



December 28, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
12th Street & Constitution Ave., N.W.
Washington, D.C. 20423

No. 2-0051082
Date JAN 5 1982
Fee \$ 50.00
ICC Washington, D. C.

Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
216 623 2200

13419
RECORDING NO. FILED 2425
JAN 5 - 1982 - 3 15 PM
INTERSTATE COMMERCE COMMISSION

Re: Transfer and Lease Agreement dated November 6, 1981

Dear Ms. Mergenovich:

Enclosed are two executed counterparts of a Transfer and Lease Agreement dated as of November 6, 1981, between International Business Machines Corporation, Armonk, New York 10504 (Lessor) and The Chesapeake and Ohio Railway Company, P. O. Box 6419, Cleveland, Ohio 44101 (Lessee).

The equipment covered by this Agreement consists of:

20 3,000 H.P. Model B30-7 locomotives manufactured by General Electric Company, bearing Lessee's road numbers 8279-8298, inclusive, AAR Mechanical Designation BB.

447 4,600 cu.ft. covered hopper cars manufactured by ACF Industries, Inc., bearing Lessee's road numbers 607000-607449, inclusive (but excluding cars with road numbers 607274, 607302 and 607329), AAR Mechanical Designation LO.

213 100-ton open top hopper cars manufactured by The Chessie Corporation, bearing Lessee's road numbers 189950-190162, inclusive, AAR Mechanical Designation HT.

Numerous other items of machinery as described in Exhibit A to the Agreement.

Also enclosed is a draft in the amount of \$50.00 representing the required recording fee. Pursuant to the Commission's rules and regulations for the recordation of certain documents under 49 U.S.C. § 11303 (formerly Section 20c of the Interstate Commerce Act), as currently administered, you hereby are requested duly to file one of the enclosed counterparts for record in your office and to return the remaining copy to me at my above address.

Very truly yours,

Louis Recher
Assistant General Attorney

LR/lk
Enclosures



JAN 5 - 1982 - 3 15 PM

INTERSTATE COMMERCE COMMISSION
Filed for Notice of Interest Purposes Only
The Obligations of the Lessee Hereunder Are Not Secured

TRANSFER AND LEASE AGREEMENT

Dated as of November 6, 1981

between

INTERNATIONAL BUSINESS MACHINES CORPORATION,
as Lessor,

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
as Lessee.

\$47,874,372.23 of Equipment

THE TRANSFER AND LEASE PURSUANT TO THIS
AGREEMENT ARE FOR TAX PURPOSES ONLY

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TRANSFER AND LEASE AGREEMENT dated as of November 6, 1981, between INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation, as Lessor, and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation, as Lessee.

The Lessor and the Lessee desire to obtain the benefits of Section 168(f)(8) of the Internal Revenue Code of 1954, as amended. In connection therewith, the Lessor and the Lessee have agreed that for Tax Purposes (as such term is defined below) only the Lessee will transfer to the Lessor the Equipment (as such term is defined below) and the Lessee will lease the Equipment from the Lessor, all on the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the agreements hereinafter contained, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

Unless the context shall otherwise require, capitalized terms used herein shall have the following meanings

for all purposes hereof (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

"Casualty Occurrence" shall have the meaning specified in Section 5.03.

"Casualty Payment" shall have the meaning specified in Section 5.03.

"Closing Date" shall have the meaning specified in Section 2.01.

"Code" shall mean the Internal Revenue Code of 1954, as amended from time to time, or any comparable successor law.

"Default" shall mean any event or condition which with the giving of notice or the lapse of time or both would become an Event of Default.

"Equipment" shall mean the items of equipment described in Exhibit A hereto.

"Event of Default" shall have the meaning specified in Section 5.06.

"Indemnified Matter" shall have the meaning specified in Section 8.01.

"Indemnified Person" shall mean the Lessor and its affiliates, successors, assigns, directors, officers, agents and servants.

"Lease Term" with respect to each item of Equipment shall have the meaning specified in Section 5.01.

"Lessee" shall mean The Chesapeake and Ohio Railway Company, a Virginia corporation, and its successors and, to the extent permitted pursuant to Section 11.08, its assigns hereunder.

"Lessee's Account" shall mean Lessee's Account No. 205-02-277 at Morgan Guaranty Trust Company of New York.

"Lessee's Basis" with respect to each item of Equipment shall mean the adjusted basis of Lessee therein for Federal income tax purposes.

"Lessor" shall mean International Business Machines Corporation, a New York corporation, and its successors and its assigns hereunder.

"Lien" shall mean any mortgage, pledge, lien, charge, encumbrance, lease, exercise of rights, security interest or claim, other than (i) liens for taxes either not yet due or being contested in good faith by appropriate proceedings, (ii) inchoate materialmen's, mechanics', work-

men's, repairmen's, employees' or other like liens arising in the ordinary course of business, (iii) liens created by or resulting from any litigation or legal proceeding that is being contested in good faith by appropriate proceedings and (iv) zoning restrictions, easements, licenses or minor irregularities in title, in each case arising in the ordinary course of business.

"Loss" shall have the meaning specified in Section 10.04.

"Note" shall mean a nonnegotiable, nontransferable, nonrecourse promissory note of the Lessor substantially in the form of Exhibit B hereto.

"Officer's Certificate" shall mean, as to any corporation, a certificate of the President, any Vice President, any Assistant Vice President, the Treasurer or any Assistant Treasurer of such corporation.

"Overdue Rate" shall mean a rate of interest per annum equal to the greater of (i) the base rate of Citibank, N.A., from time to time in effect plus 3% and (ii) 18%.

"Payment Date" shall mean each date which is an integral multiple of six months after the Closing Date, commencing with the date which is six months after the Closing Date and ending with the date which is 84 months after the Closing Date.

"Purchase Price" with respect to each item of Equipment shall mean the purchase price therefor specified in Section 2.01, as the same may be adjusted pursuant to Section 2.02.

"Rent" shall have the meaning specified in Section 5.02.

"Tax Purposes" shall mean for purposes of United States Federal tax law and for purposes of taxes on, based on or measured by net income imposed by any state, the District of Columbia or any local government or taxing authority in the United States of America which takes the position that a corporation which is treated as the owner of property pursuant to Section 168(f)(8) of the Code shall or may, by election or otherwise, be treated as the owner of such property for the purpose of such taxes imposed by such state, the District of Columbia or local government or taxing authority.

"Taxes" shall mean any and all taxes (including, without limitation, income, gross receipts, franchise, sales, use, ad valorem, value added, personal property (whether tangible or intangible), real property and stamp taxes), levies, license, registration, inspection and permit fees, assessments (including all assessments for public improvements or benefits), water, sewer, gas, heat, electricity, power and

other rents, rates and charges, imposts, duties, charges or withholdings of any nature whatsoever, together with any penalties, fines or interest thereon (including, without limitation, any additions to tax because of underpayment of estimated tax).

"Temporary Regulations" shall mean the Temporary Income Tax Regulations under the Economic Recovery Tax Act of 1981 issued on October 20, 1981.

ARTICLE II

TRANSFER OF EQUIPMENT; PURCHASE PRICE

SECTION 2.01. Closing Date. (a) On the terms and subject to the conditions hereinafter set forth, on November 6, 1981, or such other date as shall be agreed upon by the Lessor and the Lessee, but not later than November 12, 1981 (the "Closing Date"), the Lessee shall transfer for Tax Purposes only to the Lessor the Equipment and the Lessor shall acquire for Tax Purposes only the Equipment for an aggregate Purchase Price equal to \$47,874,372.23, the Purchase Price with respect to each item of Equipment being the Lessee's Basis therefor, all as set forth in Exhibit A hereto.

(b) The aggregate Purchase Price payable on the Closing Date shall be paid by the delivery by the Lessor to

the Lessee of (i) a Note in a principal amount equal to 79.75% of the aggregate Purchase Price (constituting 79.75% of the Purchase Price of each item of Equipment), payable to the Lessee and dated the Closing Date and (ii) a wire transfer of immediately available funds to the Lessee's Account (with telephone advice to Kristina Boylon, 212-483-2011, at Morgan Guaranty Trust of New York), such transfer to be in an amount equal to 20.25% of the aggregate Purchase Price (constituting 20.25% of the Purchase Price of each item of Equipment). Subject to and as provided in Section 2.03, installments on the Note shall be payable on the 14 Payment Dates next succeeding the date of the Note, each such installment to be determined by reference to the schedule of installment payments (based on \$1 million principal amount) set forth in Exhibit C hereto.

(d) The closing shall be held on the Closing Date at 10 a.m., New York City time, at the offices of Messrs. Cravath, Swaine & Moore, One Chase Manhattan Plaza, New York, New York, or at such other time or place as shall be agreed by the Lessor and the Lessee.

SECTION 2.02. Adjustment to Purchase Price. If at any time after the Closing Date it shall be determined that the adjusted basis of the Lessor for Federal income tax purposes in any item of Equipment shall exceed the Lessee's

Basis for such item, the Purchase Price of such item shall be reduced by an amount equal to such excess (the "Excess Basis"). Such reduction shall be effected by (i) delivery by the Lessee to the Lessor of a wire transfer of immediately available funds in an amount equal to 20.25% of the Excess Basis and (ii) the replacement of the Note by a new Note dated the date of the replaced Note but in a principal amount equal to the outstanding principal amount of the replaced Note reduced by an amount equal to 79.75% of the Excess Basis. The installments payable in respect of the new Note and the Rent payable pursuant to Section 5.02 for such item of Equipment shall be appropriately adjusted (as determined by the Lessor) to give effect to such reduction (and the Lessee shall indemnify the Lessor against any resulting Loss to the extent required pursuant to Article X).

