

RECORDATION NO. 14398/A Filed 1425

AUG 10 1984 - 3 15 PM

August 10, 1984

INTERSTATE COMMERCE COMMISSION

ICC OFFICE OF THE SECRETARY
AUG 10 3 37 PM '84
MOTOR OPERATING UNIT

James H. Bayne
Secretary
Interstate Commerce Commission
Washington, D.C.

RECORDATION NO. 14398 Filed 1425

No. 4-223A121

Date AUG 10 1984

AUG 10 1984 - 3 15 PM

Fee \$ 20.00

Dear Mr. Bayne:

INTERSTATE COMMERCE COMMISSION
ICC Washington, D. C.

I have enclosed two (2) original copies of the documents described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code. These documents are a Lease and Lease Supplement, a primary document and a secondary document, respectively, each dated as of August 1, 1984. The names and addresses of the parties to the documents are as follows:

Lessee and Mailing Address:

Colorado-Ute Electric Association, Inc.
South Townsend
Post Office Box 1149
Montrose, Colorado 81401

Lessor and Mailing Address:

The Connecticut National Bank - not in its individual capacity but solely as trustee under that certain Trust Agreement dated as of August 1, 1984 -
777 Main Street
Hartford, Connecticut 06115
Attn: Bond and Trust Administration

Beneficiary and Mailing Address:

General Electric Credit Corporation
Transportation Financing Department
1600 Summer Street, 6th Floor
Post Office Box 8300
Stamford, Connecticut 06904

Manufacturer and Mailing Address:

Ortner Freight Car Company
6040 Fidelity Drive
Milford, Ohio 45150

ICC OFFICE OF THE SECRETARY
AUG 16 3 37 PM '84
MOTOR OPERATING UNIT

W. Charles Smith
C. ...

James H. Bayne
August 10, 1984
Page Two

A description of the equipment named in the document is as follows:

Fifty-five (55) open top, four (4) hopper, auto-bottom dump cars of 3,800 cubic foot capacity when level-full. AAR mechanic designation HTS. Road Numbers CUEX84001-CUEX84055 (inclusive).

A fee of \$20.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

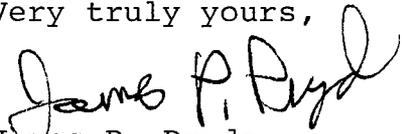
General Electric Credit Corporation
Transportation Financing Department
Post Office Box 8300
Stamford, Connecticut 06904
Attn: Ms. Lynn Mazur

A short summary of the documents to appear in the index follows:

Lease between The Connecticut National Bank (not in its individual capacity but solely as trustee under that certain Trust Agreement dated as of August 1, 1984), 777 Main Street, Hartford, Connecticut 06115 (as Lessor) and General Electric Credit Corporation, Transportation Financing Department, 1600 Summer Street, 6th Floor, Post Office Box 8300, Stamford, Connecticut 06905 (as Beneficiary), and Colorado-Ute Electric Association, Inc., Post Office Box 1149, Montrose, Colorado 81401, (as Lessee), dated August 1, 1984, and covering Fifty-five (55) Open-top, four (4) hopper, auto-bottom dump cars of 3,800 cubic foot capacity when level-full.

Supplement to Lease with Recordation No. [Recordation number of the Lease, a primary document] dated August 1, 1984, and covering Fifty-five (55) Open-top, four (4) hopper, auto-bottom dump cars of 3,800 cubic foot capacity when level-full.

Very truly yours,


James P. Pryde
Stinson, Mag & Fizzell
2100 Charterbank Center
P.O. Box 19251
Kansas City, Missouri 64141

Attorney for Colorado-Ute
Electric Association, Inc.

Interstate Commerce Commission
Washington, D.C. 20423

8/10/84

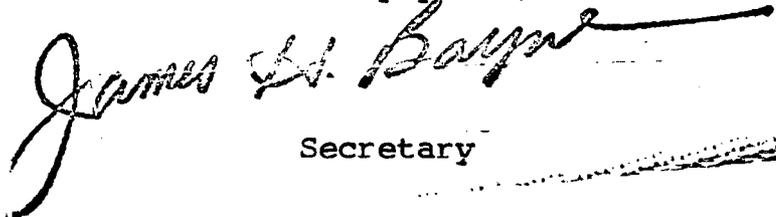
OFFICE OF THE SECRETARY

James P. Bayde
Stinson, Mag & Fizzell }
2100 Charterbank Center
P.O.Box 19251
Kansas City, Missouri 64141

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/10/84 at 3:45pm and assigned re-
recording number(s). 14398 & 14398-A

Sincerely yours,


Secretary

Enclosure(s)

