

14245

REGISTRATION NO. FIC 1423

JAN 5 1984 - 9 45 AM

INTERSTATE COMMERCE COMMISSION

December __, 1983

The Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Western Fuels Association, Inc.
Equipment Lease Dated as of December 20, 1983

Dear Madam:

Enclosed herewith for filing pursuant to 49 U.S.C. § 11303 is an Equipment Lease dated as of December 20, 1983, relating to the issuance of the lease of certain railroad equipment by Western Fuels Association, Inc. The parties to the enclosed Agreement are:

Western Fuels Association, Inc.
700 Jefferson Building
1225 19th Street, N.W.
Washington, D.C. 20036

and

The Connecticut Bank and Trust Company,
National Association, as Trustee
One Constitution Plaza
Hartford, Connecticut 06115

Please record one of the three enclosed copies and stamp the other two copies and the two copies of this letter enclosed herewith with the recordation data and return such copies to the undersigned in the enclosed self-addressed stamped envelope. A check in the amount of \$50 is enclosed in payment of the applicable recording fee.

Very truly yours,

WESTERN FUELS ASSOCIATION, INC.

By _____

Title General Manager

14245

RECORDATION NO. Filed 1425

JAN 5 1984 -9 45 AM

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE

Dated as of December 20, 1983

Between

THE CONNECTICUT BANK AND TRUST COMPANY,
NATIONAL ASSOCIATION as Trustee

LESSOR

And

WESTERN FUELS ASSOCIATION, INC.

LESSEE

(One Electric Locomotive Manufactured by
General Electric Corporation)

FSL

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Attachments to Equipment Lease:

- Schedule A - Description of Unit
- Schedule B - Certificate of Acceptance
- Schedule C - Schedule of Casualty Value for Unit
- Schedule D - Schedule of Termination Value for Unit

EQUIPMENT LEASE

THIS EQUIPMENT LEASE ("Lease") dated as of December 20, 1983, is between THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee pursuant to a Trust Agreement dated December 20, 1983 (the "Lessor") and WESTERN FUELS ASSOCIATION, INC., a Wyoming corporation (the "Lessee").

RECITALS:

WHEREAS, the Lessor, the Lessee, First Security Leasing Company, a Utah corporation (the "Owner") and National Cooperative Services Corporation (the "Note Purchaser") have entered into a Participation Agreement (the "Participation Agreement") dated as of December 20, 1983, providing for the leveraged lease financing of the units of railroad equipment listed on Schedule A hereto (the "Equipment");

WHEREAS, the Lessor has entered into a purchase order assignment (hereinafter collectively called the "Purchase Order Assignment"), with General Electric Corporation (the "Manufacturer") wherein the Manufacturer has consented to the assignment to the Lessor of certain warranties and other rights with respect to the Equipment;

WHEREAS, the Equipment listed in Schedule A constitutes all of the Equipment which is scheduled for acceptance by the Lessee on or prior to December 29, 1983 (the "Delivery Date");

WHEREAS, the Lessor intends to assign all of its rights hereunder and in the Equipment and the related lease (excepting Excepted Rights in Collateral, as defined in the Security Agreement) to Lessee to a lender or lenders (the "Note Purchaser") under a Security Agreement to be dated the date hereof (such agreement being hereinafter called the "Security Agreement");

WHEREAS, the Lessee desires to lease the Equipment, (hereinafter called the "Unit") at the rentals and for the terms and upon the conditions hereinafter provided;

WHEREAS, capitalized terms used herein which are not otherwise defined shall have the meanings given to such terms in the Participation Agreement;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Unit to the Lessee upon the following terms and conditions:

SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

1.1. Intent to Lease and Hire. Lessee hereby leases and lets and the Lessor hereby hires to the Lessee the Unit for rental subject to the terms and conditions herein set forth.

1.2. Inspection and Acceptance. The Lessee has caused an inspector designated and authorized by the Lessee to inspect the Unit and hereby confirms that the Unit is in good order and condition and has been accepted for lease pursuant hereto.

1.3. Certificate of Acceptance. Concurrent with the execution of this Lease, Lessee shall execute and deliver a Certificate of Acceptance in the form attached as Schedule B hereto (a "Certificate of Acceptance"). The Certificate of Acceptance shall be considered as a supplement to this Lease and conclusively establishes that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against the Manufacturer or supplier of any component thereof, the Unit is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that the Unit is in good condition and appear to conform to the specifications applicable thereto. By execution and delivery of such Certificate of Acceptance by the Lessee, the Lessee represents that it has no knowledge of any such defect.

SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rent for Unit. The rental payments due from the Lessee under this Lease shall be classified as either "Interim Rental" or "Fixed Rental." "Interim Rental" shall mean the rental to be paid by the Lessee for the use of the Units during the period commencing on the date the Unit is accepted by the Lessee and ending January 1, 1984. "Fixed Rental" shall mean all rental payments due from the Lessee under this Lease, for the use of the Unit for the period commencing on the Basic Term Commencement Date and ending on the termination of this Lease. Payments of Interim Rental and Fixed Rental shall hereinafter be collectively referred to as payments of "Rental." Interim Rental shall be paid in one payment on or before the Closing Date. Fixed Rental shall be payable in fifty (50) semiannual installments, payable in arrears on January 2 and July 1 of each year, commencing with July 1, 1984. The base rental rate for use in calculating the semiannual payments of Fixed Rental ("Base Rent") shall be equal to a lease rate factor (the "Lease Rate Factor") of: (i) 4.2136% of the Lessor's Cost of the Unit subject to this Lease for each of the first twenty-five (25) semiannual payments; and (ii) 5.1499% of the Lessor's Cost of the Unit for the last twenty-five (25) semiannual payments.

The payment of Interim Rental for the Unit shall equal the product obtained by multiplying: (i) the Lessor's Cost of the Unit; by (ii) the daily equivalent of the per annum interest rate on the Note issued by the Lessor to the Note Purchaser pursuant to the Security Agreement; by (iii) the percentage of the Lessor's Cost of the Unit to be financed by the Lessor through the sale of Notes pursuant to the Security Agreement; by (iv) ninety (90). Interim Rental shall be paid by Lessee on or prior to the Closing Date.

2.2. Rent Payment Dates. The "Basic Term Commencement Date" hereunder shall be January 2, 1984. The first installment of Fixed Rental with respect to the Unit shall be payable on July 1, 1984 and further installments of Fixed Rental shall be payable on semiannually January 2 and July 1 of each year thereafter with the final installment payable January 2, 2009. If any of the rent

payment dates (other than the rent payment date for Interim Rent) is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the States of Connecticut, Utah, Texas or the District of Columbia are authorized or required to close.

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

(a) Each installment of Interim Rental shall be paid to Steiner Financial Corporation, a Utah corporation ("Steiner"), in consideration for assistance rendered by Steiner to Lessor in connection with the structuring of the transaction contemplated by this Lease. Interim Rental shall be payable by wire transfer of Federal Funds to an account of Steiner at such bank as Steiner shall request in writing.

(b) Each installment of Rental shall be paid to the Lessor by a check drawn on a bank located in the continental United States, or if Lessor so requests, by wire transfer of Federal funds to an account of the Lessor at such bank as the Lessor shall direct in writing; provided that in the event either the Lessor or the Note Purchaser shall notify the Lessee in writing that the right to receive payment of such installment or a portion thereof shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by such check or wire transfer (if the assignee so requests) to the place designated in such notice or as otherwise designated from time to time in writing by such assignee;

(c) The entire amount of any payment of Casualty Value or Termination Value pursuant to Section 11 and Section 18, respectively, hereof shall be paid to the Lessor by a check drawn on a bank located in the continental United States or, if Lessor so requests, by wire transfer of Federal Funds to the account of Lessor specified in Section 2.4(a) (identifying the same as a payment of Casualty Value or Termination Value (as the case may be) relating to this Lease and forwarded to the Lessor in the manner provided for notice in Section 20.1 hereof; provided that in the event the Lessor shall notify the Lessee in writing that the right to receive payment of such Casualty Value or Termination Value shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment in the manner and to the account designated in such notice or as otherwise designated from time to time in writing by such assignee;

(d) The amount of any payment owing to the Lessor pursuant to Sections 6, 10.2, 11.1 (with respect to public liability insurance) and 20.2 hereof shall be made directly to the party to receive the same without regard to the assignment of this Lease pursuant to Section 16 hereof;

(e) The amount of any interest due in respect of the late payment of any rentals or other amounts pursuant to Section 19 hereof shall be paid to the party and in the manner herein provided to receive said rental or other amount; and

(f) All payments other than those above specified shall be made by the Lessee directly to the party to receive the same unless any such

payment has previously been made by the Lessor or its assignee, in which case the Lessee shall reimburse the Lessor or its assignee, as the case may be, directly for such payment.

Any payment made by check hereunder shall be made by check of the Lessee drawn on a bank located in the continental United States and mailed to the party to receive the same at the address herein provided or at such other address as the Lessee shall have been previously advised in writing. All such checks shall be mailed sufficiently in advance of the date such payment is due to insure that on the date such payment is due, the party to receive the same shall have immediately available funds. In the event that any payment referred to in paragraphs (c), (d) and (e) above shall be payable to two or more parties, the Lessee may seek confirmation of such parties as to the amount due any such party and shall make payment of such amount upon receipt of written confirmation from each such party of the amount due it.

