

MUDGE ROSE GUTHRIE ALEXANDER & FERDON

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202-429-9355

August 13, 1984

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14400

RECORDATION NO. Filed 1425

AUG 13 1984 - 2 20 PM

INTERSTATE COMMERCE COMMISSION

14400 A

RECORDATION NO. Filed 1425

AUG 13 1984 - 2 20 PM

INTERSTATE COMMERCE COMMISSION

Ms. Agatha L. Mergonovich,
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Attention: Ms. Mildred Lee
Recordation Unit

Dear Ms. Secretary:

We have enclosed an original and one fully executed and acknowledged counterpart of each of the documents described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code:

- 1. Equipment Lease, a primary document, dated as of December 20, 1983.
- 2. Loan, Mortgage and Security Agreement, a primary document, dated as of December 20, 1983.

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

- 1. Lessor under the Equipment Lease and Borrower under the Loan, Mortgage and Security Agreement:

Cumberland Leasing Co.
8501 West Higgins Road
Chicago, Illinois 60631

- 2. Lessee under the Equipment Lease:

Seminole Electric Cooperative, Inc.
P.O. Box 272000
Tampa, Florida 33618

ICC OFFICE OF THE CLERK
AUG 13 2 12 PM '84
MOTOR CARRIERING UNIT

Dear Ms. Mergonovich
(C) Cumberland

Ms. Agatha Mergenovich
August 13, 1984
Page 2

3. Lender under the Loan, Mortgage and Security Agreement:

National Cooperative Services Corporation
1115 30th Street, N.W.
Washington, D.C. 20007

A description of the equipment leased subject to the Equipment Lease and subject to the security interest created by the Loan, Mortgage and Security Agreement follows:

Ninety-eight (98), 100-ton nominal capacity gondola cars with single rotary dump features having an A.A.R. mechanical designation of G 092, having road numbers SEMX 84200 through SEMX 84297.

Two (2), 100-ton nominal capacity gondola cars with double rotary dump features having an A.A.R. mechanical designation of G 092, having road numbers SEMX 84904 and SEMX 84905.

All the above cars bear the following inscription:

"Ownership subject to a Loan, Mortgage and Security Agreement between Cumberland Leasing Co., Owner; National Cooperative Services Corporation, Secured Party, filed under the Interstate Commerce Act."

A fee of \$100.00 is enclosed. Please return the original to us. We have served as counsel to the Lessee in this transaction.

A short summary of the documents, both of which are primary documents, to appear in the index follows:

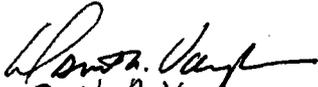
1. Equipment Lease, dated as of December 20, 1983, between Cumberland Leasing Co., as Lessor, and Seminole Electric Cooperative, Inc., as Lessee, and covering ninety-eight (98), 100-ton nominal capacity gondola cars with single rotary dump features, having road numbers SEMX 84200 through SEMX 84297 and two (2), 100-ton nominal capacity gondola cars

Ms. Agatha L. Mergenovich
August 13, 1984
Page 3

with single rotary dump features, having road numbers SEMX 84904 and SEMX 84905. The address of the Lessor is 8501 West Higgins Road, Chicago, Illinois 60631. The address of the Lessee is P.O. Box 272000, Tampa, Florida 33618.

2. Loan, Mortgage and Security Agreement, dated as of December 20, 1983, between Cumberland Leasing Co., as Borrower, and National Cooperative Services Corporation, as Lender, and covering ninety-eight 98, 100-ton nominal capacity gondola cars with single rotary dump features, having road numbers SEMX 84200 through 84297 and two (2), 100-ton nominal capacity gondola cars with single rotary dump features, having road numbers SEMX 84904 and SEMX 84905. The address of the Borrower is 8501 West Higgins Road, Chicago, Illinois 60631. The address of the Lender is 1115 30th Street, N.W., Washington, D.C. 20007.

Very truly yours,


David A. Vaughan
Counsel to Lessee

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

8/13/84

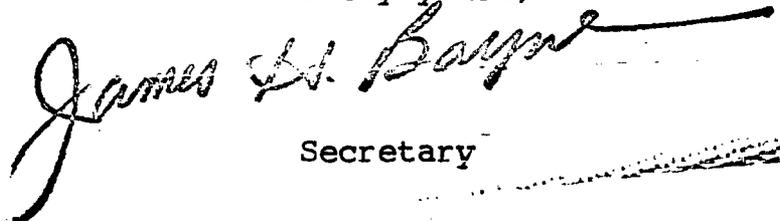
OFFICE OF THE SECRETARY

Mudge Rose Guthrie Alexander & Ferdon
2121 K. Street, N.W.
Washington, D.C. 20037

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 8/13/84 at 2:20pm and assigned re-
recording number(s) 14400 & 14400-A

Sincerely yours,


Secretary

Enclosure(s)

DUPLICATE

CERTAIN OF THE RIGHTS OF THE LESSOR UNDER THIS EQUIPMENT LEASE AND IN ALL EQUIPMENT COVERED HEREBY HAVE BEEN ASSIGNED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, NATIONAL COOPERATIVE SERVICES CORPORATION UNDER A LOAN, MORTGAGE AND SECURITY AGREEMENT DATED AS OF DECEMBER 20, 1983. THIS EQUIPMENT LEASE HAS BEEN EXECUTED IN COUNTERPARTS. SEE SECTION 23(e) HEREOF FOR INFORMATION CONCERNING THE RIGHTS OF HOLDERS OF THE VARIOUS COUNTERPARTS.

14400
RECORDATION NO. Filed 1425

EQUIPMENT LEASE

AUG 13 1984 - 2 20 PM

INTERSTATE COMMERCE COMMISSION

Dated as of December 20, 1983

between

CUMBERLAND LEASING CO.,
as Lessor,

and

SEMINOLE ELECTRIC COOPERATIVE, INC.,
as Lessee

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EQUIPMENT LEASE

EQUIPMENT LEASE dated as of December 20, 1983 (this Lease) between CUMBERLAND LEASING CO. (the Lessor), and SEMINOLE ELECTRIC COOPERATIVE, INC. (the Lessee).

SECTION 1. Definitions; Construction of References.

In this Lease, unless the context otherwise requires:

(a) All references in this Lease to designated Sections and other subdivisions are to designated Sections and other subdivisions of this Lease, and the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Section or other subdivision.

(b) The terms defined in this Section or elsewhere in this Lease shall, for purposes of this Lease and all Exhibits hereto, have the meanings assigned to them in this Section or elsewhere and include the plural as well as the singular and the singular as well as the plural.

(c) Except as otherwise indicated, all the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof.

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

Abatements shall have the meaning set forth in Section 5 hereof.