MASTER LEASE AGREEMENT

AUG 10 1984 3 45 PM

INTERSTATE COMMERCE COMMISSION

This Master Lease Agreement dated as of August 1, 1984, (hereinafter collectively with the Supplement(s) attached hereto the "Agreement") is between The Connecticut National Bank not in its individual capacity but solely as trustee under a Trust Agreement dated as of August 1, 1984 with GENERAL ELECTRIC CREDIT CORPORATION (who shall be referred to herein as "Beneficiary" (the foregoing trustee being referred to as "Lessor") and COLORADO-UTE ELECTRIC ASSOCIATION, INC. a corporation organized and existing under the laws of the state of Colorado with its mailing address and principal place of business at 1845 South Townsend, Montrose, Colorado (the "Lessee").

1. LEASE. (a) Provided Lessee shall have complied with the Closing Conditions set forth in the Supplement(s) attached hereto (collectively the "Supplement"), such Supplement(s) being incorporated herein and made a part hereof by reference, except as such conditions may be waived by the Lessor, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor in accordance with the terms and conditions contained herein such unit(s) of railroad equipment (individually a "Unit" and collectively the "Units") described in the Supplement. Terms defined in a Supplement and not otherwise defined herein shall have the meanings ascribed to them in the Supplement.

(b) Provided that the Closing Conditions (other than those conditions set forth in Section D(2) of the Supplement) set forth in the Supplement are met or have been waived by Lessor, the Lessee is authorized to accept the Units on behalf of the Lessor as provided in paragraph (c) below and upon such acceptance, the Lessor is unconditionally obligated to purchase the Unit(s) described in said Supplement.

(c) Lessor hereby authorizes an employee of Lessee to inspect the Units upon delivery, and, prior to the date the Unit is first "placed in service" (as such term is defined in the Internal Revenue Code of 1954, as amended and regulations thereunder (collectively the "Code")), if such Units conform to the specifications referenced in the applicable Supplement, to accept the Units. Such acceptance shall be evidenced by execution of a Certificate of Acceptance, and the date of such execution shall constitute the Acceptance Date. Lessee's execution of the Certificate of Acceptance shall be conclusive evidence as between Lessor and Lessee that the Units described therein are in all respects satisfactory to Lessee and are accepted for lease by Lessee under the applicable Supplement. Lessor shall have no liability whatsoever for any failure of or delay in delivery of the Unit.

2. TERM, RENT AND PAYMENT. (a) The rent payable with respect to a Unit shall commence on the Acceptance Date and shall continue through the final Basic Rent Date set forth in the Supplement (the "Lease Term"). Daily Interim Rent for a Unit shall be paid in arrears on the Interim Rent Payment date specified in the applicable Supplement. If the Lease Term of a Unit is extended, the word "Lease Term" as used herein in respect of such Unit shall be deemed to refer to the Lease Term as so extended, and all provisions of this Agreement shall apply during such extended term, except as may be

otherwise specifically provided in this Agreement or in any subsequent written agreement of the parties.

(b) Lessee shall pay Interim Rent, Basic Rent and any other amounts payable under this Agreement in the manner described in the applicable Supplement and to Lessor's account as specified in the applicable Supplement. Payments of rent shall be in the amount set forth in, and due in accordance with, the provisions of the applicable Supplement. If any such amounts are not paid on the date due, Lessee shall immediately pay Lessor, in addition to such late payments, interest at the Overdue Rate on such late payments.

3. TAXES. Unless otherwise instructed by Lessor, Lessee shall make all filings as to all property taxes on the Units except where Lessor is notified by a taxing jurisdiction that Lessor and/or Beneficiary must so file with respect to Taxes relating to the Units or this Agreement. All reports or returns will be filed in a manner which will show the ownership of the Units by Lessor, and Lessee will send a copy thereof to Lessor and to the Beneficiary. Lessee shall pay or reimburse Lessor, the Beneficiary, or their assigns upon receipt of notice, for all Taxes paid, payable or required to be collected by Lessor or Lessee which are accrued, assessed or levied against Lessor, the Beneficiary or Lessee, this Agreement, the Units, the purchase, sale ownership, delivery, leasing, possession, use, operation or return of the Units, or proceeds received with respect thereto. Neither Lessor nor Beneficiary shall be obligated to contest any Tax; but, provided an Event of Default shall not have occurred, Lessee may so contest in good faith, with due diligence, and by appropriate proceedings provided that each counsel for Lessor and for Beneficiary shall have determined in his sole discretion that the non-payment or contest of any such Tax(es) does not adversely affect the right, title and interest of the Lessor and Beneficiary in the Units provided, however, that nothing herein contained shall affect Beneficiary's rights under the Tax Indemnity Agreement (as hereinafter defined). Applicable sales and use taxes shall be added to each payment of Basic Rent and unpaid amounts thereof shall be paid by Lessee upon receipt of Lessor's notice therefor. As used in this Section 3, the term "Tax(es)" shall mean and include all license and registration fees and taxes (including without limitation, income, sales, use, personal property, ad valorem, value added, stamp, leasing, lease use, or other taxes), levies, imposts, duties, charges and withholdings of any nature together with penalties, fines and interest thereon, but shall, except as provided in that Tax Indemnity Agreement dated as of August 1, 1984, by and between Lessee and Beneficiary (the "Tax Indemnity Agreement") exclude any tax (i) imposed on or measured by any fees or compensation received by the Lessor or Beneficiary (ii) payable solely by reason of any transfer of interest by the Lessor or Beneficiary in this Agreement or in a Unit unless such transfer occurs by reason of Loss or Damage (as defined in Section 6(a) hereof) or by reason of Lessee being in default under Section 9 hereof, or (iii) assessed or imposed by the jurisdiction in which the principal office of the indemnified person is located and (iv) any federal, state or local income taxes imposed on, based on or measured by net income, items of tax preferences, deductions and credits.