SECTION 2.03. Certain Offsetting Payments. The Lessor and the Lessee hereby agree that all amounts payable pursuant to the Note shall be payable solely out of Rent and Casualty Payments. The Lessor shall not in any event have any personal liability to make any payment pursuant to the Note. The Lessee hereby agrees that the obligation of the Lessor to make payments in respect of the Note is conditioned on the simultaneous receipt by the Lessor of the corresponding amount of Rent or Casualty Payment. The Lessor hereby

agrees that the obligation of the Lessee to make payments of Rent shall terminate when there are no longer outstanding any obligations in respect of the Note, and that the obligation of the Lessee to make payments of Rent and Casualty Payments may be set off (in whole, in the case of Rent, and in part, in the case of Casualty Payments) by the Lessee against the obligations of the Lessor to make payments in respect of the Note. The Lessor hereby authorizes the Lessee to endorse on Appendix B attached to the Note, on each Payment Date with respect thereto, the information called for on such Appendix. The Lessee hereby agrees to make such endorsement, and the Lessor and the Lessee hereby agree that the endorsement of such information on such Appendix shall constitute conclusive evidence of the payment by the Lessor of the amount then due on the Note and the payment (in whole, in the case of Rent, and in part, in the case of Casualty Payments) by the Lessee of the corresponding amount of Rent or Casualty Payment then due. Any Casualty Payment in respect of any item of Equipment shall be applicable first, to reimburse the Lessor for any costs and expenses reasonably incurred by the Lessor in connection with the Casualty Occurrence resulting in such Casualty Payment; second, to the extent set forth in Exhibit E hereto, to reduce pro rata a portion of the principal installments on

the Note, all as more fully set forth in Section 5.03, and the remaining amortization on the Note shall be appropriately reduced to give effect thereto; and third, any balance of such Casualty Payment shall be paid to and retained by the Lessor. No interest shall be payable on any overdue principal of or interest on the Note, and no rent or interest shall be payable with respect to any overdue Rent or Casualty Payment or with respect to any period after the end of the Lease Term for any item of Equipment, except that interest at the Overdue Rate shall be payable with respect to any balance referred to in clause "third" of the preceding sentence for any period after the due date thereof during which such balance remains unpaid.

SECTION 2.04. Lessor's Interest in Equipment.

Subject only to the provisions of Section 5.06 and Articles VI and VII, the Lessor and the Lessee hereby agree that, regardless of whether the Lease Term of all items of Equipment shall have been terminated or a Default or Event of Default shall have occurred hereunder, at all times (i) legal title in and to the Equipment shall remain in the Lessee, (ii) the Lessor will not have any rights with respect to the possession or use of any of the Equipment and (iii) without the written consent of the Lessee, the Lessor will not exercise any rights to gain possession of

any of the Equipment, order its sale, transfer, lease or other disposition or in any way utilize any of the Equipment to satisfy any obligations of the Lessee hereunder, it being the intention of the parties hereto that all obligations of the Lessee hereunder are not secured.

SECTION 2.05. Characterization as Lease. The Lessor and the Lessee agree to, and hereby do, characterize this Agreement as a lease for Tax Purposes pursuant to which the Lessor is the lessor and owner of the Equipment for Tax Purposes and the Lessee is the lessee for Tax Purposes. The Lessor and the Lessee hereby elect to have the provisions of Section 168(f)(8) of the Code apply to the transactions contemplated by this Agreement.

SECTION 2.06. Information Returns. The Lessee agrees (i) to provide to the Lessor all the information required pursuant to Section 5c.168(f)(8)-2(a)(3) of the Temporary Regulations (or any comparable successor regulation) with respect to the Lessee and the Equipment no later than June 30, 1982, (ii) to sign the information return prepared by the Lessor pursuant to the Temporary Regulations (or any successor regulations), and to return such return, as signed by the Lessee, to the Lessor no more than 15 days after its delivery to the Lessee for signature and (iii) to prepare, sign, deliver to the Lessor for signature and file, all in

accordance with the Temporary Regulations (or any successor regulations) the information return required of the Lessee pursuant to the Temporary Regulations (or any successor regulations). The Lessor agrees (i) to provide to the Lessee all the information required pursuant to Section 5c.168(f)(8)-2(a)(3) of the Temporary Regulations (or any comparable successor regulation) with respect to the Lessor no later than June 30, 1982, (ii) to sign the information return prepared by the Lessee pursuant to the Temporary Regulations (or any successor regulations), and to return such return, as signed by the Lessor, to the Lessee no more than 15 days after its delivery to the Lessor for signature and (iii) to prepare, sign, deliver to the Lessee for signature and file, all in accordance with the Temporary Regulations (or any successor regulations) the information return required of the Lessor pursuant to the Temporary Regulations (or any successor regulations).

ARTICLE III

REPRESENTATIONS AND WARRANTIES

SECTION 3.01. Representations and Warranties of the Lessee. The Lessee represents and warrants to the Lessor as follows:

(a) This Agreement has been duly authorized,

executed and delivered by the Lessee and, assuming due authorization, execution and delivery thereof by the Lessor, constitutes a legal, valid and binding agreement, enforceable against the Lessee in accordance with its terms (subject, as to enforcement of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally).

(b) There are no actions, suits or proceedings pending or (to the knowledge of the Lessee) threatened against or affecting the Lessee or any property rights of the Lessee which, if determined adversely to the Lessee, would materially and adversely affect the ability of the Lessee to perform its obligations under this Agreement; and the Lessee is not in default with respect to any order or decree of any court or governmental instrumentality which would materially and adversely affect the ability of the Lessee to perform its obligations under this Agreement.

(c) None of the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby or the fulfillment of, or compliance with, the terms and provisions hereof will conflict with, or result in a breach of, the terms, conditions or provisions of (i) the charter or by-laws of the Lessee, (ii) any contractual

obligation to which the Lessee is a party or by which it may be bound or to which its property or that of any of its subsidiaries may be subject or (iii) any law or regulation or any order or decree of any court or governmental instrumentality. The Lessee is not in default, and no event or condition has occurred which with the giving of notice or lapse of time or both would be a default, under any of the terms, conditions or provisions of any contractual obligation to which the Lessee is a party or by which it may be bound or to which its property or that of any of its subsidiaries may be subject, in each case which would materially and adversely affect the ability of the Lessee to perform its obligations hereunder.

(d) The Lessee has furnished to the Lessor the consolidated balance sheets of the Lessee as of December 31, 1980, and as of June 30, 1981, and the related consolidated statements of income for the periods then ended, such financial statements as of December 31, 1980, and for the year then ended being accompanied by the report thereon of a nationally recognized accounting firm. All such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods covered thereby. Such financial statements present fairly the financial condition of the

Lessee at December 31, 1980, and September 30, 1981, and the results of its operations and changes in its financial position for the periods then ended.

(e) Since September 30, 1981, there has not been any material adverse change in the business or financial condition of the Lessee.

(f) On and as of the Closing Date the information set forth in Exhibit A hereto will be accurate and complete and, except as otherwise specified in Exhibit A, the Lessee will have full and complete title to the Equipment free and clear of any and all Liens. None of the Equipment was or will be manufactured by or acquired from the Lessor or any of its affiliates.

(g) The Lessee has not entered into any other agreement similar or dissimilar hereto transferring (or purporting to transfer) any interests in respect of tax benefits relating to the Equipment to any person other than the Lessor.

SECTION 3.02. Representations and Warranties of the Lessor. The Lessor represents and warrants to the Lessee as follows:

(a) This Agreement has been duly authorized, executed and delivered by the Lessor and, assuming due authorization, execution and delivery by the Lessee,

constitutes a legal, valid and binding agreement, enforceable against the Lessor in accordance with its terms (subject, as to enforcement of remedies, to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally).

(b) None of the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby or the fulfillment of, or compliance with, the terms and provisions hereof will conflict with, or result in a breach of, the terms, conditions or provisions of (i) the charter or by-laws of the Lessor or (ii) any contractual obligation to which the Lessor is a party, by which it may be bound or to which any of its property or that of any of its subsidiaries may be subject.

ARTICLE IV

CLOSING CONDITIONS

SECTION 4.01. Conditions to Obligations of the Lessor. The obligations of the Lessor to pay the aggregate Purchase Price for the Equipment on the Closing Date shall be subject to the following conditions precedent (any or all of which may be waived by the Lessor):

(a) No Federal, state or local legislative body, or Federal, state or local agency or authority responsible for the interpretation or enforcement of tax matters, shall have indicated that Federal, state or local tax laws and regulations will be applied such that, in the opinion of the Lessor, the Lessee will be required to make payments pursuant to Articles IX and X hereof which in the aggregate are likely to exceed \$5,000,000.

(b) There shall not have been any change in the Code, in the Temporary Regulations or in administrative or judicial interpretations of the Code or such Regulations which, in the opinion of Messrs. Cravath, Swaine & Moore, adversely affects or is likely to affect adversely the tax benefits intended to be realized by the Lessor pursuant to this Agreement.

(c) All approvals and consents of any trustee or holder of any indebtedness or obligations of the Lessee which, in the opinion of the Lessor, are required in connection with any of the transactions contemplated by this Agreement shall have been duly obtained, and copies thereof, certified by an officer of the Lessee, shall have been delivered to the Lessor.

(d) An executed counterpart of this Agreement with the legend "Filed for notice of interest purposes only.

The obligations of the Lessee hereunder are not secured." inscribed on the cover page thereof shall have been duly filed with the Interstate Commerce Commission (the "ICC"), and any other action in respect of the ICC or any Uniform Commercial Code filings which, in the opinion of the Lessor, are necessary or appropriate in connection with the transactions contemplated by this Agreement, shall have been accomplished.

(e) Receipt by the Lessor of an opinion of Robert F. Hochwarth, Esq., counsel for the Lessee, dated the Closing Date and addressed to the Lessor, in form and substance satisfactory to the Lessor, to the effect set forth in paragraphs (a), (b) and (c) of Section 3.01 (which, in the case of paragraph (b) and clause (ii) of paragraph (c) may be to the best knowledge of such counsel), and covering such other matters incident to the foregoing as the Lessor may reasonably request.

(f) Receipt by the Lessor of an Officer's Certificate of the Lessee dated the Closing Date (i) confirming the transfer for Tax Purposes only to the Lessor, subject to Section 2.04, of the Equipment and acknowledging receipt of the Purchase Price with respect thereto, (ii) certifying that the representations and warranties of the Lessee set forth in Sections 3.01 and 10.03 are true and correct on and

as of the Closing Date and (iii) certifying that no event or condition has occurred and is continuing, or would result from the transfer and lease of the Equipment, which constitutes a Default or an Event of Default.

(g) Receipt by the Lessor of an opinion of Messrs. Cravath, Swaine & Moore, satisfactory in form and substance to the Lessor, as to the tax consequences of the transactions contemplated hereby.

(h) Receipt by the Lessor of a description of the Lessee's insurance with respect to the Equipment specifying the amounts of insurance in force and the deductibles with respect thereto.

(i) Receipt by the Lessor of all documents that the Lessor may reasonably request in connection with the transactions contemplated by this Agreement, in form and substance satisfactory to the Lessor.

SECTION 4.02. Conditions to Obligations of the Lessee. The obligations of the Lessee to transfer the Equipment to the Lessor on the Closing Date shall be subject to the receipt by the Lessee on the Closing Date of the

following (any or all of which may be waived by the Lessee):

(a) An opinion of Robert S. Stone, Corporate Counsel of the Lessor, dated the Closing Date and addressed to the Lessee, in form and substance satisfactory to the Lessee and its counsel, to the effect set forth in paragraphs (a) and (b) of Section 3.02 (which in the case of clause (ii) of paragraph (b) may be to the best knowledge of such counsel), and covering such other matters incident to the foregoing as the Lessee may reasonably request.