Appraisal shall mean a procedure whereby independent appraisers determine the amount in question. If either party shall have given notice to the other requesting a determination by Appraisal, within 20 days after the making of such request, the Lessor and the Lessee shall each deliver a written notice to the other party appointing its appraiser, who shall not be the Vendor. If only one appraiser shall be appointed within such 20 day period, the decision of the appraiser so appointed shall be final. If within 20 days after appointment of the two appraisers, as described above, the two appraisers shall be unable to agree upon the amount in question, a third independent appraiser, who shall not be the Vendor, shall be chosen within five days thereafter by the mutual consent of the Lessor and the Lessee or, if the Lessor and the Lessee shall fail to agree upon the appointment of a third appraiser, such appointment shall be made by an authorized representative of the American

Arbitration Association or any organization successor thereto. The decision of the third appraiser so appointed and chosen shall be given within 20 days after the selection of such third appraiser and, upon receipt of such decision, the decisions of the two appraisers which are closest one to the other shall be averaged, and thereafter the amount representing such average shall be binding and conclusive on the Lessor and the Lessee. The Lessee and the Lessor shall share equally the fees and expenses of all the appraisers appointed hereunder.

Basic Lease Rate Factor shall mean (i) with respect to any Item of Equipment the Closing Date for which occurs on or prior to July 30, 1984 the appropriate percentage of the Lessor's Cost of such Item set forth in Exhibit D attached hereto, as such percentages may be adjusted from time to time pursuant to Sections 3(e) and 10(d)(ii) hereof and (ii) with respect to any Item of Equipment the Closing Date for which occurs after July 30, 1984, shall mean percentages of Lessor's Cost of such Item determined in accordance with Section 3(e) hereof as such percentages may be adjusted from time to time pursuant to Section 10(d)(ii) hereof.

Basic Lease Term (i) with respect to an Item of Equipment the Closing Date for which occurs on or prior to July 30, 1984 shall mean the period from, and including, July 30, 1984 through the Last Basic Rent Date and (ii) with respect to an Item of Equipment the Closing Date for which occurs after July 30, 1984 shall mean the period from, and including, January 30, 1985 through the Last Basic Rent Date.

Basic Rent, Supplemental Rent and Rent shall have the meanings set forth in Section 3 hereof.

Basic Rent Dates in respect of an Item of Equipment shall mean January 30 and July 30 of each year commencing July 30, 1984.

Business Day shall mean any day other than a Saturday, Sunday or other day on which banks in Washington, D.C., Chicago, Illinois, Tampa, Florida, or San Francisco, California are authorized to close.

Casualty Value and Termination Value shall have the meanings set forth in Exhibit C hereto as such Values may be adjusted from time to time pursuant to Section 10(f) of the Participation Agreement and Sections 3(e) and 10(d)(ii) hereof; **provided, further, however,** that such amounts as of any date shall be in no event less than a sum sufficient to pay in full the unpaid principal amount of the Notes outstanding on such date, together with accrued interest thereon to the date of payment and any premium payable with respect thereto.

Certificate of Acceptance shall mean a certificate of acceptance substantially in the form of Exhibit B hereto.

Change of Law shall mean any change or modification of the Code or regulations thereunder.

Claims shall have the meaning set forth in Section 14 hereof.

Closing Date shall mean, with respect to any Item of Equipment, the Business Day on which payment for such Item of Equipment is made to the Vendor, or such other party as may be designated or authorized to receive such payment, which date shall occur upon not less than three Business Days' prior written notification of such date delivered by the Lessee to the Lessor and the Lender or on such other date as may be agreed upon by such parties. Such notice will specify the Lessor's Cost and Lessor's Expense and the Loan Percentage for such Closing Date.

Code shall mean the Internal Revenue Code of 1954, as amended to the date hereof.

Cut-Off Date shall mean December 31, 1984.

Deemed Event of Loss shall mean the Lessor's having become, by virtue of the transactions contemplated by this Lease and the Participation Agreement:

(i) an "electric utility company" or an "electric utility holding company" for purposes of the Public Utility Holding Company Act of 1935 or subject to regulation under such Act or the Federal Power Act, or

(ii) subject to regulation under other applicable law or regulations relating to public utilities or electric generating companies, the effect of which regulation is to affect materially adversely, in the reasonable opinion of the Lessor, the Lessor's business or operations,

The date of occurrence of a Deemed Event of Loss shall be deemed to be the date upon which the Lessor shall have apprised the Lessee and the Lender of such determination.

Default shall mean an event which, after the giving of notice or lapse of time, or both, would mature into an Event of Default.

Document Closing Date shall have the meaning set forth in the Participation Agreement.

Equipment, and individually an **Item of Equipment** or **Item**, shall have the meaning set forth in Section 2 hereof.

Equipment Contract shall have the meaning set forth in the Participation Agreement.

Event of Default shall have the meaning set forth in Section 19 hereof.

Event of Loss with respect to any Item of Equipment shall mean any of the following events: (i) loss of such Item or of the use thereof due to theft, disappearance, destruction, damage beyond repair or rendition of such Item permanently unfit for commercial operation for any reason whatsoever; (ii) any damage to such Item which results in an insurance settlement with respect to such Item on the basis of a total loss; or (iii) the condemnation, confiscation or seizure of, or requisition of title to or use of, such Item (**Requisition of Use**) by the act of the United States government or any state or local authority within the United States or any instrumentality or agency of the foregoing should such Requisition of Use result in a taking of title to or loss of use of such Item of Equipment for a stated period extending beyond the Expiration Date. The date of such Event of Loss shall be the date of such theft, disappearance, destruction, damage, rendition or the first date on which a Requisition of Use shall have occurred.

Expiration Date shall mean July 30, 2004.

Fair Market Rental Value of an Item of Equipment shall be determined on the basis of, and shall mean the amount which would be obtainable in, an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) under no compulsion to lease and an informed and willing lessor under no compulsion to lease, in accordance with a lease on terms and conditions as herein provided, and in such determination costs of removal from the location of current use (including dismantling, shipping and reconstruction) shall not be a deduction from such value and all alternative uses in the hands of such lessee, including without limitation, the further leasing of such Item, shall be taken into account in making such determination; **provided, however**, that in determining such amount it shall be assumed that such Item is in the condition required by Section 6(a) hereof. If the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental Value with respect to such Item, such Fair Market Rental Value shall be determined in accordance with the procedure for Appraisal.

Fair Market Value of an Item of Equipment shall be determined on the basis of, and shall mean the amount which would be

obtainable in, an arm's-length transaction between an informed and willing buyer or user (other than (i) a lessee currently in possession, or (ii) a used equipment dealer) under no compulsion to buy and an informed and willing seller under no compulsion to sell, and in such determination costs of removal from the location of current use (including dismantling, shipping and reconstruction) shall not be a deduction from such value and all alternative uses in the hands of such buyer or user, including without limitation, the further leasing of such Item, shall be taken into account in making such determination; **provided, however,** that in determining such amount it shall be assumed that such Item is in the condition required by Section 6(a) hereof. If the Lessor and the Lessee are unable to agree upon a determination of Fair Market Value with respect to such Item, such Fair Market Value shall be determined in accordance with the procedure for Appraisal.

First Basic Rent Date shall mean July 30, 1984 with respect to any Item of Equipment the Closing Date for which occurs on or prior to July 30, 1984 and shall mean January 30, 1985 with respect to any Item of Equipment the Closing Date for which occurs after July 30, 1984.