4. USE, OPERATION AND MAINTENANCE. (a) Lessee assumes and shall be solely responsible for the entire risk of use and operation of the Units and each and every cause or hazard of loss of any and all Units, howsoever arising. Lessee agrees promptly to notify Lessor in writing of any loss of or

damage to a Unit in excess of \$10,000.

(b) Lessee shall not sublet, mortgage or hypothecate any Unit or any interest in this Agreement (except as provided in Section 10(b) hereof), and any attempt to do so shall be void. Lessee shall not locate or use any Unit, without the prior written consent of Lessor, outside the continental United States. Lessee shall keep the Unit free and clear from all liens (such term to include any direct or indirect charge, encumbrance, lien, security interest, legal process, or claim against the Unit, whatsoever) except (i) the respective rights of Lessor and Lessee herein; (ii) liens resulting from the voluntary action by Lessor or Beneficiary without prior approval of Lessee (other than liens created pursuant to Section 10 hereof) or resulting from claims against Lessor or Beneficiary not related to the ownership or leasing of such Unit (hereafter "Lessor's Liens"); (iii) the rights of the secured parties under the REA Mortgage; (iv) materialmen's, mechanics', suppliers', carriers', workmen's, repairmen's or other like liens arising in the ordinary course of business of Lessee and not delinquent; and (v) liens for taxes, assessments, levies, fees and other governmental and similar charges not delinquent, or the amount or validity of which is being contested in a good faith contest in accordance with Section 3 hereof (all of such liens being hereinafter referred to as "Permitted Liens"). Lessee will notify Lessor in writing within 10 days after Lessee shall have knowledge of any lien which shall have attached or which, in Lessee's reasonable opinion, will attach to any Unit and of the full particulars thereof, including the location thereof. Lessee shall affix and maintain in a prominent position on each Unit plates, tags, or other identifying labels containing in letters not less than one inch in height the words "Ownership filed with the Interstate Commerce Commission", with appropriate changes thereof as from time to time may be required by law in the opinion of Lessor, in order to protect the Lessor's title to and interest in such Unit and the rights of the Lessor hereunder, or, at Lessor's expense, any other change thereof not required by law change.

(c) Lessee shall, at its sole expense, at all times maintain and preserve the Units in good working order, repair, condition ordinary wear and tear excepted, and shall comply with industry standards, applicable laws and regulations, and manufacturer's requirements for enforcing warranty claims.

(d) Lessee will not, without the prior written consent of Lessor, affix or install any accessory, equipment, or device on any Unit leased hereunder if such addition will impair the originally intended function or use of any such Unit. All additions, repairs, parts, supplies, accessories, equipment and devices furnished, attached or affixed to any Unit which are not readily removable shall be made only in compliance with applicable law and with Rev. Rul. 75-21, as modified by 75-28, and 79-48, and any other applicable Internal Revenue Service guidelines, and shall become the property of Lessor. Any and all parts, alterations, and/or modifications required for the operation or use of a Unit by the interchange rules of the American Association of American Railroads or by the regulations of Department of Transportation, the Interstate Commerce Commission or any other applicable regulatory body shall be caused to be made by the Lessee at Lessee's expense and, once attached to the Unit, shall constitute accessions to such Unit and shall become the property of Lessor. Title to readily removeable additions or improvements shall remain with the Lessee.

5. REPORTS. (a) Lessee shall upon written request of Lessor notify Lessor and Beneficiary in writing any modifications to any Unit which exceed \$10,000 in cost to Lessee.