2.4. Net Lease. This Lease is a net lease and the Lessee's obligation to pay all Fixed Rental, Supplemental Rental and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of the Unit from whatsoever cause, the taking or requisitioning of the Unit by condemnation or otherwise, the prohibition of Lessee's use of the Unit, the interference with such use by any person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or the bankruptcy, reorganization or insolvency of Lessor or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Unit has been returned to the possession of the Lessor (for all purposes of this Lease the Unit shall not be deemed to have been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of the Unit except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee pursuant to Section 16 hereof for any reason whatsoever; provided, however, nothing contained in this Lease shall be construed as a waiver of the Lessee's right to seek, or its entitlement to, monetary damages or specific performance on account of any failure of the Lessor to perform its obligations under this Lease or on account of any act or the breach of any warranty or representation of the Lessor so long as Lessee shall continue to make the payments of Rental and all other payments due hereunder and continue to perform its obligations under this Lease.

2.5. Term of Lease. The term of this Lease ("Lease Term") with respect to each Unit shall begin upon execution of the Certificate of Acceptance by the Lessee and, subject to the provisions of Sections 11, 14 and 18 hereof, shall terminate midnight January 2, 2009.

SECTION 3. LESSEE'S REPRESENTATIONS AND WARRANTIES.

3.1 The Lessee covenants, represents and warrants that as of the Closing Date:

(a) The Lessee is a corporation duly organized and validly existing and in good standing under the laws of the jurisdiction of its incorporation, is duly qualified to do business in each jurisdiction where the Unit is or is to be located, where the Lessee's ownership or lease of property or the conduct of its business requires such qualification, and has full corporate power and authority to hold property under the Lease and to enter into and perform the obligations imposed upon the Lessee under the Lease.

(b) The execution, delivery and performance of the Lease have been duly authorized by all necessary corporate action on the part of the Lessee, are not inconsistent with its Certificate of Incorporation or By-laws, do not contravene any law, governmental rule, regulation, or order binding on the Lessee, do not and will not contravene any provision of or constitute a default under any indenture, mortgage, contract or other instrument to which the Lessee is a party or by which it is bound, and the Lease constitutes the legal, valid and binding obligation of the Lessee enforceable in accordance with its terms.

(c) Except for such filings made by Lessee pursuant to Section 10.1(a) and for the consent of the Rural Electrification Administration of the United States Department of Agriculture, neither the execution and delivery by the Lessee of the Lease nor the consummation of any of the transactions by the Lessee contemplated hereby requires the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of, any federal, state or foreign governmental authority or agency.

(d) No mortgage, deed of trust, charter, lease or other lien or security interest of any nature whatsoever which now covers or affects any property or interest therein of the Lessee now attaches or hereafter will attach to any Unit or in any manner affects or will affect adversely the Lessor's right, title and interest therein.

(e) There is no action or proceeding pending or threatened against the Lessee before any court or administrative agency or other governmental body which is likely to result in any material adverse effect on the business, properties and assets, or condition, financial or otherwise, of the Lessee or ability of the Lessee to fulfill its obligations under this Agreement.

(f) On the Closing Date, title to the Unit will be vested in the Lessor free and clear of all liens and rights of others, except for the rights of the Lessee hereunder and the Note Purchaser under the Security Agreement.

(g) The balance sheet of the Lessee at December 31, 1982, and the related statements of operations and members equity and changes in financial position for the fiscal year then ended, reported on and certified by Ernst & Whinney, independent public accountants, complete and correct copies of which have been delivered to the Lessor and the Note Purchaser, fairly present, in conformity with generally accepted accounting principles, the financial position of the Lessee at such date and its results of operations and changes in financial position for such fiscal year, and reflect on such date all liabilities, contingent or otherwise, material to the ability of the Lessee to satisfy its obligations under this Lease.

(h) The unaudited balance sheet of the Lessee at September 30, 1983 and the related unaudited statements of operations and members equity and changes in financial position for the nine months then ended, certified by the chief financial officer of the Lessee, complete and correct copies of which have been delivered to the Lessor and the Note Purchaser, fairly present in conformity with generally accepted accounting principles applied on a basis consistent with the financial statements referred to in the paragraph above, the financial position of the Lessee at such date and its results of operations and changes in financial position for such nine-month period, and reflect at such date all liabilities, contingent or otherwise, material to the ability of the Lessee to satisfy its obligations under this Lease.

(i) Since September 30, 1983, there has been no material adverse change in the business, financial position or results of operations of the Lessee.

(j) All tax returns and reports of the Lessee, if any, required by law to be filed have been duly filed, and all taxes, assessments, fees and other governmental charges upon the Lessee or any of its properties, assets, income or franchises which are due and payable have been paid other than such taxes, assessments, fees and charges which are presently payable without penalty or interest or which are being contested in good faith and by appropriate proceedings diligently conducted.

(k) No event has occurred which constitutes an Event of Default hereunder or would constitute such an Event of Default but for the requirement that notice be given or time elapse or both.

(l) That Coal Delivery Agreement as amended up to and including the date hereof (the "Coal Delivery Agreement") between the Lessee, Deseret Generation & Power Co-operative ("Deseret") and WFU, a true and complete copy of which has been delivered to the Lessor, is in full force and effect. No default thereunder (or event which, with the giving of notice of passage of time, or both, could constitute a default thereunder) has occurred and is continuing. The Coal Delivery Agreement (or the provisions thereof relating to the reimbursement by Deseret of Lessee's rental obligations with respect to the Unit) has been duly and validly assigned to Lessor to secure the performance of the Lessee's obligation under this Equipment Lease. All consents (if any) necessary to make such assignment binding vis-a-vis Deseret have been obtained.

(m) That certain Right of Entry granted by Western Fuels - Utah, Inc. ("WFU"), in the form of Exhibit N to the Participation Agreement in favor of the Lessor, the Owner, the Note Purchaser and the Assignee has been duly and validly executed by WFU and constitutes a legal, valid and binding obligation of WFU, enforceable in accordance with its terms.

SECTION 4. OWNERSHIP AND MARKING OF UNIT.

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

4.2. Identification. The Lessee shall, at its own expense, cause the Unit to be legibly and permanently labeled by means of a plate or stencil in contrasting colors upon each side of the Unit in letters not less than one inch in height as follows:

"Leased from Connecticut Bank & Trust Company, as
Trustee, and Subject to a Security Interest."

Lessee shall make appropriate changes in such identification and additions thereto as from time to time may be requested in writing by Lessor or its assignee or may be required by law in order to protect the title of the Lessor to the Unit, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place the Unit in operation or exercise any control or dominion over the same until the required legend shall have been so marked on each side of the Unit.

Lessee will cause the Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and such with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Note Purchaser under the Security Agreement. The Lessee will not change the identifying number of any Unit unless and until a statement of new number or numbers to be substituted therefor shall have been filed with the Note Purchaser and the Lessor and all filings required by any applicable law, rule or regulation shall have been made.

The Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Unit may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

4.3. Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Unit as a designation that might be interpreted as a claim of ownership.

SECTION 5. DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THE UNIT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY THE LESSOR EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF THE UNIT, (B) THE LESSOR'S TITLE THERETO, (C) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, OR WORKMANSHIP IN, THE UNIT, OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR, OWNER AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. Notwithstanding the foregoing, but subject always to Section 2.4 hereof, the Lessor warrants and represents to the Lessee that (so long as an Event of Default hereunder shall not have occurred and be continuing) the Lessee may and shall peaceably and quietly have, hold, possess, use and enjoy the Unit as provided in this Lease without suit, molestation, or interruption by Lessor (or by any party claiming by, through or under Lessor) or by reason of Lessor's acts. The Lessee agrees to warrant and defend the right, title and interest of the Lessor to the Unit and Owner's beneficial interest in the Unit, against the rights or claims of any person arising on or after delivery of any Unit by the Manufacturer thereof to the Lessee other than liens permitted by Section 9 hereof and liens arising by, through or under Lessor or, in the case of Owner's beneficial interest, through Owner. Lessor and Lessee intend that Lessee be entitled to enforce Lessor's rights under any warranties from each Manufacturer and accordingly the Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the Lease Term to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Unit against each Manufacturer or other suppliers of components incorporated therein; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. Except with respect of the Lessor's warranty of quiet enjoyment set forth above and in the case of gross negligence or wilful misconduct of the Lessor, the Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by the Unit or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of the Unit or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of the Unit. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Unit described therein is in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters. Anything contained in this Section 5 to the contrary notwithstanding, so long as no Event of Default shall have occurred and be continuing, neither the Lessor nor any person claiming by, through or under the Lessor shall take any action to interfere with the Lessee's use and possession of the Unit in accordance with the terms of this Lease.

SECTION 6. LESSEE'S INDEMNITIES.

6.1. General Indemnity. The Lessee shall defend, indemnify and save harmless the Owner, the Lessor and any assignee of the Owner or the Lessor pursuant to Section 16 hereof (including, without limitation, the Note Purchaser and the Assignee) (the "Indemnitees") and their respective successors and assigns from and against:

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

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

(c) any net increase in any Indemnitee's federal, state or local income taxes resulting from the inclusion in the net income of any Indemnitee of the amount required to be paid by Lessee to such Indemnitee pursuant to this Section 6.1.