First Termination Date shall mean the Basic Rent Payment Date first occurring following the fifth anniversary of the last Closing Date.

Guarantor shall mean Illinois Tool Works Inc., a Delaware corporation.

Impositions shall have the meaning set forth in Section 9 hereof.

Improvement shall mean any accessory, equipment or device affixed to or installed upon any Item of Equipment or any improvement, modification, alteration or addition thereto.

Interim Lease Term shall mean (i) with respect to each Item of Equipment the Closing Date for which occurs prior to July 30, 1984, the period from the Closing Date for such Item to and including July 29, 1984 and (ii) with respect to each Item of Equipment the Closing Date for which occurs after July 30, 1984, the period from the Closing Date for such Item to and including January 29, 1985. There shall be no Interim Lease Term for Items of Equipment the Closing Date for which occurs on July 30, 1984.

Investment Percentage shall have the meaning set forth in the Participation Agreement.

Investment Tax Credit shall have the meaning set forth in Section 10 of the Participation Agreement.

Last Basic Rent Date shall mean July 30, 2004.

Late Payment Rate shall mean one percentum (1%) above the rate of interest announced publicly from time to time by Citibank, N.A. in New York, New York as Citibank's base rate.

Lease Extension Period shall have the meaning set forth in Section 17 hereof.

Lender shall mean National Cooperative Services Corporation, a District of Columbia corporation.

Lessor's Cost of an Item of Equipment shall mean the amount set forth in the Certificate of Acceptance therefor under the caption "Lessor's Cost", which amount shall equal the sum of (i) the amount payable to the Vendor on the Closing Date for such Item pursuant to the applicable Purchase Documents and (ii) the allocated portion of the amount payable to the Lessee as reimbursement of amounts paid to Central Gulf Lines, Inc. for remittance to Richard Johnson as consultant to the Lessee.

Lessor's Expenses shall mean with respect to an Item of Equipment the amount set forth in the Certificate of Acceptance for such Item under the caption "Lessor's Expenses", which amount shall represent the amount of invoiced Transaction Expenses payable in respect of, or in the reasonable judgment of the Lessee and the Lessor allocable to, such Item.

Liens and Lessor's Liens shall have the meanings set forth in Section 6 hereof.

Loan Agreement shall mean the Loan, Mortgage and Security Agreement, dated the date hereof, between the Lessor and the Lender.

Loan Percentage shall have the meaning set forth in the Participation Agreement.

Net Economic Return shall have the meaning set forth in the Participation Agreement.

Nonseverable Improvement shall mean any Improvement which is defined as a "Nonseverable Improvement" in Revenue Procedure 79-48, 1979-2 Cum. Bull. 529, as amended or supplemented from time to time, if the conditions of section 4(4).03(B) of said Revenue Procedure are satisfied and the Nonseverable Improvement is described in at least one of the subparagraphs of section 4(4).03(C) of said Revenue Procedure.

Notes shall have the meaning set forth in the Loan Agreement.

Operative Documents shall have the meaning set forth in the Participation Agreement.

Overdue Rate shall have the meaning set forth in the Notes.

Participation Agreement shall mean the Participation Agreement dated as of December 20, 1983 among the Lessor, the Lender, the Guarantor and the Lessee, as the same may from time to time be supplemented, amended, waived or modified.

Parts shall mean all appliances, parts, instruments, appurtenances, accessories and other equipment of whatever nature, which may from time to time be incorporated or installed in or attached to an Item of Equipment.

Person shall mean any individual, partnership, corporation, trust, unincorporated association or joint venture, a government or any department or agency thereof, or any other entity.

Proceeds of Re-letting shall have the meaning set forth in Section 20(a) hereof.

Purchase Documents shall have the meaning set forth in the Participation Agreement.

REA Mortgage shall have the meaning set forth in the Participation Agreement.

Recovery Deductions shall have the meaning set forth in Section 10 of the Participation Agreement.

Replacement Parts shall have the meaning set forth in Section 10 hereof.

Requisition of Use, see definition of Event of Loss.

Security Interest shall have the meaning set forth in the Loan Agreement.

Severable Improvement shall mean any Improvement which is defined as a "Severable Improvement" in Revenue Procedure 79-48, 1979-2 Cum. Bull. 529, as amended or supplemented from time to time.

Tax Assumptions shall mean the assumptions set forth in Section 10 of the Participation Agreement.

Termination Date shall have the meaning set forth in Section 16 hereof.

Transaction Expenses shall have the meaning set forth in the Participation Agreement.

Vendor shall mean Ortner Freight Car Company, a Delaware corporation.

SECTION 2. Acceptance and Lease of Equipment.

Subject to the satisfaction of the terms and conditions of Section 9 of the Participation Agreement, the Lessor hereby agrees to accept delivery from the Vendor under the applicable Purchase Documents and simultaneously to lease to the Lessee, and the Lessee hereby agrees to lease from the Lessor, such items of equipment described in Exhibit A hereto as the Lessor shall have accepted pursuant to the applicable Purchase Documents (such items of equipment, upon such acceptance by the Lessor being the **Equipment**, and individually an **Item of Equipment** or **Item**). Upon satisfaction of the aforementioned terms and conditions and delivery of each **Item of Equipment** to the Lessor from the Vendor on or before the Cut-Off Date and so long as the agency established by Section 4 hereof shall not have been terminated, the Lessee will cause an authorized representative of the Lessee to inspect the same and either (a), if such **Item of Equipment** is found to be in good order, to accept such **Item of Equipment** on behalf of the Lessor as its authorized representative pursuant to Section 4 hereof and on its own behalf as Lessee and to execute and deliver a Certificate of Acceptance with respect thereto, or (b) if the Lessee, acting in good faith, should find that such **Item of Equipment** is not in good order, return the same to the Vendor. Each **Item of Equipment** shall be subject to the terms and conditions of this Lease from the date the Lessor shall have accepted such **Item of Equipment**.

SECTION 3. Term and Rent.

(a) **Term.** The term of this Lease shall begin, with respect to each **Item of Equipment** on the date such **Item of Equipment** becomes an **Item of Equipment** hereunder and shall end on the Expiration Date, unless this Lease shall have been terminated, or the term of this Lease shall have been extended, pursuant to the terms hereof or the terms of the Participation Agreement.

(b) **Basic Rent.** The Lessee shall pay to the Lessor, as basic rent (herein referred to as **Basic Rent**), the following:

(1) on each **Basic Rent Date** occurring from and including the **First Basic Rent Date** to and including the **Last Basic Rent Date**, (i) an amount equal the **Basic Lease Rate Factor** with respect to such **Basic Rent Date** multiplied by the Lessor's Cost of each **Item of Equipment** plus (ii) an

amount equal to the aggregate interest due and payable on such Basic Rent Date with respect to the Notes, and

(2) on each Basic Rent Date occurring during the Lease Extension Period, an amount determined in accordance with Section 17 hereof.