(b) Lessee will, within 120 days of the close of each fiscal year of Lessee, deliver to Lessor and Beneficiary, a copy of Lessee's and its consolidated subsidiaries' statement of operations, statement of funds used for capital expenditures, and statement of retained capital certified by a nationally recognized firm of certified public accountants. Upon Lessor's request, Lessee will deliver to Lessor and Beneficiary quarterly, within 45 days after the close of each fiscal quarter of Lessee, in reasonable detail, duplicate copies of Lessee's quarterly financial report certified by the chief financial officer of Lessee.

(c) Lessor, or its agents, shall at all reasonable times, and upon reasonable advance notice to Lessee, have the right (but not the duty) to inspect the Units and Lessee's records with respect thereto.

6. LOSS OR DAMAGE. (a) Lessee hereby assumes and shall bear the entire risk: (i) of any loss, theft, confiscation of title or requisition for use by any Governmental Entity for a period which shall exceed the then remaining Lease Term, or destruction of, or damage to, any Unit from any cause whatsoever which damage shall, in the good faith determination of Lessee, have rendered the Unit inoperable for a period of six months or more; and (ii) of any loss if at any time after the date of execution of this Agreement and before the expiration of the Lease Term, Lessor or Beneficiary, by reason of their interests in the Unit(s) or the lease of the Unit(s) to Lessee, shall be deemed by any Governmental Entity having jurisdiction to be or shall become subject to regulation (other than regulation under which the obligations of the Lessor or the Beneficiary may be discharged by Lessee at Lessee's expense on behalf of and to the satisfaction of such party and which Lessee has discharged in a prompt and timely manner) (X) under the Public Utility Act of the State of Colorado, (Y) as an "electric utility" or a "public utility" or a "public utility holding company" under the Public Utility Holding Company Act of 1935 or the Federal Power Act, or (Z) as a "carrier" under the Interstate Commerce Act, and, in any of such cases, the effect thereof on Lessor or the Beneficiary would be, in its reasonable judgment, materially adverse; provided, however, that no event of Loss or Damage shall occur hereinafter which is directly attributable to activities of Lessor or Beneficiary unrelated to the transactions contemplated herein either prior to or after the Acceptance Date of the Unit(s) or if Lessor or Beneficiary shall waive in writing the application of this Section 6(a) (any of the foregoing events listed in items (i) and (ii) being herein referred to as "Loss or Damage").

(b) In the event of Loss or Damage, Lessee shall promptly notify Lessor with respect thereto, and, shall either (i) promptly place the damaged Unit in good repair, condition and working order; or (ii) pay Lessor therefor in cash within 30 days after such Loss or Damage the sum of (a) the Stipulated Loss Value of such Unit, (b) interest on such Stipulated Loss Value at the Overdue Rate from the Basic Rent Payment Date used for computing Stipulated Loss Value through the date such amount is paid (c) all Basic Rent and Interim Rent accrued to the Basic Rent Payment Date used for computing Stipulated Loss Value and (d) any other amounts due hereunder. Upon payment by Lessee of sums due hereunder with respect to a Unit, the rental for such Unit shall cease to

accrue as of the Basic Rent Payment Date used to compute the Stipulated Loss Value, the Lease Term as to such Unit shall terminate, and (except in the case of the loss, theft or complete destruction of such Unit) Lessor shall be entitled to recover possession of such Unit.

(c) Lessee shall, if Lessee has paid the amounts due under paragraph (b) hereof, retain any insurance proceeds, condemnation awards, damages or sale proceeds received by Lessee or Lessor by reason of such Loss or Damage up the Stipulated Loss Value paid under said paragraph (b), plus Lessee's reasonable costs and expenses incurred if Lessee has disposed of the Unit at Lessor's request, and any excess shall be retained by Lessor.