(b) An Officer's Certificate of the Lessor dated the Closing Date to the effect that the representations and warranties of the Lessor set forth in Section 3.02 are true and correct on and as of the Closing Date.

ARTICLE V

LEASE OF EQUIPMENT

SECTION 5.01. Lease Term. The term of the lease of each item of Equipment shall commence on and as of the Closing Date concurrently with the transfer of such item to the Lessor and, subject to Sections 5.03 and 5.06, shall terminate on the 14th Payment Date with respect to such item thereafter. Such term, as to each item of Equipment, is herein called the Lease Term with respect thereto. This

Agreement constitutes a separate lease as to each item of Equipment.

SECTION 5.02. Payments of Rent. As rental hereunder for each item of Equipment, the Lessee shall pay to the Lessor on each Payment Date an amount equal to 12.129685% of the original principal amount of the Note attributable to such item (such amounts being herein called Rent). The provisions of Section 2.03 shall apply to all payments of Rent.

SECTION 5.03. Casualty Payments. (a) In the event that any item of Equipment shall during its Lease Term be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, or shall be acquired by condemnation or otherwise by the United States Government or any other governmental entity for a term ending after the Lease Term for such item (any such event being herein called a Casualty Occurrence), the Lessee shall promptly notify the Lessor with respect thereto. Subject to paragraph (b) of this Section 5.03, on the next succeeding Payment Date which follows the receipt of such notice by 30 days, (a) the Lessee shall pay to the Lessor the Rent due on such Payment Date and an amount equal to the sum of (i) any costs and expenses reasonably incurred by

the Lessor in connection with such Casualty Occurrence and (ii) an amount equal to the percentage set forth opposite such Payment Date in Exhibit E hereto under the caption "Total Formula Casualty Payment" multiplied by the Purchase Price (as the same may have been adjusted pursuant to Section 2.02) for such item (the sum of such amounts so paid or payable being herein called a Casualty Payment) and (b) the Lessor shall (in addition to any installment of principal then falling due) apply to the prepayment of the Note an amount equal to the percentage set forth opposite such Payment Date in Exhibit E hereto under the caption "Amount To Be Applied to Principal of Note" multiplied by such Purchase Price. Such prepayment shall be applied pro rata to all remaining principal installments based on the respective amounts of such installments scheduled to become due on all remaining Payment Dates (excluding the Payment Date on which such prepayment becomes due). Upon the making of such payment by the Lessee in respect of any item of the Equipment, all Rent in respect thereof shall cease to accrue, the Lease Term as to such item shall terminate, and any and all interests of the Lessor in and to such item shall without further action vest in the Lessee (without recourse to or any warranty by the Lessor). The provisions of Section 2.03

shall apply to all Casualty Payments and all corresponding applications to prepayment of the principal of the Note.

(b) Notwithstanding the provisions of paragraph (a) of this Section 5.03, if, in the opinion of the Lessor, a Casualty Occurrence with respect to an item of Equipment will not result in the loss by the Lessor of an ACRS Deduction or Investment Credit (as such terms are defined in Section 10.01) or any acceleration of income to the Lessor if the Lease Term with respect to such item is not terminated pursuant to such paragraph (a), then no Casualty Payment shall be required of the Lessee with respect to such Casualty Occurrence and the Lease Term with respect to such item shall continue in accordance with the applicable terms of this Agreement.

(c) Any payment to the Lessor required pursuant to paragraph (a) of this Section 5.03 which does not exceed \$100,000 shall be made by wire transfer of immediately available funds or by check payable to the Lessor. Any payment to the Lessor required pursuant to paragraph (a) of this Section 5.03 in excess of \$100,000 shall be made by wire transfer of immediately available funds.

SECTION 5.04. Requisition. In the event of the taking or requisition for use by the United States

Government or any other governmental entity of any item of Equipment which shall not constitute a Casualty Occurrence, all the obligations of the Lessee hereunder with respect to such item shall continue to the same extent as if such taking or requisition had not occurred. All payments received by the Lessor or the Lessee from the United States Government or such governmental entity for the use of such item during its Lease Term shall be paid over to, or retained by, the Lessee.

SECTION 5.05. Net Lease; No Release; Waiver. The obligations of the Lessee under this Article V constitute a net lease, and the obligation to pay all amounts payable hereunder as Rent, Casualty Payments or otherwise shall be unconditional and absolute and shall not be affected by any circumstances whatsoever (including, without limitation, any counterclaim, defense or other right which the Lessee may have against the Lessor; any defect in, damage to or loss of any of the Equipment; or any insolvency, bankruptcy or similar proceedings by or against the Lessee), subject only to the setoff rights described in Section 2.03. Except as provided in Sections 5.03, the Lessee shall not be released from its obligations under this Article V in the event of, and shall bear the risk of, any Casualty Occurrence to any

of the Equipment. The Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel or surrender this Agreement.

SECTION 5.06. Events of Default; Remedies. If, during the continuance of the Lease Term with respect to any of the Equipment, one or more of the following events (each of such events being herein sometimes called an Event of Default) shall occur:

(a) default shall be made in the payment of any amount required by this Agreement to be paid to the Lessor; or

(b) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied; or

(c) the Lessee shall (i) be generally not paying its debts as they become due (within the meaning of Section 303(h) of the Bankruptcy Code), (ii) file, or

consent by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property or (v) take corporate action for the purpose of any of the foregoing; or

(d) a court or governmental authority of competent jurisdiction shall enter an order appointing, without consent by the Lessee, a custodian, receiver, trustee or other officer with similar powers with respect to the Lessee, or with respect to any substantial part of the Lessee's property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Lessee, or if any such petition shall be filed against the Lessee and such petition shall not be dismissed within 60 days;

then, in any such event the Lessor may (i) by written notice to the Lessee terminate the Lease Term with respect to any item of or all Equipment (and the Lessee shall indemnify the Lessor against any resulting Loss to the extent required pursuant to Article X) or (ii) proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of the terms hereof or to recover damages for the breach hereof. The Lessee shall pay all expenses, including attorneys' fees, reasonably incurred by the Lessor by reason of the occurrence of an Event of Default and in enforcing its remedies under this Section 5.06. No remedy referred to in this Section 5.06 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor; and the exercise or beginning of exercise by the Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by the Lessor of any or all such other remedies. No express or implied waiver by the Lessor of any Event of Default hereunder 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 limit or modify any of the Lessor's rights or remedies under this Section 5.06.

ARTICLE VI

OPTIONS

SECTION 6.01. Options. On the 14th Payment Date, if neither a Default nor an Event of Default shall have occurred and be continuing, the Lessee shall have the right to purchase all the rights and interests of the Lessor in and to all the remaining Equipment for an aggregate purchase price of \$1. On 14th Payment Date the Lessor shall have the right to require the Lessee to purchase all the rights and interests of the Lessor in and to all the remaining Equipment for an aggregate purchase price of \$1. Unless each of the Lessee and the Lessor shall give written notice to the other party at least 90 days prior to the 14th Payment Date stating that the Lessee or the Lessor, as the case may be, does not intend to exercise its option under this Section 6.01, each such option shall be deemed exercised (if then exercisable, in the case of the Lessee's option) on the 14th Payment Date and on such Payment Date all interests of the Lessor in and to the remaining Equipment shall, without further action, vest in the Lessee (without recourse to or any warranty by the Lessor).

ARTICLE VII

COVENANTS OF LESSEE

Until the end of the Lease Term with respect to

each item of Equipment, the Lessee covenants and agrees with the Lessor as follows:

SECTION 7.01. Insurance. The Lessee will, at its own expense, cause to be carried and maintained insurance with respect to all items of Equipment at the time subject hereto and the use and operation thereof, including, without limitation, property insurance and public liability insurance, in such amounts, subject to such deductibles and for such risks and with such insurance companies as are at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned or leased by it. Subject to the rights, if any, in respect of insurance proceeds granted to the holder of any Lien described in Exhibit A, the Lessee hereby assigns and transfers to the Lessor all right, title, and interest in and to any insurance proceeds paid under any policy of insurance to the extent such proceeds relate to the items of Equipment or the use and operation thereof as aforesaid; provided, however, that if the Lessee fully complies with all the provisions of this Section 7.01 in respect of the risk insured against as to which such proceeds are paid, and if neither a Default nor an Event of Default has occurred and is continuing, the Lessee shall be entitled to retain all such proceeds (and in no event shall the Lessor have any claim to any proceeds

in excess of its claim arising in respect of such Default or Event of Default). The Lessee will furnish to the Lessor on request a description of its insurance coverage with respect to the Equipment and will furnish to the Lessor 30 days' prior written notice of any material change in such coverage; provided, however, that if it is not practicable for the Lessee to have knowledge of a material change in coverage at least 30 days prior to the occurrence thereof, the Lessee shall give the Lessor written notice as soon as the Lessee learns of such change.

SECTION 7.02. Periodic Reports. On or before May 31 in each year, commencing with the calendar year 1982, the Lessee will furnish to the Lessor a statement dated as of the preceding December 31 which (i) describes in detail all changes to Exhibit A which would be required to make such Exhibit accurate and complete as of such December 31 with respect to the items of Equipment then leased hereunder and (ii) identifies all items of Equipment that have suffered a Casualty Occurrence during the preceding calendar year. The Lessee will prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any Federal, state or other regulatory

authority by reason of the Lessor's interest in the Equipment or the leasing thereof to the Lessee. The Lessee will also furnish to the Lessor, promptly upon transmission thereof, copies of all regular and periodic reports filed by the Lessee with the Securities and Exchange Commission and of all reports and information, if any, furnished by the Lessee to its stockholders. The Lessor shall have the right (but not any obligation) reasonably to inspect, at the Lessor's own risk and expense, all or any of the Equipment and the records of the Lessee with respect thereto at such reasonable times as the Lessor may request.

SECTION 7.03. Compliance with Laws, etc. The Lessee agrees, for the benefit of the Lessor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of Equipment) with all laws of the jurisdictions in which its operations involving the Equipment may extend and with all lawful rules of any legislative, executive, administrative or judicial body exercising any power or jurisdiction over any of the Equipment if the failure so to comply could adversely affect the tax benefits intended to be realized by the Lessor pursuant to this Agreement (and whether or not the Lessee is obligated to indemnify the Lessor in connection therewith).

SECTION 7.04. Other Reports. The Lessee will prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the Lessor's interest in the Equipment or the leasing thereof to the Lessee.