Anything herein contained to the contrary notwithstanding, each payment of Basic Rent hereunder occurring during the term of this Lease shall be, under any circumstance and in any event, in an amount at least sufficient to pay in full, as of the applicable Basic Rent Date, all payments then required to be made on account of the principal of, premium, if any, and interest on all Notes then outstanding. In addition, the Lessee agrees not to prepay any payment of Basic Rent except as specifically provided by the terms hereof.

(c) **Supplemental Rent.** The Lessee shall pay to the Lessor or such other party as may be appropriate the following amounts (herein referred to as **Supplemental Rent** and, together with all Basic Rent, as **Rent**):

(1) on demand, any amount (other than Basic Rent, Casualty Value and Termination Value) which the Lessee assumes the obligation to pay, or agrees to pay, under this Lease to the Lessor or others.

(2) on the date provided herein, any amount payable hereunder as Casualty Value or Termination Value; and

(3) on demand, to the extent permitted by applicable law, interest (computed on the basis set forth in the Notes) at (A) the Overdue Rate on that portion of Rent which is equal to the amount payable pursuant to the Notes and the Loan Agreement and (B) the Late Payment Rate on the remaining portion of Rent, on any payment of Rent not paid when due for any period during which the same shall be overdue.

The expiration or other termination of the Lessee's obligation to pay Basic Rent hereunder shall not limit or modify the obligations of the Lessee with respect to Supplemental Rent. Anything herein contained to the contrary notwithstanding, any payment of Casualty Value or Termination Value hereunder, when added to any payment of Basic Rent required to be made on the date of such payment of Casualty Value or Termination Value as the case may be, shall be, under any circumstance and in any event, in an amount at least sufficient to pay in full, as of the applicable Basic Rent Date or other date as of which such Casualty Value or Termination Value shall be determined, all payments then required to be made on account of the principal of, premium, if any, and interest on the Notes then outstanding.

(d) **Place of Payment.** All Payments of Rent hereunder shall be made to the account of the Lessor at its office at The Northern Trust Company, Chicago, Illinois, Account No. 20691642, Attention: Michael Robinson, and to the Lender as provided in Section 11 of the Participation Agreement, in immediately available funds (in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts) no later than 1:00 P.M. New York, New York time on the date payable hereunder. Upon the termination of the Security Interest, all payments of Rent thereafter made hereunder shall be made to the Lessor as provided above. If the date on which any payment of Basic Rent or Supplemental Rent is due hereunder shall not be a Business Day, such payment shall be made on the next succeeding Business Day.

(e) **Adjustments.** If (i) there shall be a Change in Law which is enacted and effective on or before the date 10 days following the conclusion of the 2nd session of the 98th Congress which adversely affects the ability of the Lessor to claim Recovery Deductions or the Investment Tax Credit in consequence of the Lessee's status as an entity exempt from Federal income taxes (including, but not limited to, H.R. 4170), (ii) there shall be any other Change in Law (but only with respect to Items of Equipment the Closing Date for which occurs after the date such Change in Law is enacted, (iii) the Items of Equipment shall not all be delivered on May 15, 1984, or (iv) Lessor's Expenses shall exceed one percent (1%) of Lessor's Cost of all Items of Equipment, then, the Basic Lease Rate Factor, the Casualty Values and the Termination Values, shall be calculated and adjusted (upward or downward) by the Lessor, in accordance with Revenue Procedure 75-21, 1975-1 C.B. 715, to the extent necessary to preserve the Net Economic Return and (to the extent consistent with the preservation of the Net Economic Return, to minimize the Basic Lease Rate Factor), computed by the same method and utilizing the same parameters as utilized by the Lessor in originally evaluating the transactions contemplated hereby and by the Participation Agreement, **provided, however** that in no event shall any such adjustment reduce any payment below the amount required to pay in full the principal, premium, if any, and interest when due on the Notes. Such adjustment or calculation shall be evidenced by a supplement to this Lease. However, such adjustment or calculation shall become effective as of the date of the enactment of the Change in Law, failure to deliver on May 15, 1984 or payment by the Lessor of Lessor's Expenses in excess of one percent of Lessor's Cost of all Items of Equipment which caused such adjustment or calculation to be necessary whether or not a supplement to this Lease shall have then been entered into.

(f) **Lessee's Right of Review.** Whenever the terms of this Lease (including, without limitation, the terms of paragraph (e) of this Section and the terms of paragraph (d) of Section 10) or the terms of the Participation Agreement (including, without limitation, the refinancing of the Notes contemplated by Section 6(b)(5) thereof) shall require adjustment of the Basic Lease Rate Factor, the Casualty

Values and the Termination Values so as to preserve the Net Economic Return of the Lessor, the Lessee shall have the right, upon demand made within 10 days of receipt from the Lessor, of notice of such adjustment, to have an independent certified public accounting firm of national standing selected by the Lessee review the computations made by the Lessor to verify the accuracy of such computations and the consistency of the method and parameters used by the Lessor with respect thereto. The conclusion reached by such independent certified public accounting firm shall be binding upon the Lessee and the Lessor. All information disclosed by the Lessor to such independent certified public accounting firm in connection with such review shall be confidential and not divulged. All costs and expenses which may be incurred under this paragraph shall be paid by the Lessee.

SECTION 4. Appointment of Representative.

(a) **Appointment of Authorized Representative.** For purposes of accepting delivery of each Item of Equipment from the Vendor, the Lessor hereby appoints the Lessee as authorized representative of the Lessor. Until such authority shall have been terminated pursuant to paragraph (b) of this Section, such authorized representative shall be authorized to take possession of each Item of Equipment upon the delivery thereof to the Lessee by the Vendor, to accept on behalf of the Lessor all Purchase Documents, if any, delivered at such time with respect to such Item of Equipment, either to accept delivery of such Item of Equipment on behalf of the Lessor if it is found to be in good order or to return to the Vendor such Item of Equipment if it is found not to be in good order, and to take such other action on behalf of the Lessor as shall be required to accept delivery of or to return such Item of Equipment. The Lessee hereby agrees that the acceptance of delivery of each Item of Equipment by the Lessee as such authorized representative shall, without further act, irrevocably constitute acceptance by the Lessee of such Item of Equipment for all purposes of this Lease.

(b) **Termination of Appointment of Authorized Representative.** The authority of the authorized representative granted pursuant to paragraph (a) of this Section shall terminate upon notice to the Lessee by the Lessor.

SECTION 5. Net Lease.

This Lease is a net lease, and the Lessee acknowledges and agrees that the Lessee's obligation to pay all Rent hereunder, and the rights of the Lessor in and to such Rent, shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment (Abatements) for any reason whatsoever, including, without limitation, Abatements due to any present or future claims of the Lessee against the Lessor under

this Lease or otherwise, against the Vendor, or against any other Person for whatever reason. Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the obligations of the Lessee be affected, by reason of any defect in or damage to, or any loss or destruction of, the Equipment or any part thereof from whatsoever cause, or the interference with the use thereof by the Lessor or any other Person, any insolvency, bankruptcy, reorganization or similar proceeding by or against the Lessee or the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of the Lessor to enter into this Lease, or any failure of the Lessor to perform any obligation of the Lessor to the Lessee or any other Person under this Lease or any instrument or document executed in connection herewith, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law or regulation to the contrary notwithstanding, it being the express intention of the Lessor and the Lessee that all Rent payable by the Lessee hereunder shall be, and continue to be, payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. The Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided herein, the Lessee nonetheless agrees to pay to the Lessor an amount equal to each Rent payment at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Each Rent payment made by the Lessee shall be final and the Lessee will not seek to have any right to recover all or any part of such payment from the Lessor or the Lender for any reason whatsoever.