7. INSURANCE. Lessee agrees, at its own expense, to keep each Unit insured against such hazards as Lessor may require, including, but not limited to, insurance for damage to such Unit and liability coverage for personal injuries, death or property damage, each of such insurance policies to be subject to deductible amounts not greater than \$100,000, with losses under policies payable to Lessor, in its individual capacity and as trustee, as its interest may appear, as additional insured or loss payee, irrespective of any breach of warranty or other act or omission of Lessee, all of the foregoing being with companies and on terms and in amounts satisfactory to Lessor. Lessee agrees to deliver to Lessor said policies, or evidence of insurance satisfactory to Lessor, with premium receipt therefor, prior to delivery of such Unit. Said policies shall provide that the insurance provided thereby may not be altered or cancelled by the insurer until after thirty (30) days written notice to Lessor. Lessee agrees to provide to Lessor on the annual anniversary of the Acceptance Date set forth in the first Certificate of Acceptance a certificate, in form and substance satisfactory to Lessor, issued by an independent insurance broker acceptable to Lessor evidencing the maintenance of the insurance on such Unit required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. Lessee further agrees to provide on demand such renewal policy. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make proof of loss and claim for insurance, and to make adjustments with insurers and to receive payment of and execute or endorse all documents, checks or drafts in connection with payments made as a result of such insurance policies. Any expense of Lessor in adjusting or collecting insurance shall be borne by Lessee. Insurance for damage to a Unit shall be for the greater of (i) Stipulated Loss Value or (ii) full replacement value. Lessee will not make adjustments with insurers except with Lessor's prior written consent. Lessor may, at its option, apply proceeds of insurance, in whole or in part, to (i) repair or replace a Unit or any portion thereof, or (ii) satisfy any obligation of Lessee to Lessor hereunder. Provided no Event of Default or event, which with the giving of notice, the passage of time, or both shall constitute an Event of Default, shall have occurred and be continuing, Lessor shall, after applying the sums as provided in the immediately preceding sentence, reimburse Lessee from insurance proceeds received for Lessee's expenses incurred in repairing the damage to a Unit for which damage the insurance proceeds were paid. Lessor's obligation under the preceding sentence shall exist only to the extent of insurance proceeds received by Lessor.

8. RETURN OF UNITS. Within 60 days after expiration of the Lease Term, or upon termination of this Agreement or any Supplement, at Lessor's

request, Lessee shall promptly, at its own cost, expense and risk: (i) deliver to Lessor at a location to be selected by Lessor within the United States (except Alaska or Hawaii) possession of the Unit in same operating order, repair and condition as when originally delivered to Lessee, ordinary wear and tear excepted, and in condition to meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction, and (ii) if requested by Lessor, store the Unit at a location reasonably agreeable to both Lessor and Lessee. Storage of a Unit under the preceding sentence shall be for a period of up to 150 days unless an Event of Default under Section 9 of this Agreement shall have occurred and be continuing in which case storage of the Unit shall be until such time as such Unit shall have been sold, leased, or otherwise disposed of by Lessor or one year from the date Lessor begins exercising its remedies under Section 9 hereof whichever first occurs. During such storage period Lessee shall keep the Unit insured as provided in Section 7 of this Agreement and shall maintain the Unit in the manner called for under Section 4 of this Agreement. The assembling, delivery, storage and transporting of the Unit are of the essence of this Lease.

9. DEFAULT. (a) If during the term of this Agreement, (i) Lessee fails to pay any Basic Rent, Interim Rent or other amount payable hereunder or under the Tax Indemnity Agreement when due and such non-payment shall continue for five business days after it is due; (ii) Lessee shall make or permit any unauthorized assignment or transfer of this Agreement, or any interest herein, or of the right to possession of the Unit(s); (iii) Lessee breaches any other covenant, condition or agreement hereof or of any Supplement which breach shall continue for 15 days after the earlier of (y) written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied and (z) the date on which such default shall first become known to the Treasurer of the Lessee; (iv) any representation or warranty made by Lessee herein, in any Supplement, or other document prepared or used in connection with this Agreement shall, if material when made and still material at the time in question, prove to be false or misleading when made or otherwise shall become materially false or misleading at any time thereafter (other than any representation made in the Tax Indemnity Agreement); (v) Lessee ceases doing business as a going concern; (vi) Lessee becomes insolvent or suffers a material adverse change in its operating or financial condition which materially impairs Lessee's ability to perform its obligations hereunder or Lessor's title to or rights in any Unit; (vii) if any Unit is illegally used; or (viii) if Lessee makes a general assignment for the benefit of creditors, or if a petition is filed by or against Lessee under Title 11 of the United States Code or any successor or similar law and, if filed against Lessee, has not been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue) for a period of 60 days following the filing of such petition, or if this Agreement, the Unit(s), or a substantial portion of the property of Lessee is attached or a receiver is appointed for Lessee or for a substantial portion of Lessee's property, any of the foregoing items (i) through (viii) constituting an Event of Default, Lessor may proceed by court action at law or in equity to enforce performance hereof by Lessee or declare this Agreement in default and terminated. Such declaration shall be by written notice to Lessee and shall apply to all Supplements hereunder.

