the provisions of Section 18(a)(iii) hereof.

SECTION 14. ASSIGNMENTS BY LESSOR.

(a) Right to Assign; Limitation. The Lessor may assign this Lease and/or the Fixed Rent and the Supplemental Rent at any time due and to become due, or at any time owing or payable, by the Lessee to the Lessor under any of the provisions of this Lease to any Assignee. Upon any such assignment, the Lessor shall give written notice to the Lessee stating the name and post office address of any such Assignee and all rents and other sums payable by the Lessee which are the subject matter of such assignment shall be paid to such Assignee. Except as provided in Section 14(b), the Lessor may not assign any of its ownership right, title or interest in this Lease and/or the Fixed Rent and Supplemental Rent due or payable hereunder to any Person other than to a successor trustee in accordance with the provisions of the Trust Agreement.

(b) Obligation and Right of Assignee. Any Assignee shall not be obligated to perform any duty, covenant or condition required to be performed by the Lessor under any of the terms hereof, but on the contrary, the Lessee and the Lessor by their respective executions hereof each acknowledge and agree that notwithstanding any such assignment each and all of such duties, covenants or conditions required to be performed by the Lessor shall survive any such assignment and shall be and remain the sole liability of the Lessor. Without limiting the foregoing, the Lessee acknowledges and agrees that, except as otherwise expressly provided in Section 13 hereof, the rights of the Assignee in and to the Fixed Rent and Supplemental Rent (in the case of the latter if, as and when any thereof becomes due and owing to the Assignee pursuant to the terms of this Lease) shall, subject to the rights of the Lessee against the Lessor pursuant to Section 4(a)(ii), not be subject to any abatement whatsoever, and shall not be subject to any defense, setoff, counterclaim or recoupment or reduction of any kind for any reason whatsoever whether by reason of failure of or defect in the Lessor's title or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof or any damage to or loss or destruction of the Equipment or any part thereof or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor or of any other Person to the Lessee or to any other Person, or for any cause whatsoever, it being the intent hereof that the Lessee shall be unconditionally and absolutely obligated to pay the Assignee all of the Fixed Rent and Supplemental Rent assigned thereto subject only to the provisions of Section 4(d) hereof permitting payment of indemnities to be made directly to the Person claiming in respect of such indemnities.

(c) Subordination of Interest of Assignee. It is further understood and agreed that the right, title and interest of the Assignee shall by the express terms of any instrument or instruments granting and conveying any interest in any Unit or Units to the Assignee be subject to the rights and duties of the Lessee as provided hereunder in and to the Equipment; provided, however, that such instrument or instruments may expressly provide that in the event Canadian Imperial Bank of Commerce is the sole party for whose benefit the Assignee then holds the assignment of this Lease and the security interest in the Equipment, then in such event, but only in such event, the right, title and interest of the Assignee shall be senior and have priority over the rights of the Lessee hereunder.

SECTION 15. DEFAULTS.

15.1. The following events shall constitute "Events of Default":

(a) the Lessee shall default in the payment of any installment of Fixed Rent, or of any Casualty Value payable pursuant to Section 13 hereof, and such default shall continue for a period of five business days after the due date thereof; or

(b) the Lessee shall default in the payment of any Supplemental Rent when due and such default shall continue for a period of ten calendar days after written notice thereof from the Lessor or the Owner or any Assignee to the Lessee; or

(c) the Lessee shall default in any respect in the observance or performance of any other covenant required to be observed or performed by the Lessee hereunder, including, without limitation, the observance or performance of any covenant contained in Section 16 hereof, or under the Purchase Order Assignment and such default shall continue for more than 30 calendar days after the earlier of (i) written notice thereof from the Lessor, the Owner or any Assignee to the Lessee, or (ii) an officer of the Lessee shall have actual knowledge that a Default has occurred and is continuing under this Lease and shall willfully fail to advise the Lessor, the Owner or the Assignee that such event has occurred and is continuing; or

(d) any representation or warranty made by the Lessee herein or in any statement or certificate furnished to the Lessor or the Assignee in connection herewith proves untrue, inaccurate or incomplete in any material respect as of the date of issuance or making thereof; or

(e) a petition for reorganization under Title 11 of the United States Code (as now or hereafter constituted) shall be filed by or against the Lessee and, unless such

petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed; or

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

(g) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein within 30 days after written notice from the Lessor, the Owner or any Assignee to the Lessee demanding such cancellation.

15.2. When any Event of Default has occurred and is continuing the Lessor may in its sole discretion elect, to the extent permitted by and subject to compliance with any mandatory requirements of applicable law then in effect, to:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants and terms of this Lease or to recover damages for the breach thereof, including

such amounts as are sufficient to restore the Owner to the same net after-tax rate of return and net after-tax cash flow, after considering the effect of the receipt of such damages and amounts on its Federal income tax and state and local taxes or franchise taxes based on net income, that the Owner would have realized had such breach not occurred;

(b) by notice in writing to the Lessee, terminate this Lease and/or the Lessee's rights of possession hereunder as to any one or more of the Units, whereupon all right, title and interest of the Lessee to or in the use of such Units shall terminate, and the Lessor or the Assignee, as the case may be, may, directly or by its agent, enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession thereof (the Lessee hereby indemnifying and holding the Lessor or the Assignee, as the case may be, harmless from liability for any damages occasioned by such taking of possession, other than for damages arising as a result of the gross negligence or willful misconduct of the Lessor or the Assignee, as the case may be) or may, at the Lessor's or the Assignee's election, require the Lessee at the Lessee's expense to return any Unit promptly to the Lessor or the Assignee in the manner and condition required by, and otherwise in accordance with all of the provisions of, Section 16 hereof as if such Unit were being returned at the end of the term of this Lease with respect to such Unit; provided, however, that the Lessee will provide free storage for such Unit either in Chicago, Illinois or at a location within 350 miles of such city for a period not exceeding 365 days after the Lessor or the Assignee shall have so declared this Lease to be in default and shall bear the entire expense and risk of such storage (including, without limitation, the cost of any insurance) and preparation of such Unit for shipment and the delivery of such Unit to the location contemplated by Section 16 hereof;

(c) in the event of any such termination with respect to any Unit or Units of Equipment, the Lessor or the Assignee shall have the right, but shall not be obligated, to sell such Unit or Units at public or private sale as the Lessor or the Assignee may determine or otherwise dispose of, hold, use, operate, lease to others or keep idle such Unit or Units, as the Lessor or the Assignee 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 other proceeds with respect thereto, except to the extent required by paragraph (d) or (e) below and except that the Lessor or the Assignee will furnish the Lessee with such reasonable evidence of the amount of any proceeds in respect of such Unit or Units as the Lessee may request;