SECTION 6. Return of Equipment.

(a) Upon the expiration or termination of this Lease with respect to an Item of Equipment, the Lessee, at its own risk and expense, shall deliver possession of such Item of Equipment to the Lessor at or as near as practicable to, any destination within the continental United States specified in writing by the Lessor, such Item of Equipment to be in the condition in which it is required to be maintained pursuant to Section 10 hereof. Each Item of Equipment, upon redelivery pursuant hereto, shall be free and clear of all mortgages, liens, security interests, charges, claims or other encumbrances (Liens), other than Liens either (i) created or granted by the Lessor, including any such Liens created or granted in connection with the purchase or financing of such Item of Equipment, or (ii) resulting from claims against the Lessor not related to the Lessor's ownership of such Item of Equipment (Liens described in clauses (i) and (ii) above being herein referred to as **Lessor's Liens**).

(b) At the option of the Lessor, Lessee will provide for the storage of the Items of Equipment (at no more than six locations of the Lessee's choice of which locations the Lessee shall give the Lessor prompt notice) for up to (i) 90 days after the expiration or earlier termination (other than a termination contemplated by clause (ii) hereof) of the Basic Lease Term (or earlier if this Lease is terminated pursuant to Section 16 hereof) or any Lease Extension Period or (ii) 120 days upon termination of this Lease following an Event of Default under Section 19 hereof, as the case may be, at Lessee's expense and risk, including, but not limited to, providing insurance as required in Section 13 hereof. At the end of the storage period provided for in this paragraph (b) with respect to an Item of Equipment, the Lessee at its own risk and expense shall deliver possession of such Item of Equipment to the Lessor at, or as near as practicable to, any destination within the States of Florida, Georgia or Alabama, as specified in writing by the Lessor. At the request of the Lessor, the Lessee shall deliver possession of such Item of Equipment to the Lessor at the end of the storage period provided for in this paragraph (b) at, or near as practicable to, any destination within the continental United States (outside the aforementioned three States), as specified in writing by the Lessor, provided, however, that such delivery shall be at the risk and expense of the Lessor. The Lessee shall make redelivery of the Items of Equipment to the Lessor in accordance with this paragraph (b) as soon as practicable after receipt of written notice from the Lessor of the destination for delivery of possession.

SECTION 7. Warranty of the Lessor.

(a) **Quiet Enjoyment.** The Lessor warrants that during the term of this Lease, if no Event of Default has occurred, the Lessee's use of the Equipment shall not be interrupted by the Lessor or anyone claiming solely through or under the Lessor.

(b) **No Other Warranties.** The warranties set forth in paragraph (a) of this Section are in lieu of all other warranties of the Lessor, whether written, oral or implied, with respect to this Lease or the Equipment, and the Lessor shall not be deemed to have modified in any respect the obligations of the Lessee pursuant to Section 5 hereof, which obligations are absolute and unconditional. **THE LESSEE EXPRESSLY AGREES TO LEASE THE EQUIPMENT "AS IS". THE LESSOR SHALL NOT BE DEEMED TO HAVE MADE, AND THE LESSOR HEREBY DISCLAIMS, ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE TITLE, DESIGN OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT, ITS VALUE OR CONFORMITY OF THE EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE DOCUMENT OR AGREEMENTS RELATING THERETO, NOR SHALL THE LESSOR BE LIABLE FOR INCIDENTAL OR**

CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, REVENUE OR PROFIT WITH RESPECT TO ANY ITEM OR LIABILITY TO ANY THIRD PARTY). In addition, acceptance by the Lessee of any Item under this Lease shall be conclusive proof, as between the Lessor and the Lessee, that such Item is in accordance with specifications, in good working order and repair and without defect or inherent vice in title, condition, design, operation or fitness for use, whether or not discoverable by the Lessor or the Lessee as of the date of such tender, and free and clear of all liens, charges and encumbrances; **provided, however,** that nothing contained herein shall in any way diminish or otherwise affect any right either the Lessor or the Lessee may have against the Vendor, and the Lessor hereby assigns to the Lessee and authorizes the Lessee, at the Lessee's expense, to assert for the Lessor's account, during the term of this Lease, so long as no Event of Default shall have occurred hereunder and be continuing, all of the Lessor's rights under any applicable Vendor's warranty and the Lessor agrees to cooperate with the Lessee in asserting such rights; **provided, however,** that the Lessee shall indemnify the Lessor and hold the Lessor harmless from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by the Lessor in connection with, as a result of, or incidental to, any action by the Lessee pursuant to the above authorization. The Lessee shall promptly notify the Lessor and the Lender of any breach of any such warranty or indemnity. The Lessee shall inform the Lessor and the Lender of any legal action proposed to be brought by it, or negotiations proposed to be entered into by it, to enforce such warranties and indemnities and shall afford the Lessor adequate opportunity to participate or intervene in such actions or negotiations as they may desire. The Lessor shall otherwise take, at the Lessee's expense, any action which the Lessee may reasonably request in order that the Lessee may fully obtain the benefits of the foregoing assignment. Notwithstanding the foregoing assignment and authorization, the Lessee agrees to use due diligence to enforce and assert all such warranty and indemnity rights which would have a material effect upon the value of any of the Items. The Lessee will cause any payments resulting from enforcement of such warranty or indemnity to be made to the Lessee if no Default or Event of Default shall have occurred and be continuing, **provided** that, in any event, such payments shall be applied as follows: (i) in case the breach of such warranty or indemnity contributed to an Event of Loss with respect to any Item, **first**, in reduction of the Lessee's obligation to pay Casualty Value and any other amounts due under Section 12 hereof with respect to such Item if not already paid by the Lessee or, if already paid by the Lessee, to reimburse the Lessee for its payment of such Casualty Value and such other amounts, and, **second**, to compensate the Lessee for all other losses or expenses, including reasonable attorneys' fees and costs, incurred by it as a result of such breach of warranty or indemnity, and the balance, if any, shall be paid over to or retained by the Lessor; and (ii) in case the breach of such warranty or indemnity did not contribute to an Event of Loss, **first**, to the proper repair and maintenance of any Item with

respect to which such warranty or indemnity was breached in accordance with the provisions of Section 10 hereof or, if such repair or maintenance has already been made by the Lessee, to reimburse the Lessee for any payments made by it in respect of the repair and maintenance occasioned by such breach, and, second, to compensate the Lessee for all other losses or expenses incurred by it as a result of such breach of warranty or indemnity, and the balance, if any, shall be paid over to or retained by the Lessor.

SECTION 8. Liens.