SECTION 7.05. Maintenance. During the Lease Term with respect to each item of Equipment the Lessee will, at its own cost and expense, maintain and keep each such item (including any parts installed thereon or replacements made thereto) in good operating order, repair and condition, ordinary wear and tear excepted.

SECTION 7.06. Indebtedness, Transfer and Subleasing. During the Lease Term with respect to each item of Equipment the Lessee will promptly pay when due any and all indebtedness and other obligations to which such item may be subject. Except as otherwise provided in Section 7.07, during the Lease Term with respect to each item of Equipment the Lessee will not, without the prior written consent of the Lessor, (i) sell, assign or otherwise transfer any interest in such item or this Agreement, (ii) sublease or otherwise in any manner transfer possession or control of

such item, (iii) directly or indirectly create, incur, assume or suffer to exist any Lien with respect to such item (other than Liens described in Exhibit A hereto) or (iv) agree to do any of the foregoing, if such sale, assignment, transfer, sublease or Lien could adversely affect the tax benefits intended to be realized by the Lessor pursuant to this Agreement (and whether or not the Lessee is obligated to indemnify the Lessor in connection therewith). Any person who purports to acquire under or through the Lessee, whether by sublease, foreclosure of any lien, operation of law or otherwise, any right to the possession or control of any item of Equipment prior to the expiration of the Lease Term with respect thereto and the payment in full of all the Lessor with respect thereto pursuant to this Agreement, shall acquire no interest in such item of Equipment greater than the interest held by the Lessee hereunder. Pursuant to and not in limitation to the foregoing, the Lessee will not, without the prior written consent of the Lessor, take any action referred to in the second sentence of this Section 7.06 or permit any such action to be taken if such action constitutes or would result in a disqualifying event within the meaning of Section 5c.168(f)(8)-(8)(b) of the Temporary Regulations (or any comparable successor regulation), and the Lessee will not, without the prior written consent of

the Lessor, take any action (except subleases of items of Equipment entered into in the ordinary course of business) referred to in the second sentence of this Section 7.06 or permit any such action to be taken unless, prior to the effective date of the sale, assignment, transfer or sublease, or the date of attachment of any Lien, as the case may be, the Lessor shall have been furnished with the written agreement of the person acquiring an interest in an item of Equipment or this Agreement or possession or control of or a Lien on an item of Equipment (the "Acquiring Person") (i) to take such item of Equipment subject to this Agreement, (ii) to file the statement contemplated by clause (ii) of Section 5c.168(f) (8)-2(a)(5) of the Temporary Regulations (or any comparable successor regulation) and (iii) to assume full and complete responsibility for the due and punctual performance and observance of each covenant and condition of Article VII of this Agreement to be performed or observed by the Lessee with respect to such item of Equipment. No lease, sublease or other arrangement for use, operation or possession of any item of Equipment, no acquisition by any person, whether by foreclosure of lien, operation of law or otherwise, of any right to possession or control of any item of Equipment, and no action taken pursuant to this Section 7.06 shall have the effect of releasing the Lessee, any

Acquiring Person or any successor corporation which shall theretofore become such in the manner prescribed in Section 7.07 from its liabilities under this Agreement. The Lessee acknowledges that recovery of damages at law will not be an adequate remedy for any breach of this Section 7.06 or Section 7.07 and agrees that if it does not comply with either such Section, an injunction requiring specific performance may be issued against it, in addition to any other rights the Lessor may have. The Lessor acknowledges that the Lessee and the Acquiring Person may make such arrangements, not inconsistent with this Section 7.06, between themselves with respect to any such sale, assignment, transfer, sublease or Lien as they may see fit.

SECTION 7.07. Consolidation and Merger. The Lessee shall not consolidate with or merge into any other corporation or convey, transfer or lease substantially all its assets as an entirety (through liquidation or otherwise) unless the corporation formed by such consolidation or into which the Lessee is merged or the entity which acquires by conveyance, transfer or lease substantially all the assets of the Lessee as an entirety shall be a corporation organized under the laws of the United States of America (including the laws of any state thereof) which shall effectively assume full and complete responsibility for the due and punctual

performance and observance of each covenant and condition of this Agreement to be performed or observed by the Lessee. Prior to the effective date of such consolidation, merger, conveyance, transfer or lease of substantially all the assets of the Lessee as an entirety the successor corporation shall furnish to the Lessor such corporation's written agreement (i) to assume full and complete responsibility for the due and punctual performance and observance of each covenant and condition of this Agreement to be performed or observed by the Lessee, (ii) to take all the Equipment subject to this Agreement and (iii) if required by the Temporary Regulations (or any successor regulation) to give effect to the foregoing, to file the statement contemplated by clause (ii) of Section 5c.168(f)(8)-2(a)(5) of the Temporary Regulations (or any comparable successor regulation). Upon any consolidation or merger, or any conveyance, transfer or lease of substantially all the assets of the Lessee as an entirety in accordance with this Section 7.07, the successor corporation formed by such consolidation or into which the Lessee is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Lessee under this Agreement with the same effect as if such successor corporation had been named as the Lessee herein. No such conveyance, transfer or lease

of substantially all the assets of the Lessee as an entirety shall have the effect of releasing the Lessee or any successor corporation which shall theretofore have become such in the manner prescribed in this Section 7.07 from its liability hereunder. Nothing contained herein shall permit any lease, sublease or other arrangement for the use, operation or possession of the Equipment in violation of Section 7.06.

SECTION 7.08. Recording, etc. The Lessee, at its own cost and expense, will from time to time do and perform any act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all instruments reasonably requested by the Lessor for the purpose of proper protection, to its satisfaction, of the rights and interests of the Lessor under this Agreement, or for the purpose of carrying out the intention of this Agreement; and the Lessee will promptly furnish to the Lessor evidence of all such filing, registering, depositing or recording, and (if required by the Lessor) an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor.

SECTION 7.09. Transfer of Tax Benefits. The Lessee will not enter into any other agreement or arrangement transferring (or purporting to transfer) any interest in

respect of tax benefits relating to the Equipment to any person other than the Lessor.

SECTION 7.10. Corporate Existence. The Lessee shall at all times maintain its corporate existence except as permitted by Section 7.07 of this Agreement, and will do or cause to be done all things necessary to preserve and keep in full force and effect its rights (charter and statutory); provided, however, that the Lessee shall not be required to preserve any right if its Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of its business and that the loss thereof does not materially adversely affect or diminish any material right of the Lessor.

ARTICLE VIII

GENERAL INDEMNITY

SECTION 8.01. Indemnification. The Lessee will pay, and will protect, indemnify and hold each Indemnified Person harmless from and against, any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any and all liabilities, obligations, damages, costs, disbursements, attorneys' fees and expenses and other expenses relating

thereto) in any way relating to or arising, or alleged to arise, out of this Agreement or the Equipment, including, without limitation, those in any way relating to or arising or alleged to arise out of (a) the manufacture, financing, construction, erection, purchase, acceptance, rejection, ownership, delivery, nondelivery, transfer, lease, possession, control, use, operation, condition, occupancy, installation, servicing, maintenance, repair, transfer of title, abandonment, improvement, replacement, sale, return or other disposition of any item of Equipment or any part thereof, (b) any latent and other defects whether or not discoverable by the Lessor or the Lessee, (c) any claim for patent, trademark or copyright infringement, (d) any claims based on liability in tort, strict or otherwise, (e) any injury to or the death of any person or any damage to or loss of property on or near any item of Equipment or any part thereof or in any manner growing out of or be connected with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of any item of Equipment or any part thereof or of any other equipment in connection with any item of Equipment or any part thereof (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof, or (f) any violation of any provision of this

Agreement (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to any item of Equipment or any part thereof or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except to the extent that such claim shall have arisen from an act of the party claiming indemnification (all of which matters hereinabove set forth in this Section 8.01 being hereinafter called Indemnified Matters). The Lessee shall be obligated under this Section 8.01 irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this Section 8.01 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding shall be brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may, and upon the request of such Idemnified Person will, at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person (and such approval shall not be unreasonably withheld) and, in the event of any failure by the Lessee to do so, the Lessee shall pay all

costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this Section 8.01, the Lessee shall pay such Indemnified Person an amount which, after deduction of all Taxes required to be paid by such Indemnified Person in respect of the receipt thereof, shall be equal to the amount of such payment. The Lessee and the Lessor each agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Without prejudice to any other rights the Lessee may have in connection therewith (including, without limitation, any claim for damages for a failure to give the notice specified in the preceding sentence), the parties agree that the failure to provide such notice shall not affect the Lessee's obligations hereunder to any Indemnified Person. Upon the payment in full of any indemnities as contained in this Section 8.01 by the Lessee, and provided that no Default or Event of Default shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the Indemnified Matter against which indemnity shall have been given. None of the indemnities of this Section 8.01 shall be deemed

to create any rights of subrogation in any insurer or third party against the Lessee, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

ARTICLE IX

GENERAL TAX INDEMNITY

SECTION 9.01. Indemnification. All payments by the Lessee in connection with the transactions contemplated by this Agreement shall be free of withholdings of any nature whatsoever (and at the time that the Lessee is required to make any payment upon which any withholding is required, the Lessee shall pay an additional amount such that the net amount actually received by the person entitled to receive such payment will, after such withholding, equal the full amount of the payment then due) and shall be free of expense to the Lessor for collection or other charges, and, except as provided in the last sentence of this Section 9.01, the Lessee hereby agrees to reimburse or pay and assume liability for, and does hereby agree to indemnify, protect, defend, save and keep harmless on an after-tax basis each Indemnified Person from and against, any and all Taxes imposed (whether now existing or hereafter enacted or adopted) against any Indemnified Person, the Lessee or any item of the Equipment

or any part thereof by any authority having or asserted to have jurisdiction to impose such Taxes (including, without limitation, any Federal, state or local government or taxing authority in the United States or any foreign government or foreign or international taxing authority or any subdivision of any of the foregoing) (A) upon or with respect to any item of the Equipment or any part thereof, (B) upon or with respect to the manufacture, financing, construction, erection, purchase, acceptance, rejection, ownership, delivery, nondelivery, transfer, lease, possession, control, use, operation, condition, occupancy, installation, servicing, maintenance, repair, transfer of title, abandonment, improvement, replacement, sale, return or other disposition of any item of the Equipment or any part thereof, (C) upon or with respect to the rentals, receipts or earnings arising from any item of the Equipment or any part thereof, including the Rent or other sums payable by the Lessee under this Agreement, (D) upon or with respect to the income or other proceeds received with respect to any item of the Equipment or any part thereof upon the disposition thereof, (E) upon or with respect to this Agreement or the Note or any contract relating to the manufacture, construction, acquisition or delivery of any item of the Equipment, in each case as supplemented or amended (hereinafter collectively called the

"Operative Documents") or (F) otherwise in connection with the transactions contemplated by the Operative Documents. The provisions of this Section 9.01 shall not apply to United States Federal Taxes, or Taxes of any state, the District of Columbia or any local government or taxing authority in the United States, in each case if such Federal or other Taxes are on, based on or measured by the net income of the Lessor (other than (i) Taxes in the nature of or in lieu of sales, use or rental taxes, (ii) Taxes which, by the terms of the statute imposing such Taxes, expressly relieve the Lessee as a lessee from the payment of Taxes which it would otherwise be obligated to pay or indemnify and (iii) Taxes upon or with respect to indemnification payments made pursuant to this Article IX).