The Lessee shall not be required to indemnify any Indemnitee against any loss, damage, injury, claim or demand which arises out of or consists of any of the following: (1) violation of banking, investment or securities laws, unless such violation is a result of a misrepresentation or breach of a warranty or agreement by the Lessee; (2) any breach of or failure to perform any express duty, obligation or warranty made by such Indemnitee, unless such breach or failure to perform is a result of a misrepresentation, breach of a warranty or agreement, or an action or failure to act by the Lessee; (3) any lien on the Unit which the Lessee is not obligated to discharge pursuant to Section 9 hereof; (4) the gross negligence or wilful misconduct of such Indemnitee, its agents or its employees; (5) expenses which the Lessor or Owner agrees are to be for its own account in any of the Operative Agreements and which are not Transaction Expenses; (6) "Impositions" (as such term is defined in Section 10.2 but without regard to the exceptions), it being understood that Lessee may indemnify Lessor for such Impositions pursuant to the terms of Section 10.2; (7) resulting from claims based on the assertion that such Indemnitee was not entitled to enter into this Lease which may be raised by any regulatory authority or any shareholder or creditor of such Indemnitee and (8) items for which such Indemnitee will be fully compensated by payment of the appropriate Casualty Value or Termination Value; provided that such payments are actually made by the Lessee. In the event that any Indemnitee shall not be entitled to indemnification by the Lessee for any of the reasons set forth in clauses 1 through 8 above, the Lessee agrees that all other Indemnitees shall have the right to be fully indemnified by the Lessee regardless of the circumstances

which relieve the Lessee of its obligation to indemnify any other Indemnitee, and the wrongful conduct of any Indemnitee shall not be imputed to any other Indemnitee. Each Indemnitee agrees to give the Lessee prompt written notice of any matter which may give rise to a claim or liability against such Indemnitee. Each Indemnitee agrees that the Lessee shall assume and conduct promptly and diligently, at its sole cost and expense, the entire defense of or settlement of any loss, damage, injury, claim or demand with respect to which it shall be required to indemnify pursuant to this Section 6.1. Each Indemnitee agrees to cooperate fully with the Lessee in any such defense, settlement proceeding or other disposition. Each Indemnitee further agrees that it will assign to the Lessee any rights (with respect to the incident giving rise to the indemnity) which it may have against any other Indemnitee and any proceeds received as a result of any counterclaim or settlement with respect to any indemnity claim paid by the Lessee (to the extent that the amount received as a result of such counterclaim or settlement is equal to or less than the amount paid by Lessee), and empowers the Lessee, at its sole cost and expense, to defend or prosecute any claim in the name of such Indemnitee or the Lessee, as the Lessee may deem advisable. The indemnities and assumptions of liabilities set forth in this Section 6.1 do not guarantee to any party at any time a residual value in the Unit nor do they guarantee the payment of the Note or any interest accrued thereon. None of the indemnities of this Section shall be deemed to create any rights of subrogation in any insurer or third party against, from or under Lessor, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

6.2. Special Tax Representations; Tax Indemnity.

(a) Owner has acquired its beneficial interest in the Unit and authorized the Lessor, as Trustee, to enter into this Lease on the Owner's behalf on the basis that Owner, as beneficial owner of the Unit, will be entitled to take into account the following deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended (the "Code") to an owner (commencing in Owner's taxable year ending December 31, 1983) of property (collectively, the "Tax Benefits"): (1) the investment credit pursuant to Section 38 and related sections of the Code, in an amount equal to either ten percent (10%) of the Equipment Cost of the Unit or alternatively eight percent (8%) of the Equipment Cost of the Unit, if the Owner elects not to incur the basis reduction otherwise required by Section 48(q) of the Code (the "Investment Credit"); (2) accelerated cost recovery deductions under Section 168(a) of the Code in an amount determined by multiplying the Equipment Cost of the Unit (less the percentage basis reduction, if any, required pursuant to Section 48(q) of the Code) by the percentage applicable under Section 168(b)(1) of the Code to "5-year property," within the meaning of Section 168(c)(2)(B) of the Code (the "Recovery Deduction"); and (3) the deduction by Owner under Section 163 of the Code (the "Interest Deduction") of the full amount of any interest paid or accrued by Lessor, in accordance with the Code and Regulations relating thereto, with respect to the Note issued to the Note Purchaser pursuant to the Security Agreement.

(b) This Lease has also been entered into on the basis of the following special representations and warranties of the Lessee (the "Special Representations"): (i) on the Closing Date, the Unit will constitute "new section 38 property" within the meaning of Sections 46 and 48 of the Code,

and at the time Owner becomes the beneficial owner of the Unit, it will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) of the Code from commencing with Owner; (ii) the Unit is "5-year property" (within the meaning of Section 168(c)(2)(B) of the Code) and eligible for the applicable Recovery Deductions in the percentages set forth in Section 168(b)(1) of the Code and Lessee will not at any time during the Lease Term use or fail to use the Unit in such a way as to disqualify the Unit for Recovery Deductions set forth in Section 168(b)(1) of the Code; (iii) Lessee will not at any time during the Lease Term use or fail to use the Unit in such a way as to disqualify it as "section 38 property" within the meaning of Section 48(a) of the Code; (iv) for Federal income tax purposes, all amounts includable in the gross income of Owner with respect to the Unit and all deductions allowable to Owner with respect to the Unit will be treated as derived from, or allocable to, sources within the United States; (v) Lessee will maintain sufficient records to verify the assumptions specified in subsections (i) through (iv) of this Section 6.2(b), which records will be furnished to Owner within 30 days after receipt of a written demand therefor; (vi) an amount equal to at least twenty percent (20%) of the Equipment Cost of the Unit is a reasonable current estimate of what the Fair Market Value of the Unit, determined without regard to inflation or deflation, will be on the expiration of the Lease Term (without regard to Section 18), and at least twenty percent (20%) of the originally estimated useful life of the Unit is a reasonable current estimate of what the remaining useful life of such Unit will be on the expiration of the Lease Term with respect thereto (without regard to Section 18); (vii) the Unit will be placed in service on or after the Closing Date; and (viii) during the first five years of the Lease Term with respect to each Unit such Unit will not be used by a tax exempt organization or governmental unit within the meaning of Section 48(a)(4) or Section 48(a)(5) of the Code.

(c) If, by reason of (i) the inaccuracy of any of the Special Representations set forth in paragraph (b) of this Section, (ii) the inaccuracy of any matters contained in Lessee's financial statements which have been provided to Lessor, or contained in that certain offering memorandum by which the Lessee sought investors to serve as Lessor for the Equipment, prepared by Lease Management Corporation, or (iii) the act (other than Lessee's obligations pursuant to Section 2.2 of the Participation Agreement) or failure to act by Lessee or any other person that uses or is in possession of the Unit with the consent of Lessee, Owner shall lose, shall not have or shall lose the right to claim or there shall be disallowed, deferred or recaptured with respect to Owner, all or any portion of the Tax Benefits with respect to the Unit (any such loss, disallowance, recapture, unavailability or recognition hereinafter being referred to as a "Loss of Benefits"), then, at Lessee's option, either Lessee's semiannual Fixed Rental shall be increased to maintain Owner's projected after-tax return on investment over the term of this Lease (the "Yield") in light of such Loss of Benefits, or: (1) Lessee shall on the next Rent Payment Date (as provided in Section 2.3) occurring after Lessor has notified Lessee of such Loss of Benefits, pay Owner a lump-sum amount which in the reasonable opinion of Owner will cause Owner's net after-tax return on investment over the Lease Term to equal the Yield; and (2) Lessee shall pay to Owner upon being notified thereof an amount equal to any interest and penalties which may be assessed against Owner with respect to any such Loss of Benefits.

In the event of an increase in Fixed Rental to compensate Owner for a Loss of Benefits, Owner shall provide written notice to Lessee of the amount of such increase. In the event of such an increase in the Fixed Rental, Lessee may request (at its expense) that Owner's calculations be reviewed by an independent third party selected by Lessee and acceptable to Owner. Upon request by Owner, Lessee agrees to execute a supplement to this Lease acknowledging the increase in the Fixed Rental.

In calculating the amount of any payment to be made hereunder, Owner and Lessee agree that calculation of any payment under this section with respect to federal taxes will be based on an assumed federal tax rate of 46%, regardless of the actual tax rate. A Loss of Benefits shall be determined to have occurred upon the earliest to occur of: (A) the issuance of a written opinion by independent tax counsel mutually selected by Owner and Lessee that there is no reasonable basis for claiming the Tax Benefit that is the subject of the Loss of Benefits; (B) a reasonable and good faith agreement with the taxing authority by Owner with respect to a Loss of Benefits; (C) payments of taxes, interests or penalties with respect to a Loss of Benefits; or (D) any court decision (including a decision of the Tax Court of the United States) which is not appealed with respect to a Loss of Benefits.