The Lessee will not directly or indirectly create, incur, assume or suffer to exist any Liens on or with respect to the Equipment or any Item thereof, the Lessor's title thereto or any interest of the Lessor therein (and the Lessee will promptly, but in any event within 30 days after any such creation or incurrence, at its own expense, take such action as may be necessary duly to discharge any such Lien), except (a) the respective rights of the Lessor and the Lessee as herein provided, (b) Lessor's Liens, (c) Liens for taxes either not yet due or being contested by the Lessee in good faith with due diligence and by appropriate proceedings, so long as the nonpayment of any such tax or the contest of any such payment in such proceedings does not materially adversely affect the title, property or rights of the Lessor or the Lender, (d) inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business of the Lessee and not delinquent more than 30 days, so long as such proceedings do not materially adversely affect the title, property or rights of the Lessor or the Lender and (e) choate Liens that have been bonded for the full amount in dispute and which are being contested by the Lessee in good faith and by appropriate proceedings so long as such proceedings do not involve any danger of the sale, forfeiture or loss of the Items of Equipment, title thereto or any interest therein. The Lessor warrants that it has not created and covenants that it will not create, incur or permit to exist at any time before or after delivery of any Item of Equipment under this Lease any Lessor's Lien (other than the Lien of the Loan Agreement). No breach of such warranty and covenant shall release or otherwise affect Lessee's obligations to pay Rent as provided in this Lease.

If any Lien shall be asserted or filed against any Item of Equipment or any Rent or any order (whether or not valid) of any court shall be entered with respect to any such amount by virtue of any claim of any kind, in either case so as to interfere with the due payment of such amount to the Lessor or the Lender or the due application of any such amount by the Lender pursuant to the Loan Agreement, as the case may be, then upon receipt of notice of such claim from the Lessor or the Lender, the Lessee will promptly take such action (including but not limited to the payment of money) as may be necessary to prevent or to nullify the cause or result of such

interference, such obligation or such refusal, as the case may be, or the Lessee will pay directly to the Lessor or the Lender a sum equal to the amount of any diminution in any amount payable by the Lessee under or pursuant to this Lease or the Loan Agreement on account of any such order resulting from such tax or claim.

The Lessee hereby agrees and confirms that this Lease shall be subject in all respects to the security interest created by the Loan Agreement.

SECTION 9. Taxes.

The Lessee agrees to pay and to indemnify the Lessor for, and hold the Lessor harmless from and against, all license, recording and registration fees, income, franchise, gross receipts, sales (other than sales taxes in connection with the sale of any Item of Equipment by the Lessor unless such sale occurs during the continuance of an Event of Default), use, excise, personal property (tangible or intangible), ad valorem, value added, leasing, leasing use, stamp, or other taxes, levies, imposts, duties, charges, or withholdings of any nature, together with any penalties, fines or interest thereon (Impositions), arising out of the transactions contemplated by this Lease, the Participation Agreement, the Notes, the Loan Agreement or any other documents contemplated hereby or thereby and imposed against the Lessor, the Lessee, the Equipment or any Item by any Federal, state, local government or other taxing authority in the United States or by any foreign government or any taxing authority or governmental subdivision of a foreign country, upon or with respect to the Equipment or any part thereof or upon the construction, sale, purchase, ownership, delivery, leasing, subleasing, mortgaging, possession, use, operation, return, transfer or other disposition, documentation, acceptance, storage, repair or maintenance thereof, or upon the rentals, indemnity payments, receipts or earnings arising therefrom, or upon or with respect to this Lease, the Loan Agreement, the Notes, the Participation Agreement, the Purchase Documents or the issuance, endorsement, requisition or subsequent transfer thereof, or otherwise or with respect to the transactions contemplated thereby, excluding Impositions on, based on, or measured by, the net income of the Lessor.

Notwithstanding the foregoing exclusion, there shall not be excluded any Impositions imposed by any jurisdictions, on, based on, or measured by, net income resulting directly or indirectly (whether by inclusion of an item in gross income, disallowance of a credit against tax, disallowance of a deduction for depreciation or cost recovery or otherwise) from (x) the Lessee's receipt of or right to receive any refund or credit pursuant to the Purchase Documents or (y) any payment by the Vendor in satisfaction of a claim against the Vendor with respect to the Equipment or any part thereof under any warranty or indemnity provision of the Purchase Documents or for

failure to meet any specifications attached thereto, unless, and only to the extent that, any Impositions which are not imposed by way of withholding are being contested by the Lessee in good faith (and for the payment of which adequate reserves have been provided) by appropriate proceedings so long as such proceedings do not involve any danger of the sale, forfeiture or loss of any Item of Equipment or any interest therein.

The Lessee further agrees that, with respect to any payment or indemnity under this Lease, such payment or indemnity shall include any amount necessary to hold the recipient of the payment or indemnity harmless on an after-tax basis from all Impositions (without regard to the exclusions set forth above) required to be paid by such recipient (which in the case of the Lessor shall include any member of an affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member) with respect to such payment or indemnity under the laws of any Federal, state or local government in the United States, or under the laws of any foreign government or any taxing authority or governmental subdivision of any foreign government. Payments due from the Lessee to the Lessor pursuant to this Section 9 shall be made directly to the Lessor in immediately available funds.

If any proceeding is commenced, or is threatened in writing, against the Lessor for any Imposition, the Lessor shall promptly notify the Lessee in writing, provided, however, that the failure to give prompt notice shall not impair the Lessor's right to indemnification under this Article 9. If reasonably requested by the Lessee in writing as promptly as reasonably practical after receipt of such notice, the Lessor shall upon receipt of (i) an opinion of independent counsel, to the effect that (a) a meritorious defense exists to the asserted liability for such Impositions that are the subject of such proceeding or threat thereof, and (b) the contest of such asserted liability will not result in a risk of sale, forfeiture or other loss of, or the imposition of a lien upon, any Item of Equipment or any part thereof, and (ii) indemnity satisfactory to it and at the expense of the Lessee (including, without limitation, all costs, expenses, losses, legal and accountants' fees and disbursements, penalties and interest) either (A) in good faith contest (after consultation with Lessee) in the name of the Lessee or the Lessor, the validity, applicability or amount of such Impositions by (a) resisting payment thereof if the Lessor in its full discretion shall determine such course of action to be appropriate, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment be made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings, or (B) if such contest may be undertaken by the Lessee in its own name or (if such contest may not be undertaken by the Lessee in its own name) on behalf of the Lessor, permit the Lessee to contest the validity, applicability or amount of such Impositions, provided, however, that the Lessee shall be permitted to contest such

Impositions only if, prior to commencing any such contest, the Lessee shall have satisfied the conditions listed above and shall have consulted with the Lessor regarding the contest strategy that it intends to follow, and that sole control over the conduct of a contest undertaken by or in the name of the Lessor will reside in the Lessor. If the Lessor shall obtain a refund of all or any part of such Impositions paid by the Lessee the Lessor shall pay the Lessee the amount of such refund; provided that such amount shall not be payable before such time as the Lessee shall have made all payments or indemnities then due under this Section 9 or if a Default or an Event of Default shall have occurred and be continuing. If in addition to such refund the Lessor shall receive an amount representing interest on the amount of such refund, the Lessee shall be paid that proportion of such interest which is fairly attributable to Impositions paid by the Lessee prior to the receipt of such refund (after deducting from the amount of such interest all taxes imposed with respect to the receipt or accrual thereof). The Lessee shall not be deemed to be in default under any of the above indemnification provisions so long as the Lessee (if the Lessee is the party undertaking such contest) shall diligently prosecute such contest. Notwithstanding the foregoing, the Lessor may, at any time, refuse to engage in any such contest or terminate any such contest previously commenced, but if it shall do so, it shall have no right to indemnification for such year for the taxes that were (or would have been) the subject of such contest.