(d) in the event of any such termination with respect to any Unit or Units of Equipment and whether or not the Lessor shall have exercised or shall thereafter at any time exercise any of its rights under paragraph (c) above, (i) the Lessor or the Assignee shall be entitled to retain all rents and additional sums theretofore paid by the Lessee or received by the Lessor or the Assignee, including any such then in its possession which, had this Lease not been declared in default, would otherwise be payable to the Lessor or the Assignee hereunder, (ii) the Lessor or the Assignee may recover from the Lessee all rents and additional sums accrued and unpaid under any of the terms hereof as of the date of termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period), and (iii) the Lessor or the Assignee may recover forthwith from the Lessee as liquidated damages for the loss of a bargain, but not as a penalty, whichever of the following amounts the Lessor or the Assignee in its sole discretion shall elect: (x) an amount equal to the excess, if any, of the Casualty Value of the Unit or Units involved in such termination as of the Rent Payment Date next preceding the date of termination over the Fair Market Sales Value of such Unit or Units (computed as hereinafter in this Section provided) as of the date of termination, or (y) an amount equal to the excess, if any, of the then present value of all Fixed Rent which would otherwise have accrued hereunder on account of the Unit or Units involved in such termination from the date of termination to the end of the term of this Lease for each such Unit over the then present value of the aggregate Fair Rental Value of such Unit or Units for the balance of such term, such present values to be computed in each case on the basis of a 10% per annum discount factor from the respective dates upon which such rents would have been payable hereunder had this Lease not been terminated;

(e) in the event the Lessor or the Assignee, pursuant to paragraph (c) above, shall have sold any Unit or Units of Equipment, then in lieu of exercising its rights under paragraph (d) above, (i) the Lessor or the Assignee shall be entitled to retain all rents and additional sums theretofore paid by the Lessee or received by the Lessor or the Assignee, including any such then in its possession which, had this Lease not been declared in default, would otherwise be payable to the Lessor or the Assignee hereunder, (ii) the Lessor or the Assignee may recover from the Lessee all rents and additional sums accrued and unpaid under any of the terms hereof on account of such Unit or Units as of the date of termination, and (iii) the Lessor or the Assignee may recover from the Lessee as liquidated damages for the loss of a bargain, but not as a penalty, an amount equal to the excess, if any, of the Casualty Value of the Equipment,

computed as of the Casualty Value payment date next preceding such date of termination, over the net proceeds of such sale;

(f) in addition to the foregoing, the Lessor and the Assignee shall be entitled to recover from the Lessee any and all damages which the Lessor or the Assignee shall sustain by reason of the occurrence of any such Event of Default or other breach of this Lease, together with reasonable attorneys' fees and such reasonable expenses as shall be expended or incurred in the seizure, rental, storage or sale of the Equipment or in the enforcement of any right or privilege hereunder or in any consultation or action in connection therewith.

15.3. Except as otherwise expressly provided above with respect to the payment of liquidated damages, no remedy referred to in this Section is intended to be exclusive, but shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor and the Assignee thereof at law or in equity; and the exercise or beginning of exercise or failure to exercise by the Lessor or the Assignee of any one or more of such remedies shall not preclude the simultaneous or later exercise by the Lessor or the Assignee of any or all of such other remedies. No express or implied waiver by the Lessor or the Assignee 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 or the Assignee to sell, lease or otherwise use any Unit in mitigation of the Lessor's or the Assignee's damages as set forth in this Section or which may otherwise limit or modify any of the Lessor's or the Assignee's rights and remedies in this Section.

15.4. The term "Fair Market Sales Value" of any Unit shall be determined on the basis of, and shall be equal in amount to the value which would obtain in an arm's-length transaction between an informed and willing buyer and an informed and willing seller under no compulsion to sell and the cost of removal thereof shall not be a deduction from such Fair Market Sales Value. Such Fair Market Sales Value shall be determined by mutual written agreement of the Lessor and the Lessee or, upon notice to the Lessee by the Lessor, at any time prior to such mutual agreement, shall be determined by two independent appraisers, one chosen by the Lessor and one chosen by the Lessee. If such appraisers cannot agree on such value within 60 days after the date of appointment thereof, then such value shall be determined by an appraiser chosen by the American Arbitration Association, which appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The expenses and fees of any appraiser or appraisers shall be borne by the Lessee.

SECTION 16. DISPOSITION OF EQUIPMENT.

(a) Return. Unless this Lease shall have been previously terminated pursuant to Section 13 or Section 15 hereof, at the end of the term of this Lease (including any storage period) in respect of a Unit of Equipment, the Lessee will deliver possession of such Unit to the Lessor at such location as the Lessor shall designate to the Lessee by not less than 90 days' prior written notice, or in the absence of such designation, as the Lessee may select. The Lessee shall only be responsible for that portion of the costs of such delivery as shall equal the cost which would be incurred in delivering the Units a distance of 350 miles from Chicago, Illinois and the Lessor shall be responsible for any cost of delivery in excess thereof. The Equipment shall be in good repair, order and condition, ordinary wear and tear excepted, and shall be suitable for use in interchange in accordance with Interchange Rules and shall otherwise be in a condition so as to materially conform in all material respects to any other rules and regulations of governmental entities applicable to railroad rolling stock of the type leased hereunder.

(b) Storage. The Lessee at its own expense will provide seventy-five (75) days' storage of the Equipment after the expiration of the term of this Lease, including any applicable renewal term and will transport the Equipment to a storage location. The Lessee may utilize up to ten storage locations as it may select, provided no such location shall be more than 350 miles either from Chicago, Illinois or from Jackson, Michigan. The 75-day period of storage shall commence on the date of delivery of the first Unit Train to a qualified location, provided that there shall be a minimum simultaneous storage period in respect of all Units of at least 40 days. During any such storage period, the Lessee shall permit the Lessor or any Person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any such Person.

Commencing ten days after the expiration of the term of this Lease, including any applicable renewal term, the Lessee shall begin to pay the Lessor the daily equivalent of the Fixed Rent rate on any Unit of Equipment which has not then been stored pursuant to the terms of this Section 16; provided, however, that upon delivery and storage of the first Unit Train any such daily rent shall cease to accrue for 15 days following delivery and storage of such first Unit Train and at the expiration of such 15-day period shall again accrue in respect of any Units of Equipment which have not then been stored in accordance with the terms of this Section 16. All amounts earned in respect of the Equipment after the expiration of the term of this Lease, including any applicable renewal term shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. The assembling, delivery, storage and transporting of the Equipment as herein provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in

the premises the Lessor or the Assignee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

SECTION 17. FINANCIAL STATEMENTS AND REPORTS.