(d) If the Internal Revenue Service shall claim an adjustment in the federal income taxes of Owner which would result in a Loss of Benefits, then Owner shall promptly notify Lessee and Owner hereby agrees to contest such claim, provided, however, that: (i) within thirty (30) days after receipt by Lessee of notice of such claim, Lessee shall request that such claim be contested; (ii) Owner, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with Internal Revenue Service or the state or local taxing authority in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court and/or the United States Court of Claims, as Owner shall elect, or contest such claim in the Tax Court of the United States, or in the appropriate state or local court of competent jurisdiction, considering, however, in good faith such request as Lessee shall make concerning the most appropriate forum in which to proceed; (iii) prior to taking such action, Lessee shall have furnished Owner with an opinion of tax counsel acceptable to Owner to the effect that there is a reasonable basis in fact or law for contesting such claim; and (iv) Lessee shall have acknowledged that it will be liable to Owner for an indemnity hereunder in the event the claim is successfully asserted by the Internal Revenue Service on the asserted basis which gave rise to the Lessee's obligation to make an indemnity payment under this Section 6.2 and Lessee shall have agreed to pay Owner on demand all costs and expenses which Owner may incur in connection with contesting such claim including, without limitation, (A) reasonable attorneys' and accountants' fees and disbursements, and (B) the amount of any interest or penalty which may ultimately be payable as the result of contesting such claim, and (C) if Owner determines in its sole discretion to contest the disallowance of Tax Benefits by a proceeding for refund of amounts paid based on the disallowance, Lessee shall have loaned to Owner on an interest-free basis an amount equal to the amount paid by Owner. Upon final determination of the liability of Owner, Lessee shall become obligated for the payment of any

indemnification due under paragraph (c) of this Section 6.2 resulting from the outcome of such contest, and, in the event that the amount of the proposed disallowance of Tax Benefits had been paid by Lessee, and was refunded, Owner shall become obligated to pay Lessee any refund received together with any interest received thereon. Upon the occurrence of a Loss of Benefits with respect to which an indemnity payment is required by Section 6.2(c) and such payment has been made, Casualty Values and Termination Values shall be reduced to reflect the occurrence and payment of such Loss of Benefits.

(e) In the event that Owner shall obtain a refund of any additional federal income tax paid by Owner, other than a refund received pursuant to paragraph (d) of this Section 6.2 in respect of which a lump sum payment was made under this Section 6.2 by Lessee, Owner shall pay Lessee the amount of such refund (reduced by any costs or expenses incurred by Owner in obtaining such refund) together with any interest received by Owner thereon and to the extent the payment to the Owner was increased to reflect Owner's obligations to pay taxes thereon pursuant to the last sentence of the first paragraph of Section 6.2(c), together with any additional tax savings resulting from any payment under this section, provided such amount shall in no event exceed the amount of the tax indemnity payment paid by Lessee to Owner. Any payments required under this paragraph shall be paid to Lessee by Owner promptly upon the receipt by Owner of any such refund.

(f) The determination of any amount payable to or by Owner under this Section 6.2 shall be made by Owner, and, if requested by Lessee, such determination shall be verified, at Lessee's expense, by a firm of independent public accountants of recognized national standing selected by Lessee and acceptable to Owner.

(g) Notwithstanding the above, Lessee shall not be required to pay the Owner the amount or amounts provided for in Section 6.2(c) through 6.2(f) above if the requirement for payment shall arise solely as the result of any one or more of the following events:

(i) The Owner, without the written consent of Lessee, shall fail to claim or cause to be claimed in a timely manner (including making all appropriate permissible elections) such Tax Benefits in its income or franchise tax returns for the appropriate years or shall fail to follow the proper procedures in claiming such Tax Benefits;

(ii) The Owner shall not have sufficient income or tax liability to benefit from such Tax Benefits;

(iii) Owner shall transfer all or any portion of its beneficial interest in the Unit or Lessor shall transfer all or any portion of its title to the Unit (other than a transfer pursuant to Section 11.5 or 18.5 hereof), if such transfer by Owner shall occur at any time when Lessor is not pursuing its remedies following the occurrence and continuance of an Event of Default and shall not be pursuant to the written consent of Lessee;

(iv) A Casualty Occurrence shall have occurred and Lessee shall have paid Lessor the Casualty Value of the Unit or Lessee shall have paid the Lessor the Termination Value of the Unit pursuant to Section 18.5 hereof;

(v) Owner's failure to meet the minimum unconditional "at risk" requirements of Section 4(1) of Rev. Proc. 75-21;

(vi) Failure of Owner to meet and maintain the initial and continuing "Minimum Investment" requirement of Section 4(1)(A) and (B) of Rev. Proc. 75-21;

(vii) Failure for any reason of Owner to meet and maintain the "at risk" requirements of Section 46(c)(8) of the Code; and

(viii) A change in tax law (other than a change in law enacting Pickle Legislation) occurring after the Delivery Date. "Pickle Legislation" means HR 3110 or any other bill having an effective date on or prior to the Delivery Date which if enacted would reduce or eliminate or defer the Investment Credit or Recovery Deduction available to Owner with respect to the Unit due to the use of the Unit by, or to provide a service to, a tax exempt organization).

(h) All of the Owner's rights and privileges arising from the indemnities contained in this Section shall survive the expiration or other termination of this Lease with respect to the Unit and such indemnities are expressly made for the benefit of, and shall be enforceable by, the Owner, its successors and assigns.

6.3. Definition of "Supplemental Rent"; Continuation of Indemnities and Assumptions. For purposes of this Lease, all payments required to be made by Lessee hereunder (except payments of Fixed Rental pursuant to Section 2.1) including, without limitation, payments made pursuant to this Section 6, Section 10.2 and interest thereon pursuant to Section 20.2 shall be defined to constitute "Supplemental Rent." The Lessor shall have all rights and remedies pursuant to this Lease or under applicable law in the event of nonpayment of Supplemental Rent as it has in the event of nonpayment of Fixed Rental. The indemnities, assumptions of liability and other obligations contained in this Section 6 shall continue in full force and effect notwithstanding the termination of this Lease, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii) or (iv) of subsection (b) or subsection (c) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Unit as provided in Section 13 or 15, as the case may be and for matters where claims are made after termination of the Lease which relate to events occurring prior to such termination.

SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all applicable governmental laws, regulations, requirements and rules with respect to the Unit and the use and maintenance of the Unit subject to this Lease. In case the Unit are required to be

altered, replaced or modified in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, replacements and/or modifications at its own expense and title thereto shall be immediately vested in the Lessor. The Lessee shall not use or permit the Unit to be used in an improper or unsafe manner or in violation of any federal, state or local law, statute, ordinance, rule or regulation. Notwithstanding the above, Lessee may, in good faith and at its expense, contest the validity or application of any such law or rule in any manner which does not, in the reasonable opinion of the Lessor or the Note Purchaser, adversely affect the property or rights of the Lessee or the Note Purchaser under this Lease or the Security Agreement.

SECTION 8. MAINTENANCE OF UNIT.

The Lessee shall use the Unit only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. So long as the Unit shall be leased hereunder and until the Unit is returned to the Lessor in accordance with the provisions of Sections 13 and 15 hereof, the Lessee shall, at its own cost and expense, maintain and keep the Unit so as to insure that the Unit: (i) conforms with the applicable rules of the American Association of Railroads; and (ii) is in the same order, condition and repair as when originally accepted for lease by the Lessee, ordinary wear and tear excepted. Except as required by the provisions of Section 7 hereof, the Lessee shall not modify the Unit without the prior written authority and approval of the Lessor and any assignee pursuant to Section 16 hereof which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon the Unit pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Unit in good order, condition and repair under this Section 8 shall be free of all liens (except liens permitted by this Lease) and considered accessions to the Unit and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to the Unit unless the same are readily removable without causing damage to the Unit. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to the Unit, the Lessee agrees that it will, prior to the return of the Unit to the Lessor hereunder, remove the same at its own expense without causing damage to the Unit.

SECTION 9. LIENS ON THE UNIT.

The Lessee shall promptly pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors, sublessees or assigns which, if unpaid, would constitute or become a lien or a charge upon the Unit, and any liens or charges which may be levied against or imposed upon the Unit as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease and any other liens or charges which arise by virtue of claims against, through or under any other party (by operation of law or otherwise), other than the Lessor, Lessor's assignees, or their successors or assigns. However, the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor, the beneficial interest of the Owner, or the security interest or other rights of any assignee under Section 16 hereof in

and to the Unit and Lessee provides Lessor, Owner and the Note Purchaser with written notice of the lien or charge being contested and the basis of such contest. The Lessee's obligations under this Section 9 for claims, liens or charges arising by, through or under the Lessee shall survive the termination of this Lease, with respect to any lien or charge arising prior to termination.

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

10.1. Filing. The Lessee will cause all filings to be made under the Interstate Commerce Act, the Uniform Commercial Codes of the States of California, Colorado, Connecticut, Wyoming, Utah and the District of Columbia and will cause the filing of such other documents as the Lessor, the Owner or the Note Purchaser may reasonably request to protect their interests in this Lease, the Unit and the other collateral granted to the Note Purchaser pursuant to the Security Agreement (collectively the "Collateral") and will furnish the Lessor, the Owner and the Note Purchaser proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Note Purchaser, for the purpose of protecting the Lessor's title to, the Owner's beneficial interest in or the Note Purchaser's security interest in, the Unit and the other Collateral to the satisfaction of the Lessor's, Owner's or the Note Purchaser's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor, the Owner and the Note Purchaser proof of such filings and an opinion of counsel reasonably satisfactory to the Lessor, the Owner and the Note Purchaser that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, refile, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action, including any opinion of counsel required pursuant to this Section 10.1.