In case any report or return is required to be made with respect to any obligation of the Lessee under this Section 9 or arising out of this Section 9, the Lessee either will make such report or return in such manner as will show the ownership of the Equipment in the Lessor, and send a copy of such report or return to the appropriate party identified pursuant to Section 22 hereof as a "Lessor" for purposes of this Section 9 or will notify the Lessor of such requirement and make such report or return in such manner as shall be satisfactory to the Lessor.

The representations, warranties, indemnities and agreements of such Lessee provided for in this Section 9, the Lessee's obligations under any and all thereof and the obligations of the Lessor hereunder shall survive the expiration or other termination of this Lease or the Participation Agreement.

SECTION 10. Maintenance and Operation; Compliance and Use; Replacement Parts; Improvements; Equipment Marking and Filing.

(a) **Maintenance and Operation.** The Lessee shall operate the Equipment only in the manner for which it was designed and intended and shall maintain, inspect, service, repair and overhaul the Equipment (i) in accordance with the Vendor's recommended procedures so as to keep the Equipment in as good operating condition

as when delivered to the Lessee hereunder, ordinary wear and tear excepted, (ii) in accordance with the interchange rules of the Association of American Railroads and (iii) as well as other similar equipment owned or leased by the Lessee. Throughout the term of this Lease, the possession, operation and maintenance of the Equipment shall be at the sole risk and expense of the Lessee.

(b) **Compliance and Use.** The Lessee agrees that the maintenance, use and operation of the Equipment will not be in violation of the interchange rules of the Association of American Railroads, any statutes, laws, ordinances, regulations and mandatory standards or directives of any governmental agency (including, without limitation, the Department of Transportation or the Interstate Commerce Commission) applicable to the maintenance, use or operation thereof, which violation would have a material adverse effect on the ownership of the Equipment by the Lessor or its use and operation by the Lessee, and, subject to the provisions of Sections 12(b) and 15 hereof, will at all times (1) be used solely in the conduct of its business and (2) be and remain in the possession and control of the Lessee and (3) be located within the continental United States.

(c) **Replacement Parts.** Except as otherwise provided in the succeeding paragraph (d) of this Section, the Lessee, at its own cost and expense, will promptly replace all Parts which may from time to time become worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever (such substituted parts hereinafter called **Replacement Parts**). The Lessee shall notify the Lessor of any Replacement Part having a per item cost of \$10,000 or more. In addition, in the ordinary course of maintenance, service, repair, overhaul or testing, the Lessee may, at its own cost and expense, remove any Parts, whether or not worn out, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use, **provided, however,** that the Lessee shall, at its own cost and expense, replace such Parts as promptly as practicable. All Replacement Parts shall be free and clear of all Liens and shall be in as good operating condition as, and shall have a value and utility at least equal to, the Parts replaced assuming such replaced Parts were in the condition and repair required to be maintained by the terms hereof. All Parts at any time removed from any Item of Equipment shall remain the property of the Lessor, no matter where located, until such time as such Parts shall be replaced by Parts which have been incorporated or installed in or attached to such Item of Equipment and which meet the requirements for Replacement Parts specified above. Immediately upon any Replacement Part becoming incorporated or installed in or attached to an Item of Equipment as above provided, without further act, (i) title to the removed Part shall thereupon vest in the Lessee, free and clear of all rights of the Lessor, and shall no longer be deemed a Part hereunder, (ii) title to such Replacement Part shall thereupon vest in the Lessor, and (iii) such Replacement Part shall become subject to this Lease

and be deemed part of such Item of Equipment for all purposes hereof to the same extent as the Parts originally incorporated or installed in or attached to such Item of Equipment. The Lessee agrees to execute and file such documents as may be reasonably required to create, perfect and maintain the Lender's security interest in any such Replacement Part and the Lessor's ownership in any such Replacement Part.

(d) **Improvements.** (i) **General.** The Lessee may, without the prior written consent of the Lessor or the Lender, but solely at Lessee's expense, either (1) repair an Item of Equipment by the installation of a Replacement Part, or (2) affix, install or make any Nonseverable Improvement or Severable Improvement as the Lessee may deem desirable in the proper conduct of its business, **provided, however,** no such Improvement diminishes the value, utility and condition of such Item of Equipment below the value, utility and condition thereof immediately prior to the making, affixing or installing of such Improvement, assuming such Item of Equipment was then of the value or utility and in the condition required to be maintained by the terms of this Lease.

(ii) **Nonseverable Improvement.** Title to any Nonseverable Improvement shall, upon installation or affixation, vest in the Lessor and thereupon such Nonseverable Improvement shall become a part of the Equipment for all purposes hereof and become subject to this Lease (whether or not the Lessor elects to finance such Nonseverable Improvement). If any such Nonseverable Improvement shall have a cost (including installation) in excess of \$10,000, the Lessee at its sole cost and expense shall promptly furnish the Lessor with a full warranty bill of sale, in form and substance satisfactory to the Lessor, conveying title to such Improvement to the Lessor. The Lessee shall give the Lessor at least 90 days' prior written notice before any Nonseverable Improvement is made and the Lessor shall have the option (but not the obligation) of financing the cost of such Nonseverable Improvement on terms acceptable to the Lessee (in which case the Basic Lease Rate Factor, the Casualty Values and the Termination Values will be increased in such manner as shall be agreed upon by the Lessor and the Lessee). Within 45 days after the giving of such notice, the Lessor shall notify the Lessee in writing whether or not it elects to finance the cost of such Nonseverable Improvement. If the Lessor elects not to finance such Nonseverable Improvement, the Lessee will, subject to the limitations of Section 8 hereof, itself finance such Nonseverable Improvement. Any Nonseverable Improvement installed or affixed to the Equipment pursuant hereto shall be subject and subordinate to the rights of the Lender, as secured party and lienholder.

(iii) **Severable Improvement.** Title to any Severable Improvement shall remain in, and be acquired at the expense of, the Lessee. So long as no Default shall have occurred and be continuing hereunder, the Lessee may remove any Severable Improvement at any

time prior to the expiration or termination of this Lease. The Lessor shall have the option to purchase for cash any Severable Improvement owned by the Lessee at the expiration or termination of this Lease. If the Lessor elects to exercise such option, the Lessor shall, not later than the date of the return of the Item of Equipment pursuant to Section 6 hereof, give the Lessee written notice of its election to purchase such Severable Improvement on a date specified in such notice occurring within 10 days after such return. The purchase price of such Severable Improvement shall be the Fair Market Value as of the date of such purchase. If the Lessor elects to purchase such Severable Improvement, the Lessee will on or prior to the date of such purchase, upon receipt of the purchase price, furnish or cause to be furnished to the Lessor (x) a bill of sale with respect to such Severable Improvement in form and substance satisfactory to the Lessor and (y) such evidence of title as the Lessor may reasonably request.