The Lessee agrees that it will furnish directly to the Lessor, the Owner and their respective successors and assigns, the following:

(a) As soon as available and in any event within 60 days after the end of each quarterly period, except the last, of each fiscal year, a balance sheet of the Lessee as at the end of such period and a statement of income and retained earnings of the Lessee for the period beginning on the first day of such fiscal year and ending on the date of such balance sheet, the income statement setting forth the corresponding figures for the corresponding period of the preceding fiscal year, all in reasonable detail, provided that the Lessee may furnish copies of its Form 10-Q (or any successor form) in lieu of the information required by this Section 17(a);

(b) As soon as available and in any event within 120 days after the last day of each fiscal year, a copy of the Lessee's annual report to stockholders, including balance sheet, income statement and statement of retained earnings of the Lessee, which statements will have been certified by a firm of independent public accountants of recognized standing selected by the Lessee covering the operations of the Lessee;

(c) Within the period provided in subparagraph (b) above, a certificate, signed by any Vice President or the Treasurer of the Lessee, to the effect that the signer thereof has reviewed the terms and provisions of this Lease and that at the date of said certificate is not aware of any Default, or if the signer is aware of any such Default, he shall disclose in such certificate the nature thereof;

(d) On or before May 31 in each year, commencing with the year 1981, (i) an accurate statement, as of the preceding December 31 (A) showing the amount, description and numbers of the Units of Equipment then leased hereunder, the amount, description and numbers of all Units of Equipment that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (B) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 11(b)

hereof shall have been preserved or replaced, and (ii) a certification that the Lessee is in compliance with the requirements of Section 7 of this Lease;

(e) As soon as available, copies of such financial statements, reports and proxy statements as the Lessee shall furnish to its stockholders; and

(f) Such additional information as the Lessor and any of the Lessor's successors or assigns may reasonably request concerning the Lessee, in order to enable such Person to determine whether the covenants, terms and provisions of this Lease have been complied with by the Lessee.

The Lessee agrees to permit the Lessor and any such successor or assign (or such Persons as the Lessor or such successor or assign may designate) to visit and inspect the Units of Equipment in which any such Person has an interest and to examine the records or books of account of the Lessee relating to such Unit or Units of Equipment, all at such reasonable times as the Lessor or such successor or assign may reasonably request. Without limiting the foregoing, the Lessee shall, during the final 90 days of the term of this Lease, including any applicable renewal term, permit the Lessor or any Person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit on the premises of the Lessee to inspect any or all Units, provided that such inspection shall be conducted during reasonable business hours and shall not interfere with the normal operation of the Equipment and provided further that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any Person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

SECTION 18. RENEWAL OPTIONS AND RIGHTS OF FIRST REFUSAL.

(a) Renewal Options. Provided that no Default or Event of Default has occurred and is continuing the Lessee shall have the following renewal options:

(i) at the expiration of the original term of this Lease, the Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Units of Equipment then leased hereunder for one renewal term of three years upon and subject to the terms and conditions herein contained for the original term of this Lease; provided that the Fixed Rent payable for and during such renewal term shall be an amount equal to 5.26332% of the Lessor's Cost of such Units of Equipment payable annually in arrears. The Casualty Value payable for and during such renewal term in respect of any Unit of Equipment suffering a Casualty Occurrence during such term shall be an amount determined in accordance with Exhibit C hereto. The Lessee shall give the Lessor

written notice of its election pursuant to this Section 18(a)(1) at least one hundred eighty (180) days prior to the expiration of the original term of this Lease;

(ii) Following the renewal, if any, under Section 18(a)(1), the Lessee shall have the option to renew and extend this Lease as to any one or more Unit Trains then leased hereunder for two additional renewal terms of two years each upon and subject to the terms and conditions herein contained for the original term of this Lease; provided that the Fixed Rent payable for and during any such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Units and that the Casualty Value payable for and during any such renewal term in respect of any such Unit of Equipment suffering a Casualty Occurrence during such term shall be an amount equal to the greater of (A) the then applicable value in the event of loss or destruction assigned by the Association of American Railroads to units of equipment similar in type and age to the Units of Equipment, or (B) an amount equal to 25% of the Lessor's Cost of such Unit. Each renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice of any such election at least one hundred eighty (180) days prior to the commencement of any renewal term provided for in this Section 18(a); and

(iii) The Fair Rental Value of a Unit of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease. If on or before 120 days prior to the date of commencement of the renewal term elected by the Lessee, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Units of Equipment, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean two independent appraisers, one chosen by the Lessor and one chosen by the Lessee, or, if such appraisers cannot agree on the amount of such value within 90 days prior to the date of commencement of the applicable renewal term, then the term "Appraiser" shall mean an appraiser chosen by the American Arbitration Association. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The appraiser's determination of such Fair Rental Value shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the Appraiser shall be borne equally by the Lessor and the Lessee.

(b) Right of First Refusal. Provided no Event of Default has occurred and is continuing, the Lessor shall not, at the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18(a) hereof, at

the end of such renewal term) sell, transfer or otherwise dispose of a Unit of Equipment unless:

(i) the Lessor shall have received a bona fide offer or offers in writing to purchase such Unit of Equipment from a responsible purchaser or purchasers which is or are not directly affiliated with the Lessor or the Owner or their respective successors or assigns;

(ii) the Lessor shall have given the Lessee notice (A) setting forth in detail the identity of such purchaser or purchasers, the Unit or Units of Equipment to be purchased, the proposed purchase price or prices, the proposed date of purchase and all other material terms and conditions of such purchase, and (B) offering to sell such Unit of Equipment to the Lessee upon the same terms and conditions as those set forth in such notice; and

(iii) the Lessee shall not have notified the Lessor, within 15 days following receipt of such notice, of its election to purchase such Unit or Units of Equipment upon such terms and conditions.

If the Lessee shall not have so elected to purchase such Unit or Units of Equipment, the Lessor may sell such Unit or Units of Equipment at a price and upon other terms and conditions no less favorable to the Lessor than those specified in such notice. Anything in this Section 18(b) to the contrary notwithstanding, the Lessor shall have the right to decline any and all offers to purchase the Equipment obtained pursuant hereto; provided, however, that if the Lessor does decline any such offer or offers, or having not offered the Equipment for sale at the end of the original term of this Lease or any applicable renewal period, decides to sell the Equipment within six months thereafter, the Lessee shall have a right of first refusal to purchase the Equipment upon the terms and conditions contemplated by this Section 18(b) but with respect to such then current offer or offers. Notwithstanding the foregoing provisions of this Section 18(b), the Lessor may, if the Lessee has not renewed this Lease pursuant to Section 18(a) hereof, lease or retain for its own use any or all Units of Equipment at any time after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18(a) hereof, at the end of such renewal term) without first offering to sell such Unit or Units of Equipment to the Lessee.

(c) Delivery of Equipment. Unless the Lessee has elected to purchase the Units of Equipment or to renew this Lease in respect thereof as provided in this Section 18, all of the Units of Equipment then leased hereunder shall be returned to the Lessor at the end of the original term, or of the then current renewal term, as the case may be, in accordance with Section 16 hereof.

SECTION 19. FEDERAL INCOME TAX INDEMNIFICATION.