10.2. Payment of Taxes. All rental and other payments to be made by the Lessee under this Lease will be free of expense to the Owner, the Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Note Purchaser) and their respective successors and assigns (the "Indemnitees") for collection or other charges and will be free of expense to the Indemnitees with respect to any Impositions as hereinafter defined. As used in this Agreement "Impositions" shall mean the amount of any local, state, Federal or foreign taxes, assessments or license fees and any charges, fines or penalties in connection therewith which are imposed on or measured by this Lease or the receipt of sums pursuant hereto or any sale, rental, use, payment, shipment, delivery or transfer of title in respect of the Unit under the terms hereof or the Security Agreement, including Impositions resulting from the inclusion in the net income of any Indemnitee of the amount of indemnification payments with respect to this Lease or payments pursuant to Section 6 or this Section 10.2; provided that, except with respect to indemnification payments hereunder or payments pursuant to this Section 10.2, Impositions shall not include as to each respective Indemnitee: (a) United States Federal income tax liability, any foreign income tax (except to the extent such tax arising as a consequence of the use of the Equipment outside of the United States) of such Indemnitee, payable by any respective Indemnitee in consequence of the receipt of Rental and other payments provided herein; and (b) the aggregate of all franchise taxes or other state and local taxes measured by net income based on such Rental and other payments

made under the Lease, up to the amount in the aggregate of any such income and franchise taxes which would be payable to the state and city in which such Indemnitee is incorporated without apportionment to any other state and (c) any franchise taxes or other state and local taxes measured by net income based on such Rental and other payments made under the Lease except for such taxes which are in substitution for or relieve the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided. The Lessee shall not be liable for any income tax liability of any Manufacturer of the Unit. The Lessee agrees to pay, on demand, any and all Impositions. The Lessee will also pay promptly all Impositions which may be imposed on the Unit or for the use or operation thereof or upon the earnings arising therefrom or upon any Indemnitee solely by reason of its interest with respect thereto and will keep at all times all and every part of the Unit free and clear of all Impositions which might in any way affect the interest of any Indemnitee therein or result in a lien upon the Unit; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith at Lessee's expense and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the reasonable opinion of the Indemnitee, adversely affect the interest of any Indemnitee hereunder or under the Security Agreement. If any Indemnitee shall directly pay any such Imposition, the Lessee shall reimburse such Indemnitee for the amount of said Imposition on presentation of an invoice therefor. Following any such reimbursement, at Lessee's sole expense, Lessee shall have the opportunity to in good faith and by appropriate legal proceedings bring suit for a refund of such payments from the governmental entity imposing the Imposition.

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

The amount which Lessee shall be required to pay an Indemnitee thereof pursuant to this Section 10 shall be an amount sufficient to restore such party to the same net after-tax rate of return and after-tax cash position, after considering the effect of such payment on its United States Federal income taxes and state income taxes or franchise taxes based on net income, that such party would have had or been in had such payment not been made.

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

SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

11.1. Insurance. The Lessee will at all times after delivery and acceptance of the Unit, at its own expense, keep or cause to be kept the Unit insured against loss on an "all risk" basis, (a) in an amount which shall be customary for companies owning property of a character similar to the Unit and engaged in a business

similar to that engaged in by the Lessee and not less than (b) an amount equal to the Casualty Value for the Unit. Such "all risk" insurance may be subject to deductible provisions in such amounts and to the extent that such deductibles are consistent with prudent industry practice, but in any event with no greater deductible and in at least comparable amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Unit, provided it is expressly understood and agreed that any loss, cost or expense arising out of use of deductible provisions shall be exclusively the cost and expense of the Lessee; and that in no event shall the deductible amount for such insurance policies exceed \$25,000. The Lessee shall also maintain general public liability insurance with respect to the Unit against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$20,000,000 per occurrence combined single limit or such greater amount as the Lessor shall reasonably require and as shall be consistent with industry practice, subject to deductible or self-insurance provisions in such amounts as are consistent with prudent industry practice, but in any event with no greater deductible and at least comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Unit. The Lessee shall furnish the Lessor, the Note Purchaser and the Assignee with certificates of independent insurance brokers or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal prior to the expiration date of the original policy or policies. All such policies shall provide that the same shall not be cancelled or materially changed without at least 30 days' prior written notice to each assured named therein.

If no Event of Default (except an Event of Default arising as a result of a breach of Section 8 hereof relating to the Unit suffering a Casualty Occurrence) shall have occurred and is continuing, the proceeds of any insurance received by the Lessor on account of or for any loss or casualty in respect of the Unit shall be applied as follows: (i) if the Unit has been repaired, restored or replaced, such proceeds shall be paid to the Lessee upon a written application signed by an authorized officer of the Lessee for the payment of, or to reimburse the Lessee for the payment of, the cost of repairing, restoring or replacing the Unit so long as the restoration, replacement and repair parts become immediately subject to all of the terms and conditions of this Lease and all public filings, recordings and registrations necessary or expedient to vest title thereto in the Lessor and to perfect the security interest of the Note Purchaser are accomplished by the Lessee at its expense (which application shall be accompanied by satisfactory evidence of such cost and of the completion of such repair, restoration or replacement), or (ii) if this Lease is terminated with respect to the Unit as a result of a Casualty Occurrence, such proceeds shall be applied in accordance with Section 11.5 (to the extent necessary to pay any unpaid portion of the Casualty Value) and, if no Event of Default (except an Event of Default arising as a result of a breach of Section 8 hereof relating to the Unit suffering a Casualty Occurrence) has occurred and is continuing, all excess insurance proceeds shall be paid to Lessee. If Lessee is at the time of the application of proceeds from insurance in default in the payment of any other liability of the Lessee to the Lessor hereunder and such default is continuing such proceeds shall be applied against such liability.

11.2. Endorsements. Any insurance carried in accordance with Section 11.1 hereof shall be endorsed to provide that:

(a) the Lessor, as owner of the units, the Owner, as its interest, if any, may appear, the Assignee and the Note Purchaser are included as additional named insureds on all policies of liability insurance and, with the understanding that any obligation imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of the Lessee and not that of any other insured;

(b) the policies with respect to damage or destruction to the Unit shall be payable to the Lessor (except as provided below), provided, however, that so long as the Security Agreement shall be in effect Lessee shall cause the insurance on the Unit to provide that the casualty losses in respect thereof, if any, shall be payable to the Note Purchaser (except as provided below) under a standard mortgagee loss payable clause satisfactory to the Assignee, the Lessor and the Note Purchaser and that such losses shall be adjusted and paid as provided in this Lease;

(c) the insurer thereunder waives all rights of subrogation against the Lessor, the Owner, the Assignee and the Note Purchaser and waives any right of set-off and counterclaim and any other right of deduction, whether by attachment or otherwise;

(d) such insurance shall be primary without right of contribution from any other insurance carried by or on behalf of the Lessor, the Owner or the Note Purchaser with respect to its interest in the Unit;

(e) if such insurance is cancelled for any reason whatsoever, including nonpayment of premium, or any substantial change is made in the coverage thereunder, such cancellation or change shall not be effective as to the Lessor, the Owner, Assignee and the Note Purchaser until 30 days after receipt by the Lessor, the Owner, the Assignee and the Note Purchaser, respectively, of written notice from such insurer of such cancellation or change, sent by registered mail; and

(f) inasmuch as the policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

Any insurance carried in accordance with Section 11 hereof shall be immediately endorsed to provide that the respective interests of the Lessor, the Owner, the Note Purchaser and the Assignee shall not be invalidated by any action or inaction of the Lessee or any other Person, and that such insurance shall insure the Lessor, the Owner, the Note Purchaser and the Assignee regardless of any breach or violation by the Lessee or any other Person of any warranties, declarations or conditions contained in the policies relating to such insurance, in the event that the Lessee agrees to provide a similar endorsement to its insurance in connection with any other transaction.

11.3. Adjustment of Losses. The loss, if any, under any property damage insurance required to be carried by Section 11.1 hereof shall be adjusted with the insurer or otherwise collected, including the filing of proceedings deemed advisable by the Lessee, subject to the approval of the Lessor (and the Note Purchaser unless the Security Agreement has been satisfied and discharged pursuant to Section 3 thereof or the loss is less than \$25,000). The loss so adjusted shall be paid to the Lessor (or the Note Purchaser pursuant to the Loss Payable clause) for application pursuant to Section 4.1(c) of the Security Agreement,

unless the amount in question is \$25,000 or less, in which case, provided that no Event of Default hereunder shall have occurred and be continuing, such amount shall be paid to the Lessee.

11.4. Duty of Lessee to Notify Lessor. In the event that any Unit shall be or become lost, stolen, destroyed, or, in the good faith judgment of Lessee's Manager of Finance and Administration, as evidenced by a written certificate of such Manager, irreparably damaged during the Lease Term or thereafter while the Unit is in the possession of the Lessee pursuant to Section 13 hereof, shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the Lease Term for an indefinite period which extends for more than 180 days or for a stated period which exceeds the then remaining Lease Term (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly (but in no event later than 30 days thereafter) and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor, the Guarantor, any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Note Purchaser and the Assignee) in regard thereto and shall pay the Casualty Value (as defined in Section 11.8 hereof) of the Unit in accordance with the terms of Section 11.5 hereof.