SECTION 9.02. Contests. If any claim is made against any Indemnified Person or if any proceeding is commenced against any Indemnified Person (including a written notice of such proceeding) for any Taxes as to which the Lessee has an indemnity obligation pursuant to Section 9.01, such Indemnified Person shall promptly notify the Lessee. Without prejudice to any other rights, the Lessee may have in connection therewith (including, without limitation, any claim for damages for a failure to give the notice specified in the preceding sentence), the parties agree that the

failure to provide such notice shall not affect the Lessee's obligations hereunder to any Indemnified Person. If reasonably requested by the Lessee in writing, and upon determination by such Indemnified Person that the action to be taken will not result in a substantial risk of adverse consequences to it, such Indemnified Person shall upon receipt of indemnity satisfactory to it and at the expense of the Lessee (including, without limitation, all costs, expenses, losses, attorneys' and accountants' fees and disbursements, penalties and interest) in good faith contest the validity, applicability or amount of such Taxes by, in such Indemnified Person's sole discretion, (A) resisting payment thereof, (B) not paying the same except under protest, if protest is necessary and proper, or (C) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. Any contest required pursuant to the next preceding sentence shall, at the option of such Indemnified Person, be conducted by such Indemnified Person or the Lessee in the name of the Lessee or such Indemnified Person. If the contest is made by the payment of such Taxes and the claiming of a refund, the Lessee shall either make such payment directly to the appropriate authority or furnish to such Indemnified Person sufficient funds to make such payment. If any Indemnified Person obtains a refund of

all or any part of any Taxes paid or reimbursed by the Lessee and if no Default or Event of Default shall have occurred and be continuing, such Indemnified Person shall promptly pay to the Lessee the amount of such refund net of expenses not already paid or reimbursed by the Lessee; provided, however, that such amount shall in no event be payable before such time as the Lessee shall have made all payments and indemnities then due and payable under this Agreement (exclusive of Rent that is not due and payable until a subsequent Payment Date) to such Indemnified Person. If in addition to such refund such Indemnified Person receives an amount representing interest on the amount of such refund, the Lessee shall promptly be paid that proportion of such interest which is fairly attributable to Taxes paid or reimbursed by the Lessee prior to the receipt of such refund. Nothing contained in this Article IX shall require an Indemnified Person to contest a claim which it would otherwise be required to contest pursuant to this Article IX if such Indemnified Person shall waive payment by the Lessee of any amount that might otherwise be payable by the Lessee under this Article IX by way of indemnity in respect of such claim. The Lessor agrees that any settlement or other compromise with respect to any aspect of any claim which it would otherwise be required to contest pursuant to this

Section 9.02 which is entered into by the Lessor prior to its having notified the Lessee of such claim shall constitute a waiver by the Lessor of any amount that might otherwise be payable by the Lessee under this Article IX by way of indemnity in respect of the matter settled or compromised.

SECTION 9.03. Payments. All Taxes shall be paid when due and payable and all amounts payable as indemnities pursuant to this Article IX shall be payable, to the extent not theretofore paid, on written demand by the appropriate Indemnified Person. Notwithstanding any other provisions of this Agreement, to the extent the Lessee shall be required to make any payment under this Article IX (including under this Section 9.03) the Lessee's payment or indemnity obligation shall also include any amount necessary to hold the appropriate Indemnified Person harmless on an after-tax basis from all Taxes required to be paid by such Indemnified Person with respect to such payment or indemnity. Whenever any payment is to be made by the Lessee under this Article IX and it is necessary in calculating the amount of such payment, and any related payment pursuant to the preceding sentence, to compute the amount of any liability for Federal, state or local tax imposed on or measured by the net income of an

Indemnified Person, such computation shall be based on the assumption that such taxes are payable at an assumed combined effective rate of 50%.

SECTION 9.04. Reports and Returns. In case any report or return is required to be made with respect to any obligations of the Lessee under or arising out of this Article IX, the Lessee shall (a) to the extent required or permitted by law, make and file in its own name such return, statement or report, and (b) in the case of any other such return, statement or report required to be made in the name of an Indemnified Person, advise the Lessor of such fact and prepare such return, statement or report for filing by such Indemnified Person or, where such return, statement or report is required to reflect items in addition to any obligations of the Lessee under or arising out of this Article IX, provide such Indemnified Person with information sufficient to permit such return, statement or report to be properly made with respect to any obligations of the Lessee under or arising out of this Article IX (and the Lessee shall hold each Indemnified Person harmless from and against any liabilities, obligations, losses, damages, penalties, claims, actions, suits and costs arising out of any insufficiency or inaccuracy in any such return, statement, report

or information).

SECTION 9.05. Receipts. The Lessee agrees to use its best efforts to obtain official receipts indicating the payment of all foreign Taxes which are subject to indemnification under this Article IX and shall promptly send to the Indemnified Person each such receipt obtained by the Lessee.

ARTICLE X

SPECIAL TAX INDEMNITY

SECTION 10.01. Certain Assumptions. This Agreement is being entered into on the assumption that the Lessor will be treated as the owner of each item of Equipment for Federal income tax purposes and (A) will be entitled, for Federal income tax purposes, (a) to cost recovery deductions with respect to each item of Equipment under Section 168 of the Code as in effect on the date hereof in the amount of 15 percent of the Purchase Price (prior to any adjustment pursuant to Section 2.02) of each item of Equipment in its taxable year ending December 31, 1981, 22 percent of such unadjusted Purchase Price in its taxable year ending December 31, 1982, and 21 percent of such unadjusted Purchase Price in each of its three successive taxable years thereafter, resulting in a reduction of the Lessor's basis in each item of Equipment

to a net salvage value of zero (the "ACRS Deduction"); (b) to an investment credit under Section 38 and related sections of the Code as in effect on the date hereof in an amount not less than 10 percent of the Purchase Price (prior to any adjustment pursuant to Section 2.03) of each item of Equipment in its taxable year ending December 31, 1981 (the "Investment Credit"); (c) to current deductions with respect to interest accrued or due on the Note pursuant to Section 163 of the Code (the "Interest Deduction"); and (d) to treat each item of income, loss, deduction or credit with respect to the transactions contemplated by this Agreement as derived from, or allocable to, sources within the United States and (B) shall not be required to include any amount in its gross income for Federal income tax purposes with respect to or in connection with any item of Equipment or any part thereof or any of the transactions contemplated by this Agreement, other than any amounts of Rent and Casualty Payments on the dates on which such amounts are required to be paid under this Agreement.

SECTION 10.02. Inconsistent Actions; Records.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action

or file any returns or other documents inconsistent with the foregoing and that the Lessee will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as shall be reasonably necessary to establish the factual basis for the matters referred to in Section 10.01 hereof.

SECTION 10.03. Representations, Warranties and Covenants. The Lessee represents, warrants and covenants that (a) each item of Equipment is "new section 38 property", as defined in Section 48(b) of the Code as in effect on the date hereof, of the Lessee, and, with respect to each such item which constitutes railroad rolling stock, the only expected use outside the United States is use by a person in Canada or Mexico on a temporary basis which is not expected to exceed a total of 90 days in any taxable year, (b) each item of Equipment which was placed in service, as such term is used in Sections 46, 48, 167 and 168 of the Code as in effect on the date hereof and the regulations promulgated thereunder, prior to the date hereof was so placed in service by the Lessee on the date specified with respect

thereto in Exhibit A; no such item of Equipment was so placed in service by the Lessee earlier than January 1, 1981, nor will any such item of Equipment be placed in service by the Lessee later than the day prior to the Closing Date, (c) the Purchase Price of each item of Equipment shall not exceed the Lessee's Basis in such item of Equipment on the Closing Date, (d) each item of Equipment falls within the asset guideline class, as set forth in Rev. Proc. 77-10, 1977-1 C.B. 548, as amended and in effect on January 1, 1981, specified with respect thereto in Exhibit A, (e) in the hands of the Lessor, each item of Equipment will constitute "recovery property", as defined in Section 168(c)(1) of the Code as in effect on the date hereof, which is "5-year property", as defined in Section 168(c)(2)(B) of the Code as in effect on the date hereof, (f) the Lessee will characterize this Agreement as a lease pursuant to which the Lessee is the lessee of each item of Equipment and the Lessor is the lessor of each item of Equipment and will elect on its Federal income tax returns (in accordance with the provisions of Section 168(f)(8) of the Code and the regulations promulgated thereunder) to have the provisions of Section 168(f)(8) of the Code apply to this Agreement, (g) at all times during the Lease Term with respect to each

item of Equipment, each such item (i) will constitute "section 38 property" within the meaning of Section 48(a) of the Code (in the hands of the Lessor and the Lessee as provided in Section 5c.168(f)(8)-6(b)(1)(i) of the Temporary Regulations (or any comparable successor resolution)) as in effect on the date hereof and (ii) will not be used predominantly outside the United States within the meaning of such Section 48(a) or Section 168(f)(2) of the Code, (h) the Lessee will not take any action in connection with filing its Federal income tax returns which, pursuant to Section 168(f)(8) or (10) of the Code, would disentitle the Lessor to any tax benefits described in Section 10.01, (i) in the absence of this Agreement, the Lessee would have been entitled to the Investment Credit and the ACRS Deduction, (j) the Lessee has not claimed any investment credit or depreciation or cost recovery deductions with respect to any item of Equipment, (k) the Lessee is not subject to the limitations of Section 46(c)(8), 46(c)(9), 47(d) or 465 of the Code and will not be so subject during the term of this Agreement and (l) no item of Equipment was acquired from or manufactured by an affiliate of the Lessee (or, if any item of Equipment was so acquired or manufactured, the Purchase Price of such item does not exceed the lowest adjusted basis for Federal income tax purposes of any such affiliate with respect to such item).