(a) Loss of Assumed Tax Benefits. If for Federal income tax purposes:

(i) the Owner is not allowed for its calendar 1980 taxable year an investment credit under Section 38 and related sections of the Code with respect to any one or more of the Units of not less than 10% of the Lessor's Cost with respect to such Unit or Units; or

(ii) the Owner is not allowed the benefit of current deductions for depreciation, commencing with its calendar 1980 taxable year, on any one or more of the Units under Section 167(a) of the Code (x) computed pursuant to any method of depreciation authorized by Section 167(b)(2) or (3) of the Code and pursuant to the asset depreciation range system of Section 167(m) of the Code and Section 1.167(a)-11 of the income tax regulations, (y) computed on the basis (A) of a net salvage value of zero, (B) that the basis of such Unit or Units under Section 167(g) of the Code is not less than the Lessor's Cost with respect to such Unit or Units, and (C) that such Unit or Units have an asset depreciation period of 12 years, and (z) determined on the basis of the "half-year convention" of Section 1.167(a)-11(c)(2)(iii) of the income tax regulations; or

(iii) The Owner is not allowed the benefit of current deductions under Section 163 of the Code for interest payable on the Securities issued by the Lessor to finance a portion of the Lessor's Cost of the Equipment; or

(iv) any investment credits or deductions for depreciation with respect to any one or more of the Units are recaptured in whole or in part pursuant to Section 47 or Section 1245 of the Code or any successor provision or provisions thereto; or

(v) any amount includible in the gross income of the Owner with respect to any one or more of the Units or any deduction allowable to the Owner with respect to such Unit or Units or with respect to any interest payable on the Securities issued by the Lessor to finance a portion of the Lessor's Cost of Equipment shall be treated as derived from, or allocable to, sources outside the United States; or

(vi) any amount is included, at any time prior to the end of the term of this Lease (including any renewal terms), in the gross income of the Owner as a result of any repair, improvement, alteration, modification or addition (including replacement of parts) to such Unit

or Units made by the Lessee (herein called a "Capital Expenditure");

(any such failure to allow, such recapture, such treatment of income or deductions as derived from or allocable to sources without the United States, or such inclusion in gross income as a result of a Capital Expenditure being herein called a "Loss"), then the following provisions of this Section 19 shall apply.

(b) Indemnification and Exceptions. Except as herein-after provided, the Lessee shall be required to indemnify the Owner with respect to:

(i) a Loss described in clause (i) or (ii)(x) or (ii)(y)(C) of paragraph (a) of this Section 19, if such Loss results from the use of a Unit by any Person prior to the time such Unit is delivered to and accepted by the Lessee under this Lease so as to preclude the "original use of such property" within the meaning of Section 48(b) or Section 167 (c)(2) of the Code from commencing with the Owner;

(ii) a Loss described in clause (i), (ii)(y)(C), (iv) or (v) of paragraph (a) of this Section 19, if such Loss results from the Lessee's failure or allowance of the failure to use any Unit, or the Lessee's use or allowance of use of any Unit outside of the United States;

(iii) a Loss described in clause (vi) of paragraph (a) of this Section 19, if such Loss results from a Capital Expenditure; or

(iv) any Loss for any other reason, if such Loss results solely and directly from any act, or failure to act, at any time, by the Lessee (including, without limitation, any act, or failure to act, in respect of the income tax returns of the Lessee insofar as they relate to the transactions contemplated by this Lease and related documents, it being understood that the Lessee will not take or fail to take any action that is inconsistent with the Owner being treated as the owner, and the Lessee being treated as the lessee, of the Units for Federal, state and local income tax purposes).

However, the Lessee shall not be required to indemnify the Owner with respect to any Loss that results solely and directly from:

(i) a Casualty Occurrence, if the Lessee has made all payments with respect thereto that are required to be made pursuant to Section 13 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor or the Owner of its interest in any Unit or Units or the voluntary reduction by the Lessor or the Owner of its interest in the rentals from

any Unit or Units under this Lease or any transfer or disposition by the Owner resulting from bankruptcy or other proceedings for the relief of debtors in which the Owner is the debtor (whether voluntary or involuntary) of any interest in any Unit or in the rentals therefor, if such disposition (x) shall be the direct cause of such Loss with respect to such Unit or Units, (y) shall occur at a time while no Event of Default has occurred and in continuing, and (z) shall not be pursuant to the written consent of the Lessee;

(iii) the failure of the Owner to claim in a timely and proper manner on its income tax returns for the appropriate years any credits or deductions contemplated by paragraph (a) of this Section 19, unless the Owner shall have been advised by Messrs. Donovan Leisure Newton & Irvine, or other independent tax counsel selected by the Owner and approved by the Lessee (which approval shall not be unreasonably withheld) that there is no reasonable basis for claiming any such deduction or credit;

(iv) the failure of the Owner to have sufficient Federal income tax liability against which to apply such credits or sufficient income to benefit from such depreciation or interest deductions;

(v) the failure of the Owner to take timely action in contesting a claim made by the Internal Revenue Service, but only if such action is required by the terms of paragraph (c) of this Section 19;

(vi) any amendment to, or change in, the Code or income tax regulations thereunder, or published administrative or judicial interpretations of the Code or such regulations which amendment or change is not enacted or adopted and does not have an effective date on or prior to December 31, 1980; or

(vii) any act, or failure to act, at any time, by the Owner which is inconsistent with the Owner's obligations under the Trust Agreement and the Purchase Order Assignment, except at a time when an Event of Default has occurred and in continuing.

(c) Proceedings. If at the conclusion of any audit the Owner receives a preliminary or "30 day" letter from the Internal Revenue Service proposing an adjustment in any item that, if agreed to by the Owner, would result in a Loss with respect to which the Lessee would be required to indemnify the Owner pursuant to this Section 19, the Owner shall promptly notify the Lessee of such proposed adjustment and shall furnish to the Lessee a statement describing such Loss in reasonable detail. If requested to do so by the Lessee within 20 days after receipt of such statement, the Owner