11.5. Sum Payable for Casualty Loss. The Lessee, on the next succeeding rent payment date following its notice of a Casualty Occurrence with respect to any Unit, shall pay to the Lessor a sum equal to the Casualty Value (as defined in Section 11.8) of the Unit as of the date of such payment plus any rentals or other sums due hereunder prior to such date then remaining unpaid (other than the regular Rental installment due on such date).

11.6. Rent Termination. Upon (and not until) payment of all sums required to be paid pursuant to Section 11.5 hereof in respect of the Unit suffering a Casualty Occurrence, the obligation to pay rent for such Unit accruing subsequent to the payment of the Casualty Value shall terminate.

11.7. Disposition of Unit. Upon payment of the applicable Casualty Value following a Casualty Occurrence, Lessor shall transfer to the Lessee all of its right, title and interest in and to the Unit on an "as is-where is" basis and without recourse or warranty except for liens created by, through or under Lessor. Lessor further agrees to execute a bill of sale and such other documents as are reasonably necessary to accomplish the foregoing.

11.8. Casualty Value. The "Casualty Value" of the Unit suffering a Casualty Occurrence shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Equipment Cost of such Unit set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such date of payment.

11.9. Risk of Loss. The Lessee shall bear the risk of loss and, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to a Unit from and after the date hereof and continuing until payment of the Casualty Value and all rental installments and other sums due hereunder on and prior to the date of payment of such Casualty Value in respect of the Unit has been made, and until such Unit or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of the Unit or the salvage thereof.

SECTION 12. ANNUAL REPORTS.

12.1. Duty of Lessee to Furnish. Lessee agrees to provide the reports and certificates required by it pursuant to in Sections 5 and 6 of the Participation Agreement. In addition, on or before May 1, 1984 and each succeeding May 1 during the Lease Term, the Lessee will furnish or cause to be furnished to the Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Note Purchaser and the Assignee) an accurate statement, as of the date of such statement showing the condition or repair of the Unit, and (b) stating that the markings required by Section 4.2 hereof have been preserved or replaced.

12.2. Lessor's Inspection Rights. The Lessor and any assignee of the Lessor pursuant to Section 16 hereof (including, without limitation, the Note Purchaser and the Assignee) each shall have the right during normal business hours and upon reasonable notice at their respective sole cost and expense, by their respective authorized representative, to inspect the Unit and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Unit during the continuance of this Lease. No sublease entered into by Lessee pursuant hereto shall be valid unless the sublessee thereunder permits the Lessor, the Note Purchaser and the Assignee to inspect the Unit at the location of the sublessee.

12.3. License to Enter. Subject to the proviso hereto, Lessee hereby grants to Owner, Lessor, the Assignee and the Note Purchaser (or such persons as Lessor or the Note Purchaser shall designate) an irrevocable license (Lessee hereby warranting that such license is valid and enforceable) to enter any property owned or controlled by Lessee where a Unit is located (and to use its best efforts to obtain upon request by the Lessor, the Note Purchaser or the Assignee the right to enter any property not owned or controlled by Lessee) and to bring upon or across such land such trucks, cranes and other equipment-handling devices as such parties may deem necessary in connection with the exercise of Lessor's rights and remedies under this Lease; provided, however that neither Lessor nor the Note Purchaser shall be entitled to exercise such license unless an Event of Default has occurred and is continuing and this Lease or Lessee's rights of possession hereunder have been terminated or the Lease Term has expired and Lessee has failed or refused for any reason to surrender the Unit pursuant to Section 13 or 15 hereof. No sublease entered into by Lessee pursuant hereto shall be valid unless the sublessee thereunder also grants a license to enter identical to the foregoing to the Lessor and the Note Purchaser.

SECTION 13. RETURN OF UNIT UPON EXPIRATION OF TERM.

13.1. Return. Upon the expiration of the Lease Term, the Lessee will, at its own cost and expense, at the request of the Lessor, either: deliver possession of the Unit to the Lessor at such storage area of the Lessee as the Lessor may designate, to any other reasonable location within a 150-mile radius of the city of Denver, Colorado, or to such other location as may be agreed by Lessee and Lessor; or in the absence of any designation of a storage location, in such location as the Lessee may select, and (in the event of storage at Lessee's facilities) permit the Lessor to store the Unit at such facility for a period not exceeding 60 days. At the end of such storage period or prior thereto at the request of the

Lessor, the Lessee shall ready the Unit for shipment. The costs of all such storage and shipping of the Unit is to be at the risk and expense of the Lessee, and after expiration of such 60-day period or delivery of the Unit to the site specified by Lessor, whichever occurs first, all such risk and expense shall be for the account of the Lessor, including any reasonable charges for storage by the Lessee. In no event, however, shall Lessee be required to store the Unit for a further period greater than 90 days. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of the Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence, gross negligence or wilful misconduct of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The gathering, delivery, storage and transporting of the Unit as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so gather, deliver, store and transport the Unit. In the event the Unit is not gathered, delivered and stored as hereinabove provided within 5 days after the expiration of this Lease, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the higher of (a) an amount equal to the Lessor's Cost of the Unit multiplied by the daily equivalent of the Fixed Rental rate, or (b) the Fair Rental Value (determined in the manner provided in Section 18 hereof) for the Unit for each such day exceeds the amount, if any, received by the Lessor (either directly or from the Lessee) for such day for the Unit pursuant to the preceding sentence.

13.2. Condition on Return. The Unit returned to the Lessor pursuant to this Section 13 shall be in (i) working condition; (ii) the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted; and (iii) and free and clear of all liens and encumbrances except as permitted in Section 9. At the time of return of the Unit to the Lessor, the Lessee shall also deliver to the Lessor all plans, specifications, operating manuals and other literature in its possession applicable to the Unit.

SECTION 14. DEFAULT.

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

(a) Lessee shall fail to pay any part of any Fixed Rental, Casualty Value or Termination Value provided in Section 2, 11 or 18 hereof and such failure shall continue for five business days;

(b) Lessee shall fail to pay any Supplemental Rental or other payments due hereunder (except for payments of Casualty Value or Termination Value or payments for a Loss of Benefits pursuant to Section 6) and such failure shall continue for ten business days;

(c) Lessee shall fail to pay any sum required to be paid to Lessor to compensate the Lessor for the Loss of Benefits pursuant to Section 6 hereof and such failure shall continue for 30 days after written notice from

the Lessor or any assignee of the rights of the Lessor hereunder pursuant to Section 16 hereof, to the Lessee, specifying the default and demanding the same be remedied;

(d) The Lessee shall make or permit any assignment or transfer of this Lease, or of possession of the Unit, or any portion thereof not permitted by Section 17 of this Lease or Lessee shall permit the lapse of any insurance required to be maintained pursuant to Section 11.1;

(e) Lessee shall fail to observe or perform any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement and such default shall continue for 30 days after written notice thereof from the Lessor or any assignee of the rights of the Lessor hereunder pursuant to Section 16 hereof to the Lessee, specifying the default and demanding the same be remedied; provided that the above 30-day notice period shall be increased to 90-days if the default is reasonably curable and the Lessee demonstrates to Lessor's reasonable satisfaction that the Lessee is diligently attempting to accomplish such a cure;

(f) Any representation or warranty (except the representations contained in Section 6.2(b)) made by the Lessee herein, in the Participation Agreement or in the Purchase Order Assignment or in any statement or certificate furnished to the Lessor or the Note Purchaser pursuant to or in connection with this Lease or the Purchase Order Assignment is untrue in any material respect as of the date of issuance or making thereof, is material at the time in question and remains uncured;

(g) The Lessee becomes insolvent or fails generally to pay its debts as such debts become due, or causes or suffers an order for relief to be entered against it under applicable federal or state bankruptcy law, or makes a general assignment for the benefit of creditors or applies for or consents to the appointment of a custodian, trustee or receiver for the Lessee or the major part of its property;

(h) A custodian, trustee or receiver is appointed for the Lessee or for a major part of its property and is not discharged within 30 days after such appointment;

(i) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors, are instituted by or against the Lessee and, if instituted against the Lessee, are consented to or are not dismissed within 60 days after such institution;

(j) A default under the Coal Delivery Agreement shall have occurred and be continuing; or

(k) The Unit is used in any manner which would subject its use to the jurisdiction of the United States Interstate Commerce Commission for the purpose of perfecting a security interest.

14.2. Remedies. If any Event of Default has occurred and is continuing, the Lessor or, in the event this Lease shall be assigned to an assignee pursuant to Section 16 hereof, such assignee, at its option, may:

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

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Unit shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may upon not less than two days' prior written notice by its agents enter upon the premises of the Lessee or other premises where the Unit may be located and take possession of the Unit and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum which represents the excess of the present worth, at the time of such termination, of all rentals for the Unit which would otherwise have accrued hereunder from the date of such termination to the end of the Lease Term over the then present worth of the then Fair Rental Value of the Unit for the period beginning with the point in time when the Unit could reasonably be re-leased by Lessor (such period to begin not less than 3 months after the date Lessor regains possession of the Unit) and ending with the originally scheduled termination of the Lease Term, computed by discounting from the end of the Lease Term to the date of such termination or re-lease period, as the case may be, such present worth to be computed in each case on a basis of a per annum discount rate equal to 13.099%, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess if any of the Casualty Value of the Unit as of the most recent rental payment date on which Rent was paid in full over the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold the Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of the Unit as of the most recent rent payment date on which Rent was paid in full over the net proceeds of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto.