Upon termination, Lessee shall, without further demand, forthwith (i) pay to Lessor or Beneficiary (whichever is applicable) a sum equal to all accrued Basic Rent, Interim Rent and other amounts due hereunder and under the Tax Indemnity Agreement plus, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Stipulated Loss Value of each Unit (as set forth in the applicable Supplement), calculated as if an event of Loss or Damage occurred on the date Lessor declared an Event of Default hereunder, over the fair market value of the Unit on such date, together with interest thereon at the Overdue Rate accruing from the date Lessor declared the Event of Default to the date of payment and (ii) comply with the provisions of Section 8 of this Agreement. For purposes of the preceding sentence, the fair market value of a Unit shall be equal to that amount which, in Lessor's reasonable opinion, would be obtainable in an arm's-length transaction between an informed and willing buyer (other than a buyer in possession) and an informed and willing seller under no compulsion to sell. If the Unit has not been returned within 10 days of receipt of such declaration, Lessee hereby authorizes Lessor at any time thereafter to enter, with or without legal process, any premises where the Unit may be and take possession. Lessor may, but shall not be required to, sell any or all of the Units at private or public sale, in bulk or in parcels, with or without notice, without having the Units present at the place of sale; or Lessor may, but shall not be required to, lease, otherwise dispose of or keep idle any or all of the Units. Lessor may use Lessee's premises for any or all of the foregoing without liability for rent, costs, damages or otherwise; provided, however, that, if requested by Lessee, Lessor shall consent to the removal and storage of the Unit(s) at a location satisfactory to Lessor in its sole discretion, such removal and storage to be at Lessee's sole expense. The proceeds of sale, lease or other disposition, if any, shall be applied in the following order of priorities: (1) to pay all of Lessor's costs, charges and expenses incurred in taking, removing, holding, repairing and selling, leasing and otherwise disposing of the Units (including reasonable attorney's fees); then, (2) to the extent not previously paid by Lessee, to pay Lessor the Stipulated Loss Value for each of the Units and all other sums (including Interim Rent, Basic Rent and indemnities) then remaining unpaid hereunder, and interest on such amounts at the Overdue Rate from the dates they became due until paid; then (3) to reimburse to Lessee any sums previously paid by Lessee as liquidated damages; and (4) any surplus shall be retained by Lessor. Lessee shall pay any deficiency in (1) and (2) forthwith.

(b) The foregoing remedies are cumulative, and any or all thereof may be exercised in lieu of or in addition to each other or any remedies at law, in equity, or under statute. Lessee waives demand of performance and notice of time or place of sale or other disposition and the manner and place of any advertising. If, after an Event of Default, this Agreement is placed in the hands of an attorney for collection of unpaid rent or enforcement of any other right or remedy of Lessor, Lessee shall pay such reasonable attorney's fees as are permitted by law. Delay in declaring any Event of Default shall not constitute a waiver of such an Event of Default and waiver of any Event of Default shall not be a waiver of any other or subsequent Event of Default.

10. ASSIGNMENT. (a) Lessor may assign whether as security or otherwise any or all of its rights, title and interest in and to any Unit, this Agreement or any Supplement to (i) Beneficiary (ii) any banking or

financial institution having a combined capital and surplus of at least \$50,000,000 or (iii) any corporation owning at the time substantially all of the capital stock of the Lessor or Beneficiary or any corporation or other entity (but not an individual) controlled by or under common control with the Lessor or Beneficiary; provided, however, that no such transferee shall have any interlocking relationship with the Lessee or any of its affiliates within the meaning of Section 10 of the Clayton Act. No such assignment, conveyance or transfer shall violate any provision of law or regulation or create a relationship which would be in violation thereof. Upon any such disposition by the Lessor (other than as security) to a transferee as above provided, such transferee shall succeed to the interests of the Lessor and shall be deemed the "Lessor" for all purposes hereof and each reference herein to the Lessor shall thereafter be deemed to include such transferee.

(b) Except as provided in this Section 10, Lessee may not assign its interest in the Agreement, in any Supplement and the Unit's without the prior written consent of Lessor, and any attempt to do so will be void. Lessee may assign its rights under this Lease as security under the REA Mortgage to the Mortgagees (as defined in the REA Mortgage), provided however, that the Mortgagees shall acquire no greater rights under this Agreement and with respect to the Unit(s) than those rights enjoyed by Lessee. At the time any Mortgagee exercises its rights under the REA Mortgage, the Mortgagee shall assume and perform all the obligations of the Lessee hereunder, pursuant to a written agreement which is satisfactory to the Lessor in form and substance, shall pay all then unpaid Interim Rents and Basic Rent, and shall pay Lessor an amount sufficient on an after-tax basis, to compensate Lessor for any Loss as defined in the Tax Indemnity Agreement resulting from such assumption.