shall promptly request from Messrs. Chapman and Cutler or other independent tax counsel selected by the Lessee and approved by the Owner ("Special Tax Counsel") their opinion as to whether there is a meritorious basis for contesting such proposed adjustment. If the opinion is to the effect that there is a meritorious basis for contesting such proposed adjustment, the Owner shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Owner in its sole discretion. Upon the conclusion of such administrative proceedings, if any, the Owner shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, if the Owner receives within 30 days after such notice a written request to do so from the Lessee, the Owner shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Owner to appeal the decision of such a court or of any intermediate appellate court, the Owner shall promptly request from Special Tax Counsel their opinion as to whether there is a meritorious basis for appealing such decision. If the opinion is to the effect that there is a meritorious basis for appealing such decision, the Owner shall appeal such decision. The Owner, in its sole discretion, shall determine the initial court and shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency and shall also determine the manner of contest thereof. The Owner shall not be required to take any action as set forth in this paragraph (c) unless and until the Lessee shall have agreed to indemnify the Owner in a manner reasonably satisfactory to it for any Loss that results from an adverse determination with respect to the proposed adjustment and shall have agreed to pay to the Owner on demand all reasonable out-of-pocket costs and expenses, including, without limitation, attorneys' fees and expenses incurred by it in connection with the taking of such action. If the Owner elects to pay taxes based on a proposed deficiency and sue for a refund thereof, and if the proposed deficiency would be a Loss with respect to which the Lessee would be required to indemnify the Owner, then the Lessee shall pay to the Owner on demand the amount of such taxes and interest thereon which the Owner shall have paid, and if the Owner subsequently receives a refund of all or any part of such taxes and interest, it shall promptly pay to the Lessee the amount of such refunded taxes and interest, plus the amount of any interest received by the Owner from the United States Government with respect to such refunded taxes and interest. Notwithstanding anything to the contrary contained in this paragraph (c), the Owner may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto, provided that if the Lessee has requested such action pursuant to this paragraph (c) of Section 19, the Owner notifies the Lessee that it waives its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment. The Owner understands and agrees that in no event shall the concession by the Owner without the

written consent of the Lessee of any tax benefit contemplated in Section 19(a) of this Lease, in the overall settlement of a controversy with the Internal Revenue Service, either at the administrative level or at the court level, nor the failure to recover a refund in whole or in part with respect to the disallowance of any such tax benefit which failure is the result of a set off against a claim for refund based upon the loss of such tax benefits where the matters set off do not relate to such tax benefits, constitute an adverse determination causing the Lessee to make any of the payments contemplated by paragraph (d) of this Section 19.

(d) Amount and Time of Payment of Indemnity. The amount of indemnity payable by the Lessee pursuant to this Section 19 with respect to a Loss shall be such amount as will result, in the Owner's reasonable judgment, in preserving for the Owner both the after-tax rate of return and the after-tax cash flow that would have been realized by the Owner if such Loss had not occurred, based on the assumptions and methods of calculation utilized by the Owner in originally evaluating the transaction described in this Lease and related documents. The amount of such payment of indemnity shall reflect (i) the amount of interest, additions to tax and penalties payable by the Owner with respect to such Loss, (ii) the amount of Federal, state and local taxes imposed on, or measured by, net income, interest, additions to tax and penalties incurred by the Owner as a result of the receipt of such indemnity payment, and (iii) any amount paid by the Lessee to the Owner pursuant to the ninth sentence of paragraph (c) of this Section 19 which has not been repaid by the Owner to the Lessee pursuant to such sentence. The Owner shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount of indemnity.

In determining the amount of indemnity payable by the Lessee pursuant to this Section 19 with respect to a Loss which results from a Capital Expenditure, there shall be taken into account any investment credits and depreciation deductions to which the Owner is or expects to be entitled with respect to such Capital Expenditure in the year in which the Capital Expenditure is made and in subsequent years, but if any such investment credits or depreciation deductions are subsequently disallowed, recaptured or treated as derived from or allocable to sources outside the United States, such disallowance, recapture or allocation shall be treated as a Loss described in clause (i), (ii), (iv) or (v) of paragraph (a) of this Section 19, as the case may be.

The Lessee's obligation to pay any indemnity payable pursuant to this Section 19 with respect to a Loss shall become unconditional (1) in the case of a Loss that is required to be reflected on a tax return of the Owner, 30 days after the date such tax return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is not contested pursuant to paragraph (c) of this Section 19, 30 days after the Lessee's receipt of the statement referred to in the first sentence of paragraph (c) of this Section 19; and (3)

in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is contested pursuant to paragraph (c) of this Section 19, 30 days after the day on which such contest is finally concluded.

The Lessee shall pay to the Owner a lump sum indemnity at the time its obligation to pay indemnity pursuant to this Section 19 becomes unconditional, (A) with respect to a Loss described in clause (i) or (iv) of paragraph (a) of this Section 19 and (B) with respect to any other loss, if the Lessee's obligation to pay indemnity pursuant to this Section 19 becomes unconditional on or after the termination of this Lease. Any other indemnity payable pursuant to this Section 19 shall be structured as level future rent increases, and the Lessee shall commence payment of such increased rent on the first Fixed Rent Payment Date after the Lessee's obligation to pay indemnity pursuant to this Section 19 becomes unconditional.

(e) Adjustment of Casualty Values. In the event that the Lessee shall be required to indemnify the Owner pursuant to this Section 19 with respect to a Loss relating to a Unit or Units, upon payment of such indemnity the Casualty Value of such Unit or Units shall be appropriately adjusted so as to reflect, among other things, the reduction (if any) in taxes that will be payable upon a Casualty Occurrence with respect thereto, and so that the Casualty Value of the Unit or Units as so adjusted shall preserve for the Owner the net after-tax rate of return and net after-tax cash flow that the Owner expects to realize from the transaction described in this Lease and related documents; provided, however, that such Casualty Values shall not be reduced below the amounts required to satisfy the obligations of the Lessor in respect of the Securities issued by the Lessor to finance a portion of the Lessor's Cost of the Equipment.

(f) Reports Regarding Foreign Use. The Lessee agrees to furnish promptly upon request of the Owner such information as the Owner may reasonably request relating to the use of any Units outside of the United States.

(g) Definition of Owner. For purposes of this Section 19, the term "Owner" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Owner is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(h) Payments of Indemnity. All payments of indemnity made pursuant to this Section 19 shall be made by the Lessee directly to the Owner in the manner contemplated by Section 4(d) of this Lease.

SECTION 20. LESSEE'S REPRESENTATIONS AND WARRANTIES; SURVIVAL.

(a) Representations and Warranties. The Lessee represents and warrants as of the date of execution hereof:

(1) The Lessee is a corporation properly organized, validly existing and in good standing under the laws of the State of Michigan; has all requisite power and authority to own and operate its properties which are currently in operation and to carry on its business as now conducted; and, except as disclosed in the financial statements referred to in paragraph (ii)(A) of this Section 20(a), in the Preliminary Prospectus dated May 22, 1980 (the "Prospectus") and the Letter dated June 2, 1980 (the "Counsel's Letter") of General Counsel or a Managing Attorney for the Lessee heretofore furnished to the Lessor, the Owner and the Assignee, the Lessee has all material licenses and permits necessary to carry on its business as now conducted. The Lessee is properly licensed or qualified and is in good standing in each jurisdiction in which such qualification is necessary to carry out the terms of this Lease and to carry on its business and own its properties currently in operation;

(ii) (A) The balance sheet of the Lessee as of December 31, 1979 and the statement of income and retained earnings for the fiscal quarter ended on said date prepared and certified by Arthur Andersen & Co. have been prepared in accordance with generally accepted accounting principles consistently applied, and present fairly the financial position of the Lessee as of such date and the results of operations of the Lessee for such period;