For purposes of Section 14.2 above, the Fair Rental Value and Fair Market Value for the Unit shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee or buyer, as the case may be (other than a lessee or buyer, as the case may be, currently in possession) and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell, as the case may

be, as reasonably determined by the Lessor; provided that any sale in a commercially reasonable manner of the Unit prior to any such determination shall conclusively establish the Fair Market Value of the Unit and any rental in a commercially reasonable manner of the Unit prior to any such determination shall conclusively establish the Fair Rental Value of the Unit.

14.3. Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf in connection with the lease of the Unit. In addition to any other remedies provided herein or otherwise available to Lessor at law or in equity, Lessee shall pay to Lessor the reasonable attorney's fees and expenses incurred by Lessor in connection with any Event of Default.

14.4. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

14.5. Notice of Event of Default. The Lessee also agrees to furnish to the Lessor, the Note Purchaser, the Assignee and the Guarantor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 14.5 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee contained in this Lease, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

SECTION 15. RETURN OF UNIT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or any assignee of the Lessor pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Unit to the Lessor. The Unit shall be in working condition and in the condition required by Section 13 hereof. For the purposes of delivering possession of the Unit to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

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

(b) Return to Lessor all plans, specifications, operating manuals and other literature held by Lessee which relates to the operation of the Unit; and

(c) Provide storage at the risk of the Lessee at such storage place without charge for insurance, rent or storage for a period ending 365 days following return of the Unit to Lessor and during such period of storage the Lessee shall continue to maintain all insurance required by Section 11.1 hereof.

All amounts earned in respect of the Unit after the date of termination of this Lease shall belong to the Lessor or in the event this Lease has been assigned pursuant to Section 16 hereof, to such assignee, and, if received by the Lessee, shall be promptly turned over to the Lessor, or in the case of such assignment, to such assignee.

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

15.3. Lessor Appointed Lessee's Special Agent. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the special agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of the Unit to the Lessor, to demand and take possession of the Unit in the name and on behalf of the Lessee from whosoever shall be at the time in possession of the Unit provided that the Lessee shall have received two days' prior written notice of any such demand and retaking.

SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and all other sums due or to become due hereunder may be assigned in whole or in part by the Lessor in accordance with the Participation Agreement. Lessee hereby agrees and consents to the Lessor's assignment of certain of its rights hereunder to the Note Purchaser pursuant to the Security Agreement (and all successors in interest to the Note Purchaser, including but not limited to the Assignee). Upon any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. To expedite Lessor's ability to enter into such assignment, the Lessee agrees to deliver to the Lessor and such assignee an opinion of its counsel as to such matters as may be reasonably requested by Lessor and to provide officers certificates, insurance certificates, and other documents customarily provided by lessees in conjunction with leveraged leases. Without limiting the foregoing, the Lessee further acknowledges and agrees that (a) the rights of any such assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect

in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Unit or any part thereof, or any damage to or loss or destruction of the Unit or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising (including any breach by Lessor of any of its obligations hereunder), of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee, the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (b) said assignee shall, if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies relating to amounts payable to the Lessor pursuant to Sections 6, 10.2, 11.1 (with respect to public liability insurance) and 20.2 hereof which shall remain enforceable by the Lessor), but if no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said assignee or the Lessor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (c) except in cases where the Lessor assigns all of its right, title and interest in the Unit and the Lease in accordance with the terms hereof, all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

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

SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1. Lessee's Rights to the Unit. Notwithstanding any sublease of the Unit or assignment of this Lease, Lessee acknowledges that it remains primarily obligated hereunder. So long as no Event of Default shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Unit in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in the Unit except to the extent permitted by Section 17.2 hereof. The Lessee also shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, the Unit, except to the extent permitted by Section 17.2 hereof.

17.2. Use and Possession by Lessee. The Lessee agrees that the Unit will be used solely within the continental limits of the United States of America; the Lessee agrees that it will not assign this Lease or any of its rights hereunder or sublease all or any Unit of the Equipment to any party other than a company which owns, which is owned by or which is commonly owned with Lessee, to the

extent of fifty percent (50%) or more of its voting rights (an "Affiliate") except upon obtaining the prior written consent of the Lessor and the Note Purchaser, which consent will not be unreasonably withheld. Any assignment or sublease to an Affiliate of Lessee may be made upon written notice to Lessor, the Note Purchaser, the Assignee and the Guarantor executed by Lessee and the assignee or sublessee, to the effect that: (i) this Lease has been assigned/subleased to an Affiliate of Lessee; (ii) said Affiliate assumes all of the Lessee's obligations pursuant to this Lease; and (iii) the act of said assignment/sublease does not release Lessee from its obligations under this Lease.

SECTION 18. RIGHT OF PURCHASE OPTION; RENEWAL OPTIONS; EARLY TERMINATION.

18.1. Purchase Option. So long as this Lease shall not have terminated, the Lessee shall have the option following the expiration of the Lease Term (or any renewal period) upon not more than 360 days and not less than 180 days' prior written notice to the Lessor prior to such expiration to purchase the Unit by paying to the Lessor in immediately available funds the Fair Market Value (as hereinafter defined) thereof (provided, that in determining such Value, the Unit shall be deemed to be in the condition in which it is required to be returned pursuant to Section 13 hereof and to be free and clear of all liens, claims and encumbrances) plus all other sums then owing hereunder. The Lessee shall be solely responsible for any sales or other taxes or charges applicable to the transfer. The Lessor shall transfer to the Lessee, all of its right, title and interest in and to the equipment on an "as-is, where-is" basis and without recourse or warranty except for the absence of liens created by or through the Lessor. Lessor further agrees to execute a bill of sale and such other documents as are reasonably necessary to accomplish the foregoing.

18.2. Renewal Options. Provided that no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have upon not more than 360 or less than 180 days' prior written notice to the Lessor given prior to the expiration of the Lease Term (or any renewal period) the following renewal options:

(a) The Lessee shall have the option to renew and extend this Lease for such additional term of one or more years subject to the terms and conditions herein contained for the original Lease Term; provided that the Fixed Rental payable for and during any such renewal term shall be an amount equal to the lesser of: (i) the Fair Rental Value (as hereinafter defined) of the Unit; or (ii) one-half (1/2) the Fixed Rental for the same period which was applicable at the end of the original term of this Lease;

(b) The Casualty Value payable for and during any renewal term under this Section in respect of any Casualty Occurrence during such term shall be determined by the agreement of the Lessor and Lessee;

provided that for renewals governed by clause a(ii) of this Section 18.2: (i) the aggregate term of this Lease (including all renewal terms) shall not exceed eighty percent (80%) of the useful life of the Unit; and (ii) at the time of entering into

any renewal of the Lease the residual value of the Unit upon expiration of such renewal period will be, in the reasonable estimate of the Lessor, equal to at least 20% of the Equipment Cost thereof.

18.3. Fair Market and Fair Rental Value. The Fair Rental Value or Fair Market Value, as the case may be, of the Unit shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee or buyer, as the case may be (other than a lessee or buyer, as the case may be, currently in possession) and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell, as the case may be. If on or before 150 days prior to expiration of the Lease Term, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value or the Fair Market Value of the Unit, such value shall be determined by a qualified independent appraiser satisfactory to the Lessee and the Lessor. Such appraiser shall be instructed to make determination of the Fair Market Value or the Fair Rental Value within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee who shall be bound by such determination. The expenses and fees of the appraiser shall be borne equally by the Lessee and the Lessor.

18.4. Delivery of Unit. Unless the Lessee has elected to purchase the Unit then leased hereunder as provided in Section 18.1 or to renew this Lease as provided in this Section 18.2, all of the Unit shall be returned to the Lessor at the end of the original Lease Term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

18.5. Early Termination Option.

(a) The Lessee may, at its option exercised at any time on or after January 2, 1994, on at least 180 days prior written notice to the Lessor, terminate this Lease on any rent payment date thereafter with respect to all Unit then leased hereunder. Such termination shall be effective on the first rent payment date following such 180-day period (the "Termination Date"). During the period from the giving of such notice until the Termination Date, the Lessee, as agent for the Lessor, shall use its best efforts to obtain bids for the purchase of such Unit. The Lessee shall certify to the Lessor in writing the amount of each bid received by the Lessee and the name and address of the party submitting such bid. The Lessee may utilize agents for purposes of fulfilling such bid-related obligations. On the Termination Date, the Lessor shall sell such Unit without recourse or warranty, for cash, to whosoever shall have submitted the highest bid prior to such date, and thereupon the Lessee shall deliver such Unit so sold to the Lessor in accordance with the provisions of Section 13 of this Lease.