SECTION 10.04. Indemnified Losses. If for any reason (A) the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture all or any portion of the ACRS Deduction, the Investment Credit or the Interest Deduction or (B) the Lessor shall be required to include any amount in its gross income for Federal income tax purposes with respect to any item of Equipment or any part thereof or any of the transactions contemplated by this Agreement other than amounts of Rent and Casualty Payments on the dates on which such amounts are required to be paid under this Agreement or (C) any item of income, loss, deduction or credit with respect to the transactions contemplated by this Agreement shall be treated as derived from, or allocable to, sources without the United States for Federal income tax purposes with the result that the amount of the foreign tax credits that are allowed to the Lessor with respect to any taxable year shall be less than the amount of the foreign tax credits that would have been allowed to the Lessor with respect to such taxable year if it had not participated in the transactions contemplated by this Agreement (any such loss, disallowance, recapture, inclusion or treatment described in the foregoing clause (A), (B) or (C) being hereinafter

called a "Loss"), then in any such case the Lessee shall, subject to Section 10.05, pay on demand to the Lessor from time to time an amount which, after deduction of all additional Federal taxes payable by the Lessor in respect of the receipt of any amount pursuant to this sentence, shall be equal to the sum of (i) the additional Federal taxes payable by the Lessor as a result of such Loss plus (ii) the aggregate amount of any interest, penalties or additions to tax payable by the Lessor as a result of such Loss. Any increase or decrease in the marginal effective rate at which the Federal income taxes of the Lessor are payable will not affect the Lessee's obligations under this Section 10.04.

SECTION 10.05. Other Losses. The Lessee shall not be required to make any payment to the Lessor provided for in Section 10.04 in respect of a Loss if the Lessor shall have suffered such Loss solely as a direct result of the occurrence of one or more of the following events:

(a) except with respect to a Loss described in clause (B) or (C) of Section 10.04, a Casualty Occurrence with respect to an item of the Equipment; provided, however, that any payment to the Lessor provided for in Section 10.04 in respect of a Loss shall, pursuant to this subparagraph (a), not be required only to the

extent that the Lessor shall have been reimbursed for such Loss by a payment pursuant to Section 5.03(a);

(b) a voluntary transfer or other voluntary disposition by the Lessor of any interest in any item of Equipment, other than a transfer or other disposition while an Event of Default has occurred and is continuing (for purposes of this subparagraph (b), a transfer or disposition pursuant to Article V or VI shall not be considered a voluntary transfer or disposition);

(c) the failure of the Lessor to have sufficient taxable income against which to apply the ACRS Deduction or the Interest Deduction or sufficient liability for tax against which to apply the Investment Credit;

(d) the failure of the Lessor to timely claim the ACRS Deduction, the Investment Credit or the Interest Deduction in its income tax return for the appropriate year or to follow the proper procedure in claiming such deduction or credit in such tax return for such year unless (x) such failure is due to the failure of the Lessee to provide the Lessor in a timely manner with information that is reasonably necessary to make such claim or follow such procedure or (y) in the opinion of Messrs. Cravath, Swaine & Moore or other independent

counsel selected by the Lessor and approved by the Lessee (which approval shall not be unreasonably withheld) there is no reasonable basis for such claim or treatment or (z) the matter in question is of a continuing nature and such matter (although not in respect of the particular taxable period) has previously been decided pursuant to the contest provisions hereof (other than by reason of the Lessor's not contesting such Loss for any given period under circumstances in which the Lessee is thereby relieved of its indemnity obligation with respect thereto);

(e) any gross negligence of or wilful misconduct by IBM relating to the transactions contemplated by this Agreement; or

(f) any amendments to the Code which are enacted after promulgation of the final regulations which are expected to replace or supplement the Temporary Regulations and which are effective only for taxable years beginning after 1981.

SECTION 10.06. Tax Savings. If the Lessor, as the result of a Loss occurring with respect to any year

under circumstances which require the Lessee to indemnify the Lessor with respect to such Loss, shall actually realize with respect to any subsequent year Federal income tax savings which it would not have realized but for such Loss, the Lessor shall pay to the Lessee an amount equal to the sum of such Federal income tax savings actually realized by the Lessor plus any tax savings actually realized under the laws of any Federal, state or local government or taxing authority as the result of any payment made pursuant to this sentence when, as, if and to the extent such Federal income or other tax savings are actually realized; provided, however, that (i) such sum shall not exceed the excess of the amounts previously paid by the Lessee to the Lessor pursuant to Section 10.04 with respect to the Loss which gave rise to such tax savings over the amounts previously paid by the Lessor to the Lessee pursuant to this Section 10.06 with respect to such Loss, (ii) such sum shall not be payable before such time as the Lessee shall have made all payments or indemnities then due pursuant to this Agreement, (iii) no Default or Event of Default shall have occurred and be continuing, (iv) in computing any tax savings actually realized by the Lessor for purposes of this Section 10.06,

the Lessor shall be deemed first to have utilized all deductions and credits available to it otherwise than by reason of any such Loss or payment to the Lessee and (v) any loss of any tax savings subsequent to the year of realization by the Lessor shall be treated as a Loss subject to indemnification in accordance with the provisions of Section 10.04.

SECTION 10.07. Determination of Payments. Whenever it may be necessary for purposes of this Article X to determine (i) whether the Lessor has suffered a Loss, (ii) the amount of any Loss suffered by the Lessor or (iii) the amount of any payment required to be made under this Article X by the Lessee, such determination shall be made on the assumptions that (A) the Federal income taxes of the Lessor are payable at a marginal effective rate of 50% (the "Effective Rate", it being agreed that the Effective Rate gives effect to an assumed loss of state and local tax benefits and that the Lessee shall have no other obligation under this Article X in respect of any such loss of state and local tax benefits) and (B) in computing its Federal income tax liability, the Lessor can currently fully utilize the tax benefits which are the subject of such Loss against taxes payable at the

Effective Rate. The determination of the amount payable to or by the Lessor under this Article X shall be made in the first instance by the Lessor who shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount and, if requested by the Lessee, such determination shall be verified by a firm of independent public accountants of recognized standing selected by the Lessee and acceptable to the Lessor. The costs of such verification shall be borne by the Lessee. Such amount shall be payable not later than 10 days after written demand made at any time after the date the Loss occurs or is deemed to occur.

SECTION 10.08. Contests. In the event a claim shall be made by the Internal Revenue Service which, if successful, would result in a Loss for which the Lessee would be required to indemnify the Lessor, the Lessor hereby agrees to take such action in connection with contesting such claim as the Lessee shall reasonably request in writing from time to time, provided that (i) within 30 days after notice by the Lessor to the Lessee of such claim, the Lessee shall request that such claim be contested, (ii) the Lessor shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forego any and all administrative appeals, proceedings, hearings and conferences with

the Internal Revenue Service in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund or contest the claim in any permissible forum considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed, (iii) prior to taking such action, the Lessee shall have furnished the Lessor with an opinion of independent tax counsel agreed upon by the Lessee and the Lessor to the effect that a reasonable basis exists for such contest, (iv) the Lessee shall have indemnified the Lessor in a manner satisfactory to it for any liability or loss which the Lessor may incur as the result of contesting such claim and shall have agreed to pay the Lessor on demand all costs and expenses which the Lessor may incur in connection with contesting such claim, including, without limitation, (A) reasonable attorneys', accountants' and investigatory fees and disbursements, and (B) the amount of any interest, penalty, fine or addition to tax which may ultimately be payable as the result of contesting such claim (to the extent not otherwise indemnified under this Section 10.08), and (v) if the Lessor shall determine to pay the tax claimed and sue for a refund, the Lessee shall have paid to the Lessor the amounts payable pursuant to Section 10.04. In the case of any such claim referred to above, the Lessor

agrees promptly to notify the Lessee in writing of such claim. Without prejudice to any other rights the Lessee may have in connection therewith (including, without limitation, any claim for damages for a failure to give the notice specified in the preceding sentence), the parties agree that the failure to provide such notice shall not affect the Lessee's obligations hereunder to the Lessor). The Lessor agrees not to make payment of such claim for at least 30 days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such claim which may be particularly within the knowledge of the Lessor, and otherwise to cooperate with the Lessee in good faith in order to contest effectively any such claim and, if and to the extent agreeable to the Lessor, to permit the Lessee to participate in the proceedings relating to such claim. Nothing contained in this Section 10.08 shall require the Lessor to contest a claim which it would otherwise be required to contest pursuant to this Section 10.08 if the Lessor waives the payment by the Lessee of any amount that might otherwise be payable by the Lessee under Section 10.04 by way of indemnity in respect of such claim. The Lessor agrees that any settlement or other compromise with respect to any aspect of any claim which it would otherwise be required to contest pursuant to this Section 10.08 which

is entered into by the Lessor prior to its having notified the Lessee of such claim shall constitute a waiver by the Lessor of any amount that might otherwise be payable by the Lessee under this Article X by way of indemnity in respect of the matter settled or compromised.

If, after actual receipt by the Lessor of an amount paid by the Lessee and attributable to a Loss, the extent of such Loss shall be established by the final judgment or decree of a court or administrative agency having jurisdiction thereof or a settlement with the consent of the Lessee, the Lessor shall, within 30 days, pay to the Lessee an amount paid by the Lessee and attributable to a Loss, the extent of such Loss shall be established by the final judgment or decree of a court or administrative agency having jurisdiction thereof or a settlement with the consent of the Lessee, the Lessor shall, within 30 days, pay to the Lessee an amount which, when reduced by any net Federal, state or local income tax savings resulting from the making of such payment, shall be equal to all or the portion of any refund received by the Lessor with respect to such Loss (together with any interest paid thereon by the taxing authority) plus simple interest at the rate which is applicable under Section 6621 of the Code from time to time from the date of actual collection by the Lessor of such refund (and any such interest thereon) to the

date of payment by the Lessor to the Lessee hereunder. For purposes of the preceding sentence, the failure to recover a refund with respect to a Loss due to the setoff against the refund of matters not related to a Loss shall constitute the receipt by the Lessor of a refund with respect to such Loss. Notwithstanding the foregoing, the Lessor shall not be required to make any payment hereunder (and no interest shall accrue) (i) to the extent such payment (minus any such interest attributable thereto not previously reimbursed by the Lessee) would exceed the amount previously paid by the Lessee to the Lessor with respect to the Loss giving rise to such refund, (ii) before such time as the Lessee shall have made all payments or indemnities then due pursuant to this Agreement and (iii) so long as a Default or an Event of Default shall have occurred and be continuing.

SECTION 10.09. Adjustments to Casualty Payments.