(B) Since December 31, 1979, there has been no material adverse change in the condition, financial or otherwise, of the Lessee as shown on the balance sheet as of such date except changes in the ordinary course of business and except as disclosed in the Counsel's Letter;

(iii) The financial statements referred to in paragraph (ii)(A) of this Section 20(a), and the Counsel's Letter do not, nor does any written statement furnished by the Lessee to the Lessor, the Owner or the Assignee in connection with the negotiation of this Lease, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or herein, in light of the respective circumstances under which they were made, not misleading. There is no fact peculiar to the Lessee which the Lessee has not disclosed to the Lessor or such Assignee pursuant to Section 14 hereof in writing which materially affects adversely nor, to the best of its knowledge, will materially affect adversely the ability of the Lessee to perform this Lease;

(iv) There are no proceedings pending or, to the knowledge of the Lessee threatened, by or against or affecting the Lessee in any court or before any governmental authority or arbitration board or tribunal which if adversely determined would materially and adversely affect the Lessee's ability to perform its obligations under this Lease, except as disclosed in the financial statements referred to in paragraph (ii)(A)

of this Section 20(a), the Prospectus and the Counsel's Letter. The Lessee is not in default with respect to any order of any court or governmental authority or arbitration board or tribunal, the violation of which will materially affect adversely the ability of the Lessee to perform this Lease;

(v) The execution, delivery and performance by the Lessee of this Lease:

(A) are within the corporate powers of the Lessee;
and

(B) will not violate any provisions of any law, rule or regulation or any order of any court or governmental authority or agency, as presently interpreted, and will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under the articles of incorporation or by-laws of the Lessee or any indenture, mortgage, conditional sale, loan or credit agreement, or other instrument to which the Lessee is a party or by which it may be bound or result in the imposition of any liens or encumbrances on any property of the Lessee;

(vi) The Purchase Order Assignment and this Lease have been properly authorized by all necessary corporate action on the part of the Lessee and have been properly executed and delivered by the Lessee and constitute the legal, valid and binding contracts and agreements of the Lessee enforceable in accordance with their terms, except as enforcement of such terms may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and by the availability of equitable remedies;

(vii) No Default or Event of Default has occurred and is continuing. The Lessee is not in default in the payment of principal or interest on an evidence of indebtedness for borrowed money having an unpaid principal balance in excess of \$3,000,000 or on evidences of indebtedness for borrowed money having an aggregate unpaid principal balance in excess of \$10,000,000 and is not in default in any material respect under any instrument or instruments or agreements under and subject to which any such evidence or evidences of indebtedness for borrowed money has or have been issued and no event has occurred and is continuing under any material provision of any such instrument or agreement which with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder;

(viii) No approval, consent or withholding of objection on the part of any regulatory body, state, Federal or local, including, without limitation, the Federal Energy Regulatory Commission, the Securities and Exchange Commission and the Michigan Public Service Commission, is necessary in connection

with the execution and delivery by the Lessee of this Lease or performance by the Lessee of the provisions of said instrument;

(ix) All foreign, Federal, state and local tax returns required to be filed by the Lessee have, in fact, been filed, and all taxes which are shown to be due and payable in such returns have been paid. No controversy in respect of additional taxes due is pending or, to the knowledge of the Lessee, threatened which, if adversely determined, would materially and adversely affect the Lessee's ability to perform its obligations under this Lease. The provision for taxes on the books of the Lessee is adequate for all open years, and for its current fiscal period;

(x) (A) The Lessee warrants and represents to the Owner and any Assignee pursuant to Section 14 hereof that neither the Lessee nor any of its agents has offered the beneficial interest in the Equipment (the "Beneficial Interest") or any similar security for sale to, or solicited offers to buy any thereof from, or otherwise approached or negotiated with respect thereto with, any prospective purchaser, other than the Owner and not more than twenty-nine other institutional investors, each of whom was offered the Beneficial Interest at private sale for investment;

(B) The Lessee agrees that neither the Lessee nor any Person acting on behalf of the Lessee has or will offer the Beneficial Interest or any part thereof or any similar security for issue or sale to, or solicit any offer to acquire any of the Beneficial Interest from, anyone so as to bring the issuance and sale of the Beneficial Interest or any part thereof within the provisions of Section 5 of the Securities Act of 1933, as amended.

Nothing contained in this Section 20(a)(x) shall be deemed to constitute an acknowledgment or agreement by any party hereto that the Beneficial Interest or any such similar security constitutes a "security" within the meaning of Section 2(1) of the Securities Act of 1933, as amended, or within the meaning of any applicable state law regulating the offer, issuance or sale of securities;

(xi) The Lessee represents that it is not entering into this Lease or any other transactions contemplated thereby, directly or indirectly, in connection with any arrangement or understanding in any way involving any employee benefit plan or related trust, all within the meaning of ERISA and the Code;

(xii) This Lease has been filed for record or recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303 and no other filing, recording or depositing is necessary to protect the Lessor's rights in and to the

Units of Equipment and this Lease in the United States of America; and

(xiii) No approval, consent or withholding of objection on the part of the Federal Energy Regulatory Commission, the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or the Michigan Public Service Commission is required on the part of the Lessor or the Owner in connection with the execution and delivery by the Lessor of the Purchase Order Assignment and this Lease or performance by the Lessor of any of its obligations under said instruments solely as a result of the Lessor entering into the transactions contemplated by said instruments, assuming that the Lessor is not subject to the jurisdiction of the Federal Energy Regulatory Commission, the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or the Michigan Public Service Commission for any reason other than the execution, delivery and performance of the Purchase Order Assignment and this Lease.

(b) Survival. The issuance and delivery by the Lessor of Securities to finance a portion of the Lessor's Cost of the Equipment and the purchase of the Equipment by the Lessor pursuant to the Purchase Order Assignment are being effected in reliance on the representations and warranties contained in this Section 20 and said representations and warranties shall survive the execution and delivery of this Lease, the issuance and delivery of said Securities and said purchase of the Equipment and are expressly made for the benefit of, shall be enforceable by, and shall inure to the benefit of the Lessor and the Owner and their respective successors and assigns.

SECTION 21. OPINION OF LESSEE'S COUNSEL.

Concurrently with the delivery and acceptance of the first Unit of Equipment hereunder, the Lessee will deliver to the Lessor four counterparts of the written opinion of General Counsel or a Managing Attorney for the Lessee addressed to the Lessor and any Assignee pursuant to Section 14 hereof, in scope and form satisfactory to the Owner and the Assignee, to the effect that:

(a) The Lessee is a corporation properly organized, validly existing and in good standing under the laws of the State of Michigan; has all requisite power and authority to own and operate its properties which are currently in operation and to carry on its business as now being conducted, to enter into, execute and deliver the Purchase Order Assignment and this Lease and to perform each and all matters and things required to be observed or performed by the Lessee thereunder and hereunder.