11. NET LEASE: NO SET-OFF, ETC. This Agreement is a net lease. Lessee's obligation to pay rent and other amounts due hereunder shall be absolute and unconditional, and Lessee shall not be entitled to any abatement of rent or other amounts due hereunder, reductions thereof, or set-offs against said rent or other amounts, including without limitation, abatements, recoupments, counterclaims, defenses, reductions or set-offs whether arising out of Claims (as hereafter defined) of Lessee against Lessor, the Beneficiary, Broker (if any), the manufacturer or any other person, entity, organization or governmental body whether arising under this Agreement or otherwise; nor shall this Agreement terminate or the obligations of Lessee be affected by reason of any defect in or damage to or loss of possession, use or destruction of any or all of the Units from whatsoever cause; it being the intention of the parties that rents and other amounts due hereunder shall continue to be payable in all events in the manner and at the times set forth herein unless the obligation to do so shall have been terminated pursuant to the express terms hereof. As used in this Agreement, the term "Claims" shall mean and include any and all liabilities, obligations, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including legal fees and expenses) of any kind or nature whatsoever, present or future, alleged or actual, in contract or tort, including Claims arising out of strict or absolute tort or passive or active negligence of Lessor.

12. INDEMNIFICATION. (a) Lessee hereby agrees to indemnify, save and keep harmless Lessor (in both its individual and its fiduciary capacity) its agents, employees, successors and assigns from and against any and all

Claims arising out of (i) the selection, manufacture, purchase, acceptance or rejection of the Unit(s), the ownership of the Unit(s) during the term of this Agreement, and the delivery, lease, possession, maintenance, use, condition, return or operation of the Unit(s) (including, without limitation, latent and other defects, whether or not discoverable by Lessor, Lessee or Beneficiary and any claim for patent, trademark or copyright infringement) or (ii) the condition of the Unit(s) sold or disposed of after use by Lessee, any sublessee or employees of Lessee (except as to intentional misrepresentations made by Lessor to third parties as to the conditions of the Units); provided, however, that Lessee shall not be required to indemnify Lessor or Beneficiary for (t) except as provided in clause (x) below, any Claim directly resulting from a Permitted Lien, provided that, in the event of any conflict between the provisions of this clause and Section 4(b) hereof, the provisions of Section 4(b) shall control; (u) any Claim in respect of a Unit arising from acts or events which occur after storage of the Unit(s) has ended and after possession of the Unit(s) has been delivered by Lessee to Lessor pursuant to Section 8 hereof whichever occurs later; (v) any Claim directly resulting from acts which would constitute willful misconduct or gross negligence of the Lessor or Beneficiary (w) any Claim directly resulting from obligations specifically agreed to by Lessor in this Agreement to be borne by Lessor; (x) any Claim directly resulting from Taxes, provided, that in the event of any conflict between the provisions of this clause and Section 3 or the Tax Indemnity Agreement, the provisions of Section 3 or the Tax Indemnity Agreement shall control; and (z) any Claim for which Lessor will, be fully compensated by payment of the appropriate Stipulated Loss Value. Lessee shall, at its own expense, defend any and all actions based on, or arising out of, any of the foregoing.

(b) All of Lessor's, Lessee's and Beneficiary's stated rights, privileges and indemnities contained in this Section 12 shall survive the expiration or other termination of this Agreement and the rights, privileges and indemnities contained herein are expressly made for the benefit of, and shall be enforceable by Lessor, Lessee and Beneficiary, as applicable, and the successors and assigns of each.

13. LESSOR DISCLAIMER. (a) LESSOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE DESIGN, OPERATION OR CONDITION OF ANY UNIT OR ANY PART THEREOF, ITS MERCHANTABILITY, ITS FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE, OR WITH RESPECT TO PATENT INFRINGEMENT, TITLE OR THE LIKE. LESSOR SHALL HAVE NO LIABILITY TO LESSEE, ITS CUSTOMERS OR THIRD PARTIES FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE ARISING OUT OF THIS AGREEMENT OR THE UNIT, OR ANY DAMAGES BASED ON STRICT OR ABSOLUTE TORT LIABILITY OR LESSOR'S NEGLIGENCE. NOTHING HEREIN CONTAINED SHALL BE CONSTRUED AS DEPRIVING LESSEE OF WHATEVER RIGHTS LESSEE MAY HAVE AGAINST ANY PERSON OTHER THAN LESSOR. LESSOR ASSUMES NO LIABILITY AND MAKES NO REPRESENTATIONS AS TO THE TREATMENT BY LESSEE OF THIS AGREEMENT OR THE RENT FOR FINANCIAL STATEMENT OR TAX PURPOSES.

14. INDEPENDENT PARTIES. LESSEE ACKNOWLEDGES THAT LESSOR, BROKER (IF ANY) AND SUPPLIER ARE SEPARATE ENTITIES, EACH OF WHICH HAS ENTERED INTO THIS TRANSACTION FOR INDEPENDENT BUSINESS REASONS, AND THAT NEITHER LESSOR, BROKER (IF ANY) NOR SUPPLIER HAS ACTED, ACTS, OR SHALL BE DEEMED TO HAVE ACTED OR ACT AS AN AGENT FOR THE OTHER. NO REPRESENTATION OR PROMISE MADE BY BROKER OR SUPPLIER SHALL BE DEEMED MADE BY OR BINDING UPON LESSOR.