(b) The total sale price realized at any such sale shall be retained by the Lessor, and, in addition, the Lessee shall pay to the Lessor the amount, if any, by which the Termination Value set forth in Schedule D for the Unit (the "Termination Value") exceeds the proceeds of such sale, if any, less all expenses incurred by the Lessor in selling the Unit. In the event no such sale takes place, Lessor shall retain title to the Unit and the Lessee shall pay to the Lessor the Termination Value of the Unit. The obligation of

the Lessee to pay Fixed Rental with respect to the Unit shall continue undiminished until payment of the sale proceeds and all or any portion of the Termination Value, if any, payable hereunder to the Lessor. The Termination Values include compensation to the Lessor for all regular Rental payments accruing through the Termination Date. Upon the payment of all amounts required to be paid by the Lessee pursuant to this paragraph (b), and all other sums then owing from Lessee under this Lease, the obligation of the Lessee for all subsequent Fixed Rental Payments with respect to Unit due and payable after, but not before, the Termination Date shall cease.

(c) The Termination Value for any Unit of Equipment shall be the percentage of Equipment Cost of the Unit set forth opposite the applicable Basic Rent Date as set forth in Schedule D.

(d) Notwithstanding any other provision of this Section 18.5: (i) at any time following notice by Lessee of the Early Termination, up to and including the Termination Date, Lessor, by written notice to Lessee, may elect to terminate this Lease on the Termination Date rather than sell the Unit; and (ii) no sale pursuant to this Section 18.5 may be made to Lessee or any affiliate of Lessee. In the event of an Early Termination in which the Lessor elects to terminate the Lease rather than sell the Unit, Lessee shall return the Unit pursuant to Section 13.

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

Anything to the contrary herein contained notwithstanding any nonpayment of sums due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount calculated on the basis of two percentage points above the rate at such time in effect under the Note (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. MISCELLANEOUS.

20.1. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been duly given when delivered personally or on the fifth (5th) business day following deposit in the United States Mail, registered mail, addressed as follows:

If to the Lessor:

The Connecticut Bank and Trust
Company, National Association
One Constitution Plaza
Hartford, Connecticut 06115
Attention: Corporate Trust Department

If to the Assignee: Teacher Retirement System of Texas
1001 Trinity Street
Austin, Texas 78701
Attention: Robert Davis, Assistant
Investment Officer

If to the Owner: First Security Leasing Company
381 East Broadway
Salt Lake City, Utah 84111
Attention: Contracts Administration

If to the Note Purchaser: National Cooperative Services
Corporation
1115 30th Street, N.W.
Washington, D.C. 20007
Attention: Vice President

If to the Guarantor: National Rural Utilities Cooperative
Finance Corporation
1115 30th Street, N.W.
Washington, D.C. 20007
Attention: Governor

If to the Lessee: Western Fuels Association, Inc.
700 Jefferson Building
1225 19th Street, N.W.
Washington, D.C. 20036
Attention: General Manager

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

20.2. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the assignee thereunder (including, without limitation, the Note Purchaser) may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance; provided, however, that the Lessee shall be given 30 days' prior notice before any such action is taken unless the Lessor or the Note Purchaser shall reasonably determine that the Lessor's title to the Unit or the Note Purchaser's security interest in the Unit will be adversely affected thereby. Any payment so made by any such party and all cost and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder, with interest at the rate at such time in effect for overdue payments under the Note (or the lawful rate, whichever is less).

20.3. Execution in Counterparts. This Lease, and any amendment hereto, may be executed in counterparts of which one copy will be marked "Lessor's Copy," each of which so executed shall be deemed to be an original and in each

case such counterparts shall constitute but one and the same instrument. However, only the counterpart marked "Lessor's Copy" shall constitute "Chattel Paper" for purposes of the Uniform Commercial Code.

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

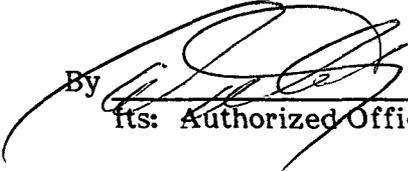
20.5. Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

20.6. Priority of Payments. Lessee agrees that to the extent that its financial resources are ever inadequate to satisfy all of its financial obligations hereunder, priority shall be given to the payment of Rental then due and owing hereunder.

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

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

THE CONNECTICUT BANK AND
TRUST COMPANY, NATIONAL
ASSOCIATION, as Trustee, except as
otherwise specified herein

By 
Its: Authorized Officer

LESSOR

WESTERN FUELS ASSOCIATION,
INC.

By 
Its for manager

LESSEE

DESCRIPTION OF EQUIPMENT

One electric model E60C 50kV, 60 Hz AC freight locomotive for standard 1.435 M gauge track manufactured by General Electric Corporation and bearing identifying number WFU-02.

SCHEDULE A
(to Equipment Lease)

**CERTIFICATE OF ACCEPTANCE
UNDER EQUIPMENT LEASE**

TO: The Connecticut Bank and Trust Company, National Association, as Trustee

I, a duly appointed and authorized representative of Western Fuels Association, Inc. (the "Lessee") under the Equipment Lease dated as of December 20, 1983 (the "Lease") between The Connecticut Bank and Trust Company, National Association, as Trustee (the "Lessor") and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Unit(s) of Equipment:

TYPE OF EQUIPMENT:	One electric model E-60 C 50kV, 60 Hz AC freight locomotive manufactured by General Electric Corporation
PLACE ACCEPTED:	Rangley, Colorado
DATE ACCEPTED:	
LESSOR'S COST OF THE LOCOMOTIVE:	\$3,038,223.34
DESCRIPTION AND IDENTIFYING NUMBER:	Locomotive: WFU-02

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

"Leased from The Connecticut Bank and Trust Company, National Association as Trustee, and Subject to a Security Interest."

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

Dated: December _____, 1983

Inspector and Authorized
Representative of the Lessee

SCHEDULE B
(to Equipment Lease)

**SCHEDULE OF
CASUALTY VALUE FOR EQUIPMENT**

The Casualty Value for any Unit payable on the Term Lease Commencement Date or any Fixed Rental payment date thereafter shall mean an amount equal to the percentage of the Lessor's Cost of such Unit set forth opposite such date in the attached schedule.

FIS YR/ REQUIRED PAYMENT
PAYMENT (EXCLUDES RENT)

1984	
1/84	101.1752
1985	
7/84	105.1534
1/85	108.2698
1986	
7/85	107.8620
1/86	110.0245
1987	
7/86	108.6251
1/87	109.7697
1988	
7/87	107.2853
1/88	107.2590
1989	
7/88	103.6729
1/89	102.8963
1990	
7/89	99.0640
1/90	98.1979
1991	
7/90	97.2975
1/91	96.3600
1992	
7/91	95.3869
1/92	94.3747
1993	
7/92	93.3251
1/93	92.2340
1994	
7/93	91.1835
1/94	89.9291
1995	
7/94	88.7135
1/95	87.4513
1996	
7/95	86.1461
1/96	84.7925
1997	
7/96	83.3972
1/97	81.0292

FIS YR/ REQUIRED PAYMENT
PAYMENT (EXCLUDES RENT)

1998	
7/97	78.5991
1/98	76.0913
1999	
7/98	73.5201
1/99	70.8714
2000	
7/99	68.2102
1/00	65.5532
2001	
7/00	62.9519
1/01	60.3857
2002	
7/01	57.9155
1/02	55.5202
2003	
7/02	53.2715
1/03	51.1473
2004	
7/03	49.1320
1/04	47.2957
2005	
7/04	45.7274
1/05	44.0111
2006	
7/05	42.1994
1/06	40.2263
2007	
7/06	38.1394
1/07	35.8710
2008	
7/07	33.4674
1/08	30.8594
2009	
7/08	29.0916
1/09	25.0000

SCHEDULE C
(to Equipment Lease)

**SCHEDULE OF
TERMINATION VALUE FOR EQUIPMENT**

The Termination Value for the Units payable on any Fixed Rental Payment Date commencing July 1, 1994 shall mean an amount equal to the percentage of the Lessor's Cost of the Units set forth opposite such date in the attached schedule.

FIS YR/ REQUIRED PAYMENT
PAYMENT (EXCLUDES RENT)

1984	
1/84	101.1752
1985	
7/84	105.1534
1/85	105.2678
1986	
7/85	107.6620
1/86	107.0225
1987	
7/86	108.6351
1/87	106.7678
1988	
7/87	107.2855
1/88	104.2570
1989	
7/88	103.6929
1/89	99.8943
1990	
7/89	99.0646
1/90	98.1979
1991	
7/90	97.2975
1/91	96.3600
1992	
7/91	95.3869
1/92	94.3747
1993	
7/92	93.3251
1/93	92.2349
1994	
7/93	96.1035
1/94	94.9291
1995	
7/94	93.7135
1/95	92.4513
1996	
7/95	91.1461
1/96	89.7925
1997	
7/96	88.3772
1/97	86.0292

FIS YR/ REQUIRED PAYMENT
PAYMENT (EXCLUDES RENT)

1998	
7/97	83.5991
1/98	81.0913
1999	
7/98	78.5201
1/99	75.8714
2000	
7/99	73.2102
1/00	70.5532
2001	
7/00	67.9519
1/01	65.3857
2002	
7/01	62.9155
1/02	60.5202
2003	
7/02	58.2715
1/03	56.1473
2004	
7/03	54.1320
1/04	52.2957
2005	
7/04	50.7274
1/05	49.0111
2006	
7/05	47.1994
1/06	45.2263
2007	
7/06	43.1394
1/07	40.8710
2008	
7/07	38.4674
1/08	35.8594
2009	
7/08	33.0916
1/09	.0000

**SCHEDULE D
(to Equipment Lease)**