(b) The Purchase Order Assignment and this Lease have been properly authorized by all necessary corporate action on the part of the Lessee and have been properly executed and

delivered by the Lessee and constitute the legal, valid and binding contracts and agreements of the Lessee enforceable in accordance with their terms, except as enforcement of such terms may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and by the availability of equitable remedies.

(c) No consent, approval or authorization of any governmental authority, including, without limitation, the Federal Energy Regulatory Commission, the Securities and Exchange Commission or the Michigan Public Service Commission, is required on the part of the Lessee in connection with the execution and delivery of the Purchase Order Assignment and this Lease.

(d) The Lessee is properly licensed or qualified and is in good standing in each jurisdiction in which such qualification is necessary to carry out the terms of the Purchase Order Assignment and this Lease.

(e) The execution and delivery by the Lessee of the Purchase Order Assignment and this Lease and compliance by the Lessee with all of the provisions of the same will not violate any provisions of any law, rule or regulation or any order of any court or governmental authority or agency applicable to the Lessee, as presently interpreted, and will not conflict with or result in any breach of any of the provisions of, or constitute a default under, or result in the creation of any lien other than Permitted Encumbrances upon any property of the Lessee, under the provisions of the articles of incorporation or by-laws of the Lessee or of any indenture, mortgage, conditional sale, loan or credit agreement or other instrument to which the Lessee is a party or by which it may be bound.

(f) No approval, consent or withholding of objection on the part of the Federal Energy Regulatory Commission, the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or the Michigan Public Service Commission is required on the part of the Lessor or the Owner in connection with the execution and delivery by the Lessor of the Purchase Order Assignment and this Lease or performance by the Lessor of any of its obligations under said instruments solely as a result of the Lessor entering into the transactions contemplated by said instruments, assuming that the Lessor is not subject to the jurisdiction of the Federal Energy Regulatory Commission, the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or the Michigan Public Service Commission for any reason other than the execution, delivery and performance of the Purchase Order Assignment and this Lease.

(g) This Lease has been filed for record or recorded with the Interstate Commerce Commission pursuant to 49 U.S.C.

Section 11303 and no other filing, recording or depositing is necessary to protect the Lessor's rights in and to the Units of Equipment and this Lease in the United States of America.

(h) All instruments or agreements necessary to the first assignment of this Lease by the Lessor pursuant to Section 14(a) hereof and the grant of a security interest in the Equipment in connection therewith have been filed for record or recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303 and no other filing, recording or depositing is necessary in the United States of America to perfect the lien and security interest created by such instruments or agreements as against creditors of and purchasers from the Lessor.

(i) To the best of counsel's knowledge, there are no proceedings pending or threatened against or affecting the Lessee or any property rights of the Lessee in any court or before any governmental authority or arbitration board or tribunal which if adversely determined would materially and adversely affect the Lessee's ability to perform its obligations under the Purchase Order Assignment and this Lease, except as disclosed in the financial statements referred to in clauses (a)(i) and (a)(ii)(A) of Section 20 of this Lease or as otherwise heretofore disclosed in writing to the Owner Participant and the Assignee. The Lessee is not in default with respect to any order applicable to it, as presently interpreted, of any court or governmental authority or arbitration board or tribunal, the violation of which would materially adversely affect the ability of the Lessee to perform the Purchase Order Assignment and this Lease.

SECTION 22. MISCELLANEOUS.

(a) Limitations of Liability. Except as otherwise provided in Section 8(b)(ii) hereof, it is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and assigns that this Lease is executed by Continental Illinois National Bank and Trust Company of Chicago, not individually or personally but solely as Trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Trustee, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by Continental Illinois National Bank and Trust Company of Chicago or its successors and assigns, or for the purpose or with the intention of binding Continental Illinois National Bank and Trust Company of Chicago or its successors and assigns personally, but are made and intended for the purpose of binding only the Trust Estate as defined in the Trust Agreement, that this Lease is executed and delivered by Continental Illinois National Bank and Trust Company of Chicago solely in the exercise of

the powers expressly conferred upon Continental Illinois National Bank and Trust Company of Chicago as trustee under the Trust Agreement, that actions to be taken by the Lessor pursuant to its obligations hereunder may, in certain instances, be taken by the Lessor only upon specific authority of the Owner, that nothing herein contained shall be construed as creating any liability on Continental Illinois National Bank and Trust Company of Chicago or the Owner or their respective successors and assigns, individually or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of, Continental Illinois National Bank and Trust Company of Chicago or the Owner or their respective successors and assigns, to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessee and by each and every person now or hereafter claiming by, through or under the Lessee, and that so far as Continental Illinois National Bank and Trust Company of Chicago and the Owner and their respective successors and assigns, individually or personally are concerned, the Lessee and any person claiming by, through or under the Lessee shall look solely to the Trust Estate as defined in the Trust Agreement for the performance of any obligation under this Lease. The term "Lessor" as used in this Lease shall include any trustee succeeding Continental Illinois National Bank and Trust Company of Chicago as trustee under the Trust Agreement or the Owner if the trust created thereby is revoked. Any obligation of the Lessor hereunder may be performed by the Owner, and any such performance shall not be construed as revocation of the trust created by the Trust Agreement. Nothing contained in this Lease shall restrict the operation of the provisions of the Trust Agreement with respect to its revocation or the resignation or removal of the Trustee thereunder.

It is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and assigns that this Lease is executed by the Lessee in its corporate capacity and that nothing herein contained shall be construed as creating any liability on any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of the Lessee to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessor and the Owner and by each and every person now or hereafter claiming by, through or under the Lessor or the Owner.

(b) Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered personally or otherwise actually received at the following addresses:

If to the Lessor:

Continental Illinois National Bank
and Trust Company of Chicago
30 North LaSalle Street
Chicago, Illinois 60693

Attention: Corporate Trust Division

If the Owner:

Thirteenth HFC Leasing Corporation
2700 Sanders Road
Prospect Heights, Illinois 60070

Attention: Carl Giessel,
Vice President

If to the Lessee:

Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201

Attention: Secretary

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

(c) Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, the Lessor may, but shall not be obligated to, make advances to perform the same and to take all such action as in the Lessor's opinion may be necessary to obtain such performance. All payments so made by the Lessor and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the Lessor upon demand with interest at a rate one percentage point over the rate of interest payable by the Lessor in respect of the then outstanding Securities issued to finance a portion of the Lessor's Cost of the Equipment (or at the maximum lawful rate, whichever is less).

(d) Execution in Counterparts. This Lease, and any Lease Supplement, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

(e) Filing; Further Assurances. Prior to the delivery and acceptance of the first Unit of Equipment hereunder, the Lessee will cause this Lease and any instrument evidencing the assignment of the Lessor's interest in this Lease to the Assignee pursuant to Section 14(a) to be properly filed, registered or recorded with the Interstate Commerce Commission in accordance with Section 11303 of Title 49 of the United States Code ("Transportation") and in such other places with the United States of America as the Lessor or the Assignee may reasonably request and will furnish the Lessor and the Assignee proof thereof.