15. QUIET ENJOYMENT. So long as no Event of Default shall have occurred and be continuing, Lessee shall, and may quietly have, hold and enjoy the Unit(s) during the Lease Term, free from repossession or disturbance by Lessor or its officers, agents, employees, servants, successors or assigns, except for the claim referred to in Section 6 of any Governmental Entity.

16. MISCELLANEOUS. (a) Subject to provisions of this Section 16(a), Lessor hereby irrevocably appoints and constitutes Lessee its agent and attorney-in-fact during the term of this Agreement to assert and enforce, in the name of and for the account of Lessor and/or Lessee, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor may have against any Supplier of the Units. Lessee's appointment hereunder shall be revocable upon written notice to Lessee except that, so long as an Event of Default or event, which with the passage of time, the giving of notice, or both would become an Event of Default, shall not have occurred, Lessor shall not revoke Lessee's appointment under this Section 16(a) to exercise Lessor's warranty rights which may exist with respect to the Unit(s).

(b) Nothing herein contained shall give or convey to Lessee any right, title or interest in and to any Unit leased hereunder except as a Lessee. Any cancellation or termination by Lessor of this Agreement or of any Supplement shall not release Lessee from any then outstanding obligations to Lessor. All Units shall at all times remain personal property of Lessor. Lessor agrees it shall not, by its own action or inaction, cause the Unit(s) to cease to be personal property.

(c) Time is of the essence of this Agreement. Lessor's failure at any time to require strict performance by Lessee with respect to any of the provisions hereof shall not waive or diminish Lessor's right thereafter to demand strict compliance therewith. Lessee agrees, upon Lessor's request, to execute any instrument necessary or expedient for filing, recording or perfecting the interest of Lessor. All notices required to be given hereunder shall be deemed adequately given if sent by registered or certified mail to the addressee at its address stated on the then most recent Supplement, (with a copy to Beneficiary) or at such other place as such addressee may have designated in writing. This Agreement and any Supplement hereto constitute the entire agreement of the parties with respect to the subject matter hereof. No variation or modification of this Agreement, or any waiver of any of its provisions or conditions, shall be valid unless in writing and signed by an authorized representative of the parties hereto.

(d) In case of a failure of Lessee to comply with any provision of this Agreement, Lessor shall have the right, but shall not be obligated to, effect such compliance, in whole or in part; and all moneys spent and expenses and obligations incurred or assumed by Lessor in effecting such compliance shall constitute additional rent due to Lessor within five days after the date Lessor sends notice to Lessee requesting payment. Lessor's effecting such compliance shall not be a waiver of Lessee's default. Interest on any overdue payment shall be at the Overdue Rate.

(e) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. Any provisions in this Agreement and

any Supplement which are in conflict with any statute, law or applicable rule shall be deemed omitted, modified or altered to conform thereto.

(f) This Agreement may be executed in any number of counterparts, such counterparts constituting but one and the same contract.

IN WITNESS WHEREOF, Lessee and Lessor have caused this Agreement to be executed by their duly authorized representatives.

Lessor: THE CONNECTICUT NATIONAL BANK
not in its individual capacity but
solely as a trustee under a
Trust Agreement dated as of
August 1, 1984 with General Electric
Credit Corporation

Lessee: COLORADO-UTE ELECTRIC
ASSOCIATION, INC.

By _____

Title _____

Date _____

By *Frank W McDonald*
Title Corporate Trust Officer
Date *Aug 10, 1984*

any Supplement which are in conflict with any statute, law or applicable rule shall be deemed omitted, modified or altered to conform thereto.

(f) This Agreement may be executed in any number of counterparts, such counterparts constituting but one and the same contract.

IN WITNESS WHEREOF, Lessee and Lessor have caused this Agreement to be executed by their duly authorized representatives.

Lessor: THE CONNECTICUT NATIONAL BANK
not in its individual capacity but
solely as a trustee under a
Trust Agreement dated as of
August 1, 1984 with General Electric
Credit Corporation

Lessee: COLORADO-UTE ELECTRIC
ASSOCIATION, INC.

By

Title

Date

Donald D. Ward
Vice-President
August 10, 1984

By _____

Title _____

Date _____

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) ss.:

On this 10 day of August, 1984, before me personally appeared Robert Vold, to me personally known, who, being by me duly sworn, says that he is Vice President of Colorado Ute Electric Association, Inc., and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Anna M. Delahunty
Notary Public

(Notarial Seal)

My Commission expires