In the event any payments shall be due to the Lessor under this Article X, the schedule of Casualty Payments set forth in Exhibit E shall be appropriately adjusted. If a Casualty Occurrence or any other event giving rise to a Casualty Payment or an amount determined by reference to Exhibit E hereto occurs and as a result thereof the loss of the ACRS Deduction or the Investment Credit incurred by the Lessor

exceeds that assumed in the computation of the applicable Casualty Payment, the Casualty Payment shall be appropriately increased based on the same assumptions on which the Casualty Payments were originally calculated.

SECTION 10.10. Affiliated Group. For purposes of this Article X, the term "Lessor" shall include any affiliated group (and any member thereof) of which the Lessor is or shall become a member if consolidated returns are or shall be filed for such affiliated group for Federal income tax purposes.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at Armonk, New York 10504,
Attention of the Treasurer;

(b) if to the Lessee, at 100 North Charles Street,
Baltimore, Maryland, 21201 Attention of Treasurer 303,
or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

SECTION 11.02. Failure To Exercise Rights Is Not Waiver. The failure of the Lessor or the Lessee to exercise

the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

SECTION 11.03. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 11.04. Effect of Modification of this Agreement. This Agreement exclusively and completely states the rights of the Lessor and the Lessee with respect to the Equipment and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

SECTION 11.05. Third Party Beneficiaries. Nothing in this Agreement shall be deemed to create any right in any person not a party hereto (other than Indemnified Persons, the entities referred to in Section 10.10 and the permitted

successors and assigns of a party) and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

SECTION 11.06. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York.

SECTION 11.07. Survival. All indemnities, covenants, agreements, representations and warranties made in this Agreement and in any certificates or other documents delivered pursuant hereto shall survive the execution of this Agreement and shall benefit the respective permitted successors and assigns of the parties hereto, and such warranties and representations and all matters set forth in such certificates shall be deemed to have been material and relied upon by each party hereto as being true and correct on the date or dates as of which such warranties and representations are made and such certificates delivered, regardless of any investigation which may have been made by any party or on its behalf. All indemnities, covenants, agreements, representations and warranties of the Lessee made in Articles VIII, IX and X hereof and in any certificates or other documents delivered pursuant thereto and all accrued rights and claims under this Agreement shall also survive the expiration or termination of the Lease Term with respect to each item of

Equipment. The Lessee's obligations under the indemnities provided for in this Agreement shall be those of a primary obligor whether or not the Lessor or any other Indemnified Person or entity referred to in Section 10.10 shall also be indemnified with respect to the same matter under the terms of any other document or instrument, and the Lessor and any other Indemnified Person or entity referred to in Section 10.10 may proceed directly against the Lessee without first seeking to enforce any other right of indemnification. All payments of indemnity made pursuant to Articles VIII, IX and X shall be made by the Lessee in immediately available funds. The Lessee will pay to each Indemnified Person, on demand, interest at the Overdue Rate on any amount of indemnity not paid when due pursuant to Article VIII or IX until the same shall be paid and will pay to any entity referred to in Section 10.10 interest at the Overdue Rate on any amount of indemnity not paid when due pursuant to Article X until the same shall be paid.

SECTION 11.08. Assigns. All rights of the Lessor hereunder shall inure to the benefit of the assigns of the Lessor. Except as provided in Sections 7.06 and 7.07, neither this Agreement nor the Note may be assigned by the Lessee without the consent of the Lessor.

SECTION 11.09. Payments on Nonbusiness Days.

If any date (other than the final Payment Date) on which any amount otherwise payable pursuant to this Agreement or the Note is not a business day, such amount shall be payable on the next business day, and no interest shall be payable thereon for the period from and after the scheduled date for payment thereof to such next business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

SECTION 11.10. Expenses. The Lessor agrees that, whether or not the transactions herein contemplated shall be consummated, the Lessor will pay or cause to be paid all the Lessor's costs and expenses in connection with the preparation and execution of this Agreement, including, without limitation, the fees and disbursements of Messrs. Cravath, Swaine & Moore, and will protect, indemnify and hold the Lessee harmless from and against any fees claimed by any broker or finder with which the Lessor has had any dealings. The Lessee agrees that, whether or not the transactions herein contemplated shall be consummated, the Lessee will pay or cause to be paid all the Lessee's costs and expenses in connection with the preparation and execution of this Agreement, and will protect, indemnify and hold the Lessor harmless from and against any fees claimed by any broker or

finder (other than Salomon Brothers Inc) with which the Lessee has had any dealings.

SECTION 11.11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

SECTION 11.12. Public Announcement. Each of the Lessor and the Lessee will consult with the other prior to making any public announcement during 1981 regarding the transactions contemplated by this Agreement.

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

INTERNATIONAL BUSINESS MACHINES CORPORATION,

by David A. Finley
David A. Finley
Assistant Treasurer

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,

by Paul R. Goodwin
Paul R. Goodwin
Vice President-Finance

STATE OF OHIO ,)
) ss.:
COUNTY OF CUYAHOGA ,)

On this 18th day of November 1981, before me personally appeared Paul R. Goodwin, to me personally known, who, being by me duly sworn, says that he is Vice President-Finance of The Chesapeake and Ohio Railway Company, and that the foregoing instrument was signed on behalf of said corporation by authority of a resolution of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

H. Marlene Winchell
Notary Public

H. MARLENE WINCHELL, Notary Public
State of Ohio, (Lorain)
My commission expires Nov. 24, 1984

[Notarial Seal]

Description of Equipment

UNLESS OTHERWISE INDICATED, EACH ITEM OF EQUIPMENT LISTED BELOW HAS A PRESENT CLASS LIFE OF 14 YEARS AND IS IN ASSET GUIDELINE CLASS 40.1 AND WAS PLACED IN SERVICE DURING THE PERIOD JANUARY 1-SEPTEMBER 30, 1981.

<u>No. of Items</u>	<u>Description</u>	<u>Amount</u>
20	3000 H.P. Model B30-7 locomotives manufactured by General Electric Company, bearing Lessee's road numbers 8279-8298, inclusive, at a cost per unit of \$730,180.47. (1)	\$14,603,609.44
447	4600 cu. ft. covered hopper cars manufactured by ACF Industries, Inc., and bearing Lessee's road numbers 607000-607449, inclusive, at a cost per unit of \$50,031.46. (1) (but not cars with road numbers 607274, 607302 and 607329).	\$22,364,062.62
213	100-ton open top hoppers manufactured by the Chessie Corporation, and bearing Lessee's road numbers 189950-190162, inclusive, at a cost per unit of \$33,212. (1)	\$ 7,074,156.00

(1) These items of Equipment are the subject of an Equipment Trust Agreement dated as of March 1, 1981, between the Lessee and Mercantile-Safe Deposit and Trust Company, as Trustee.

Projects in Service

<u>AFE</u>	<u>Location and Description</u>	<u>Date in Operation</u>	<u>Amount</u>
29552*	Elk Hill, Va. and Booker, Va. Hot Box Detectors	3-81	\$ 90,133.08
30009**	South Charleston, W. Va. Pollution Abatement	4-81	\$ 85,933.30
30008**	Newport News, Va. Pier 14, Protective Dolphin	6-81	\$ 112,671.31
30124**	Wayland, Ky. Rebuild Bridge 212	6-81	\$ 53,542.38
29832*	System High Rail Track Evaluation Unit	4-81	\$ 216,439.62
30022*	Raceland, Ky. Purchase Engine Lathe	6-81	\$ 33,982.36
30095*	Raceland, Ky. Aerial Platform	6-81	\$ 32,604.00
30023*	Raceland, Ky. Convert 64 gons to 2 rail train	7-81	\$ <u>671,261.64</u>
		TOTAL	\$ <u>1,296,567.60</u>
		GRAND TOTAL	\$ <u><u>47,874,372.23</u></u>

* These items of Equipment have a present class life of 14 years and are in asset guideline class 40.1.

** These items of Equipment have a present class life of 30 years and are in asset guideline class 40.2.

<u>Machine Description</u>	<u>System Number</u>	<u>Date in Service</u>	<u>Invoice Amount</u>
Burro Crane	BRC-709	5-15-81	\$ 199,500
Magnet	ELM-710	5-15-81	Included w/BRC 709
Clam Bucket	CSB-709	5-15-81	Included w/BRC 709
Loader-Backhoe	FLB-721	5-29-81	31,007.04
Loader-Backhoe	FLB-722	5-29-81	31,007.04
Burro Crane	BRC-706	3-23-81	199,500
Magnet	ELM-707	3-23-81	Included w/BRC 706
Clam Bucket	CSB-706	3-23-81	Included w/BRC 706
Tie Handler	XTH-726	8-14-81	27,402
Single Spike Puller	SPS-708	5-19-81	6,500
Tie Remover/Insertter	TRI-712	4-20-81	37,897.50
Tie Remover/Insertter	TRI-713	4-20-81	37,897.50
Rail Lifter	PRL-712	4-20-81	37,897.50
Tie Handler	XTH-723	4-24-81	27,402
Tie Handler	XTH-724	4-24-81	27,402
Tie Handler	XTH-725	8-14-81	27,402
Quad Spike Driver	SDQ-716	5-01-81	66,811.87
Quad Spike Driver	SDQ-717	5-22-81	66,811.87
Tie Banding Cart	TBC-707	5-01-81	6,825
Tie Banding Cart	TBC-708	5-01-81	6,825
Tie Banding Cart	TBC-709	5-01-81	6,825
Tandem Production Tamper	PTF-715	5-04-81	78,501.30
Tandem Production Tamper	PTF-716	5-20-81	78,501.30
Tandem Production Tamper	PTF-717	5-20-81	78,501.30
Spot Tamper	MST-702	6-15-81	74,763
Spot Tamper	MST-703	6-15-81	74,763
Spot Tamper	MST-704	6-16-81	74,763
Spot Tamper	MST-705	6-15-81	74,763
Spot Tamper	MST-706	6-15-81	74,763
Spot Tamper	MST-707	6-15-81	74,763
Ballast Regulator	BRD-713	8-13-81	65,668.50
Production Tamper	PTL-714	4-08-81	138,253.80
Dual Spike Driver	DSD-723	5-04-81	13,768
Dual Anchor Tightener	DAT-700	6-15-81	27,180
Dual Anchor Tightener	DAT-701	6-15-81	27,180
Trenching Machine	PTM-703	6-19-81	8,065
Trailer	TEE-709	6-19-81	1,511
Portable Welder	PEW-737	7-10-81	3,990
Portable Welder	PEW-738	7-10-81	3,990
Portable Welder	PEW-739	7-10-81	3,990
Tie Boring Machine	TBM-722	6-17-81	3,330
Production Tamper	PTL-718	6-01-81	139,269
Portable Welders	PEW-735	7-06-81	1,700
Portable Welders	PEW-736	7-06-81	1,700
Single Spike Puller	SPS-709	6-22-81	6,500