Without limiting the foregoing, the Lessee, after the initial execution, delivery and recordation of this Lease and any agreement or instrument evidencing the first assignment for collateral purposes of this Lease and the grant of a security interest by the Lessor in and to the Equipment, will at its own expense do, execute, acknowledge and deliver all and every such further act, deed, conveyance, transfer and assurance as the Lessor or the Assignee may reasonably prepare and request in order to protect the right, title

and interest of the Lessor hereunder or the perfection of any security interest granted by the Lessor in any Unit of Equipment.

(f) Amendments. Any term, covenant, agreement or condition of this Lease may be amended or compliance therewith waived (either generally or in a particular instance and either retroactively or prospectively) if the Lessee shall have obtained the written consent of the Lessor and the Assignee. The Lessee agrees that it shall pay all reasonable out-of-pocket expenses of the Lessor and the Assignee incurred (i) in connection with any waiver or amendment of this Lease not requested by the Lessor, and (ii) in connection with any waiver or amendment of any other agreements or instruments executed by the Lessor pursuant to Section 14(a) hereof (and any other documents executed by the Lessor relating thereto) in respect of which a waiver or amendment is required as a consequence of such waiver or amendment of this Lease.

(g) Owner for Tax Purposes. The Lessor and the Lessee hereby agree and understand that for Federal and state income tax purposes the Lessor will be the owner of the Equipment and the Lessee will be the lessee thereof, and that the Lessor shall not elect to treat the Lessee as having acquired said Equipment pursuant to Section 48(d) of the Code.

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

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

(j) Partial Invalidity. The unenforceability or invalidity of any provision or provisions of this Lease shall not render any other provision or provisions herein contained unenforceable or invalid.

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

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,
not individually but solely as
Trustee under Consumers Power
Trust No. 80-1

By *Donald D. Aeger*
Its Vice President

[CORPORATE SEAL]
ATTEST:

[Signature]
Trust Officer

CONSUMERS POWER COMPANY

By *[Signature]*
Its Vice President

[CORPORATE SEAL]

ATTEST:

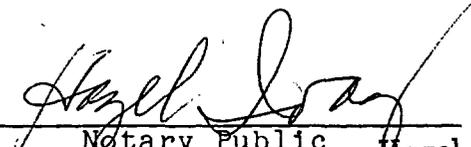
J. H. Mellinger
(Assistant) Secretary

APPROVED AS TO FORM

[Signature]
CONSUMERS POWER COMPANY
LEGAL DEPARTMENT

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 5TH day of JUNE, 1980, before me personally appeared DONALD W. ALFVIN, to me personally known, who being by me duly sworn, says that he is the VICE PRESIDENT of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



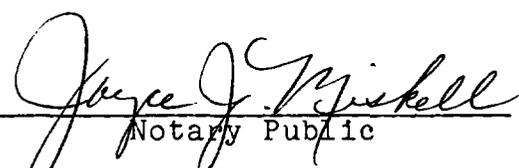
Notary Public Hazel Ivaz

[NOTARIAL SEAL]

My commission expires: December 6, 1981

STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

On this 4th day of JUNE, 1980, before me personally appeared R.J. Odtevak, to me personally known, who being by me duly sworn, says that he is the _____ Vice President of CONSUMERS POWER COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

[NOTARIAL SEAL]

My commission expires: 7-19-80

JOYCE J. MISKELL
Notary Public, Jackson County, Mich.
My Comm. Expires July 19, 1980

DESCRIPTION OF UNITS OF EQUIPMENT

Manufacturer of Equipment:	Pullman Incorporated (Pullman Standard Division)
Description and Mark and Number of Units of Equipment:	Seven hundred (700) 4,100 cubic foot, 54'7" long, high side, flat bottom, open top, gondola cars marked and numbered CPOX 1200 to CPOX 1899, both inclusive
Maximum Aggregate Lessor's Cost of Equipment:	\$43,000 per Unit (\$30,100,000 for 700 Units)
Place of Delivery:	Kentucky
Outside Delivery Date:	December 1, 1980

CERTIFICATE OF ACCEPTANCE
UNDER EQUIPMENT LEASE

TO: Continental Illinois National Bank
and Trust Company of Chicago,
as Trustee under Consumers Power
Trust No. 80-1 (the "Lessor")

Pullman Incorporated
(Pullman Standard Division)
(the "Manufacturer")

I, a duly appointed and authorized representative of Consumers Power Company (the "Lessee") under the Equipment Lease dated as of May 15, 1980 between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Units of Equipment:

TYPE OF EQUIPMENT: 4,100 cubic foot, 54'7" long,
high side, flat bottom, open
top gondola cars

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED: CPOX

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

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

I represent that the date on which the foregoing Units of Equipment are being first placed "in service" (within the meaning of Section 46 of the Internal Revenue Code of 1954, as amended, and within the meaning of the income tax regulations promulgated under Section 167 of such Code) is the date hereof.

EXHIBIT B
(to Equipment Lease)

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

Dated: _____, 19__

Inspector and Authorized
Representative of the Lessee

SCHEDULE OF CASUALTY VALUE

The Casualty Value for a Unit of Equipment payable on the Term Lease Commencement Date or any other date for payment of Casualty Value set forth below shall mean an amount equal to the percent of the Lessor's Cost of such Unit set forth opposite such date in the following schedule (as the same may be increased pursuant to Annex I to this Exhibit C):

<u>Term Lease Commencement Date or Fixed Rent Payment Date on which Casualty Value is Paid</u>	<u>Percentage of Lessor's Cost Payable as Casualty Value</u>
January 1, 1981	102.2443%
July 1, 1981	106.9725
January 1, 1982	91.8509
July 1, 1982	101.7741
January 1, 1983	92.1834
July 1, 1983	101.6102
January 1, 1984	91.4995
July 1, 1984	100.4444
January 1, 1985	89.8256
July 1, 1985	98.3059
January 1, 1986	87.1935
July 1, 1986	95.2299
January 1, 1987	83.6408
July 1, 1987	91.2579
January 1, 1988	79.2131
July 1, 1988	86.4397
January 1, 1989	73.9641
July 1, 1989	80.8344
January 1, 1990	67.9576
July 1, 1990	74.5116
January 1, 1991	61.2686
July 1, 1991	67.5534
January 1, 1992	53.9858
July 1, 1992	60.3258
January 1, 1993	46.2131
July 1, 1993	52.1288
January 1, 1994	38.0464
July 1, 1994	43.8469
January 1, 1995	29.5397
July 1, 1995	35.2474
January 1, 1996	30.0000
July 1, 1996	29.1667
January 1, 1997	28.3334
July 1, 1997	27.5000
January 1, 1998	26.6667
July 1, 1998	25.8333
January 1, 1999	25.0000

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

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Lessor's Cost</u>
Third	18.5539%
Fifth	12.3693
Seventh	6.1846