<u>Machine Description</u>	<u>System Number</u>	<u>Date in Service</u>	<u>Invoice Amount</u>
Fifteen Trailer Cars	-	6-09-81	\$ 18,781.50
Quad Spike Driver	SDQ-718	5-29-81	66,811.87
RT End Loader	FLR-723	4-20-81	55,704
Rivet Buster	RBP-701	3-13-81	3,350
Rivet Buster	RBP-702	3-13-81	3,350
Portable Welder	PEW-734	7-06-81	1,700
Seven Rail Saws	-	1-06-81	8,545.25
Air Compressor	ACR-734	9-09-81	11,635
Air Compressor	ACR-735	9-09-81	11,635
Air Compressor	ACR-736	9-09-81	11,635
Air Compressor	ACR-737	9-09-81	11,635
Air Compressor	ACR-738	9-09-81	11,635
Air Compressor	ACR-739	9-09-81	11,635
Air Compressor	ACR-740	9-09-81	11,635
Air Compressor--Rubber	ACR-741	9-09-81	11,635
Air Compressor--Rubber	ACR-742	9-09-81	11,635
Air Compressor--Rubber	ACR-743	9-09-81	11,635
Air Compressor--Rubber	ACR-744	9-09-81	11,635
Air Compressor--Rubber	ACR-745	9-09-81	11,635
Rail Saws	RSW-799	9-03-81	1,328.75
Rail Saws	RSW-800	9-03-81	1,328.75
Rail Saws	RSW-801	9-03-81	1,328.75
Rail Saws	RSW-809	9-11-81	1,328.75
Rail Saws	RSW-802	9-03-81	1,328.75
Rail Saws	RSW-803	9-03-81	1,328.75
Rail Saws	RSW-804	9-03-81	1,328.75
Rail Saws	RSW-805	9-03-81	1,328.75
Rail Saws	RSW-806	9-03-81	1,328.75
Rail Saws	RSW-807	9-03-81	1,328.75
Rail Saws	RSW-808	9-03-81	1,328.75
Front End Loader, Backhoe	FLB-727	8-26-81	32,669.60
Front End Loader, Rubber	FLR-728	9-16-81	55,774
Rock Drill--Gasoline	RDG-700	9-28-81	1,800
Rock Drill--Gasoline	RDG-701	9-28-81	1,800
Rock Drill--Gasoline	RDG-702	9-28-81	1,800
Ballast Regulator Dist.	BRD-714	9-23-81	65,668.50
Steam Cleaner	SCG-703	9-29-81	7,700
Adzer, Single	AZS-701	9-28-81	24,175
Adzer, Single	AZS-701	9-28-81	24,175
Trailer Equip.	TEE-710	9-28-81	10,948.36
Trailer Equip.	TEE-711	9-28-81	10,948.36
Trailer Equip.	TEE-712	9-28-81	10,948.36
TOTAL			\$2,353,976.57

The above listed items of Equipment may also be subject to the lien of one or more of the following:

(a) a First Mortgage Indenture, dated April 5, 1915, as amended and supplemented, between the Lessee (as successor to the Hocking Valley Railway Company) and Manufacturers Hanover Trust Company, as Successor Trustee;

(b) a First Consolidated Mortgage Indenture (Richmond and Allegheny Railway Division), dated January 20, 1890, as amended and supplemented, between the Lessee and Manufacturers Hanover Trust Company, as Successor Trustee;

(c) a Second Consolidated Mortgage Indenture (Richmond and Allegheny Railway Division), dated January 20, 1890, as amended and supplemented, between the Lessee and Manufacturers Hanover Trust Company, as Successor Trustee;

(d) a General Mortgage Indenture, dated February 23, 1892, as amended and supplemented, between the Lessee and Manufacturers Hanover Trust Company, as Successor Trustee; and

(e) a Refunding and Improvement Mortgage Indenture, dated April 1, 1928, as amended and supplemented, between the Lessee and Morgan Guaranty Trust Company, as Successor Trustee.

THIS NONRECOURSE NOTE SHALL NOT BE TRANSFERABLE
(OTHER THAN TO THE MAKER HEREOF) BY THE PAYEE HEREOF

NONRECOURSE PROMISSORY NOTE

\$38,179,811.85

New York, New York
November 6, 1981

FOR VALUE RECEIVED, INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation (the "Maker"), DOES HEREBY PROMISE to pay to THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (the "Payee"), the principal amount of Thirty-eight million one hundred seventy-nine thousand eight hundred eleven and 85/100 Dollars (\$38,179,811.85) in installments as provided below, with interest on the unpaid balance of such principal amount at an interest rate of 16% per annum from the date hereof until such unpaid balance shall become due and payable (whether at the stated maturity or on a date fixed for any installment payment or for any required prepayment), in installments as provided below. This Note has been executed and delivered pursuant to, and is subject to the limitations contained in, the Transfer and Lease Agreement dated as of November 6, 1981 (the "Agreement"), between the Payee and the Maker. All undefined capitalized terms used herein shall have the meanings specified in the Agreement.

The principal amount of and interest on this Note

shall be payable as set forth in Appendix A attached hereto, in 14 consecutive semiannual installments on each Payment Date, commencing May 6, 1982, and ending November 6, 1988; provided, however, that this Note is subject to mandatory prepayment in whole or in part as provided in Sections 2.02, 2.03 and 5.03 of the Agreement. If any Payment Date (other than the last Payment Date) is not a business day (as defined in Section 11.09 of the Agreement), the payment of principal and interest otherwise then due shall be made on the next business day.

All amounts payable pursuant to this Note shall be payable solely out of, and payment shall be conditioned on the simultaneous receipt of, the Rent and Casualty Payments required to be made by the Payee pursuant to the Agreement; and the Payee by its acceptance of this Note agrees (a) that it will look solely to the Rent and Casualty Payments to the extent available for distribution to the Payee and that the Maker shall not be personally liable to the Payee for any amounts payable under this Note and (b) that the obligation to make payments of principal and interest due hereunder is conditioned on and may be set off against the obligation of the Payee to make payments of Rent and Casualty Payments under the Agreement. For purposes of the foregoing sentence, the Maker hereby authorizes the Payee, on each Payment Date, to endorse on Appendix B attached hereto the date and amount

of each such payment, such endorsement to be conclusive evidence of the making of the payment of Rent or Casualty Payment (in the case of a Casualty Payment, to the extent such payment may be set off pursuant to Section 2.03 of the Agreement), as the case may be, by the Payee and the making of any payment required to be made hereunder by the Maker. No interest shall be payable on any overdue payment of principal of, or interest on, this Note.

This Note is made and delivered in the State of New York and shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed and delivered.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

by

David A. Finley
Assistant Treasurer

APPENDIX A TO NOTE

Schedule of Payments Due on Note

<u>Payment Date</u>	<u>Principal Due</u>	<u>Interest Due</u>	<u>Total Amount Due</u>
May 6, 1982	\$ 1,576,706.07	\$ 3,054,384.95	\$ 4,631,091.02
November 6, 1982	1,702,842.56	2,928,248.46	4,631,091.02
May 6, 1983	1,839,069.96	2,792,021.06	4,631,091.02
November 6, 1983	1,986,195.56	2,644,895.46	4,631,091.02
May 6, 1984	2,145,091.20	2,485,999.82	4,631,091.02
November 6, 1984	2,316,698.50	2,314,392.52	4,631,091.02
May 6, 1985	2,502,034.38	2,129,056.64	4,631,091.02
November 6, 1985	2,702,197.13	1,928,893.89	4,631,091.02
May 6, 1986	2,918,372.90	1,712,718.12	4,631,091.02
November 6, 1986	3,151,842.73	1,479,248.29	4,631,091.02
May 6, 1987	3,403,990.15	1,227,100.87	4,631,091.02
November 6, 1987	3,676,309.36	954,781.66	4,631,091.02
May 6, 1988	3,970,414.11	660,676.91	4,631,091.02
November 6, 1988	<u>4,288,047.24</u>	<u>343,043.78</u>	<u>4,631,091.02</u>
TOTALS	\$38,179,811.85	\$26,655,462.42	\$64,835,274.27

APPENDIX B TO NOTE

Endorsement of Payments Due on Note

<u>Payment Date</u>	<u>Amount of Rental Payment</u>	<u>Amount of Casualty Payment Applied to Note</u>	<u>Application to Principal</u>	<u>Application to Interest</u>	<u>Name, Signature and Title of Officer Making Endorse- ment of Payment</u>
May 6, 1982					
November 6, 1982					
May 6, 1983					
November 6, 1983					
May 6, 1984					
November 6, 1984					
May 6, 1985					
November 6, 1985					
May 6, 1986					
November 6, 1986					
May 6, 1987					
November 6, 1987					
May 6, 1988					
November 6, 1988					

EXHIBIT C

Schedule of Installment Payments
(Per each \$1,000,000 Principal Amount)

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>
1st	\$ 41,296.85	\$ 80,000.00
2nd	44,600.60	76,696.25
3rd	48,168.65	73,128.20
4th	52,022.14	69,274.71
5th	56,183.91	65,112.94
6th	60,678.63	60,618.23
7th	65,532.92	55,763.94
8th	70,775.55	50,521.30
9th	76,437.59	44,859.26
10th	82,552.60	38,744.25
11th	89,156.81	32,140.25
12th	96,289.35	25,007.50
13th	103,992.50	17,304.35
14th	<u>112,311.90</u>	<u>8,984.95</u>
	\$1,000,000.00	\$698,155.94

EXHIBIT D

[Intentionally Omitted]

Formula Casualty Payments

<u>Payment Date</u>	<u>Total Formula Casualty Payment</u>	<u>Amount to Be Applied to Princi- pal of Note</u>	<u>Amount of Cash Payment to Lessor</u>
1st	98.1604	76.4566	21.7038
2nd	94.7816	72.8997	21.8819
3rd	86.9037	69.0582	17.8455
4th	82.6711	64.9095	17.7616
5th	74.0671	60.4288	13.6383
6th	69.0620	55.5897	13.4723
7th	59.6339	50.3634	9.2705
8th	53.7499	44.7191	9.0308
9th	43.3829	38.6232	4.7597
10th	36.5598	32.0396	4.5202
11th	25.2476	24.9294	0.3182
12th	17.4178	17.2503	0.1675
13th	9.0183	8.9569	0.0614
14th	0.0082	0.0000	0.0082