(e) **Duty to Number and Mark.** The Lessee will cause each Item of Equipment to be kept numbered with the road number set forth in Exhibit A attached hereto. The Lessee will maintain permanently and conspicuously marked upon each side of each Item of Equipment in letters not less than one-half inch in height the following:

"Ownership subject to a Loan, Mortgage and Security Agreement between Cumberland Leasing Co., Owner; National Cooperative Services Corporation, Secured Party, filed under the Interstate Commerce Act."

with appropriate changes and additions as from time to time may be reasonably required by the Lessor or the Lender in order to protect the title of the Lessor to, and security interest of the Lender in, such Item of Equipment, its rights under this Lease and the rights of any assignee under this Lease. The Lessee will not place any Item of Equipment in operation until the required legend shall have been so marked.

The Lessee will not change the road number of any Item of Equipment unless (i) the Lessor and the Lender shall have been given 180 days prior written notice from the Lessee of a proposed change, (ii) a statement of new numbers to be substituted therefor shall have been filed, with the Lender and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Loan Agreement shall have been filed, recorded and deposited and (iii) the Lessee shall have furnished the Lender and the Lessor an opinion of counsel to the effect that such statement of new numbers has been filed in all places necessary to protect the interests of the Lessor and the Lender and no other filing or giving of notice to any other Federal or state agency or office is necessary to protect the interests of the Lessor and the Lender. Upon receipt by the Lessor of the notice referred to in clause (i) above with respect

to any Item of Equipment, the Lessor at its option may direct the Lessee to have such Item of Equipment marked with a road number selected by the Lessor, and the Lessee at its own cost and expense shall forthwith cause the Item to be marked as directed by the Lessor.

The Lessee will not allow the name of any Person to be placed on any Item of Equipment as a designation that might be interpreted as a claim of ownership or of a Lien, but the Items of Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates or any permitted sublessee.

(f) **Filing.** The Lessee, at its own expense, will cause this Lease and the Loan Agreement to be filed and recorded with (i) the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and (ii) any state governmental instrumentality necessary in order to protect the interest of the Lessor or the Lender. The Lessee will undertake, at its own expense, the filing, registering, deposit and recording required of the Lessor under the Loan Agreement and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Lender for the purpose of proper protection, to their satisfaction, of the Lender's and the Lessor's respective interests in the Items of Equipment, or for the purpose of carrying out the intention of this Lease and the Loan Agreement.

The Lessee will promptly furnish to the Lender evidence of all such filing, registering, depositing or recording and an appropriate opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lender and the Lessor.

SECTION 11. Inspection.

The Lessor and the Lender shall have the right, but not the duty, to inspect the Equipment. Upon the request of the Lessor or the Lender, the Lessee shall, at any reasonable time, make the Equipment, and the Lessee's records pertaining to the Equipment, available to the requesting party or its agent for inspection.

SECTION 12. Loss or Destruction; Requisition of Use.

(a) **Event of Loss.** Upon the occurrence of an Event of Loss with respect to any Item of Equipment or in the event of the occurrence of a Deemed Event of Loss, the Lessee shall notify the Lessor thereof within 30 days of the date thereof (except in the case of a Deemed Event of Loss), and within 180 days after such Event of Loss

or Deemed Event of Loss, the Lessee shall purchase such Item of Equipment on an **as is, where is** basis without recourse, representation or warranty, express or implied, from the Lessor at a price equal to the sum of (i) the Casualty Value of such Item of Equipment determined as of the date of such Event of Loss or Deemed Event of Loss if such Event of Loss or Deemed Event of Loss shall occur on a Basic Rent Date, otherwise on the Basic Rent Date immediately following such Event of Loss or Deemed Event of Loss, (ii) interest at the rate payable on the Notes on the amount under clause (i) above from the Basic Rent Date occurring on or next succeeding the date of such Event of Loss or Deemed Event of Loss to the day of payment and (iii) any other Rent then due. In addition, the Lessee shall pay Basic Rent on any Basic Rent Date occurring on or prior to the date of purchase of such Items of Equipment in accordance with the preceding sentence. Upon making such payment in respect thereof and all Rent due and owing with respect thereto, the Lessee's obligation to pay further Basic Rent for such Item of Equipment shall cease, but the Lessee's obligation to pay Supplemental Rent, if any, for such Item of Equipment shall remain unchanged.

(b) **Requisition of Use.** In the case of a Requisition of Use with respect to an Item of Equipment which does not constitute an Event of Loss, such Requisition of Use shall not terminate this Lease with respect to such Item of Equipment and each and every obligation of the Lessee with respect thereto shall remain in full force and effect. So long as no Event of Default shall have occurred and be continuing under this Lease, the Lessee shall be entitled to all sums, attributable to the period such Item of Equipment is subject to this Lease, received by reason of any such Requisition of Use referred to in the preceding sentence.

(c) **Risk of Loss; No Release of Obligations.** Except as provided in this Section, the Lessee shall bear the risk of loss of, and shall not be released from its obligations hereunder in the event of any damage to, the Equipment or any part thereof or any Event of Loss relating thereto.

SECTION 13. Insurance.

(a) **Public Liability and Property Damage Insurance.** The Lessee shall, at all times during the Interim Lease Term, Basic Lease Term, any Lease Extension Period and any storage period provided for in this Lease, maintain in effect at its own expense public liability insurance and property damage insurance in the aggregate amount of \$50,000,000 and on such terms and conditions as are reasonably satisfactory to the Lessor and the Lender, and in any event (i) with such reasonable deductibles which are not more than deductibles with respect to, and in amounts which are not less than, the public liability and property damage insurance applicable to similar equipment on which the Lessee carries insurance, (ii) of the type and in the amount usually carried by corporations engaged in transportation of coal, similarly situated with the Lessee, which covers risks of

the kind customarily insured against by such corporations, and (iii) which is maintained in effect with insurers of recognized responsibility reasonably satisfactory to the Lessor and the Lender.

(b) Insurance Against Loss or Damage to the Equipment. The Lessee shall, at all times during the Interim Lease Term, Basic Lease Term, any Lease Extension Period and any storage period provided for in this Lease, maintain in effect, at its own expense, with insurers of recognized responsibility reasonably satisfactory to the Lessor and the Lender, "all-risk" property insurance in such amounts and on such terms and conditions as are reasonably satisfactory to the Lessor and the Lender, which is of the type and with such reasonable deductibles and in substantially the amount usually carried by corporations engaged in the transportation of coal and similarly situated with the Lessee; **provided** that such insurance shall at all times while the Equipment is subject to this Lease be for an amount which when paid will be not less than the greatest of (i) the Casualty Value for the Equipment from time to time (determined as of the next succeeding Basic Rent Date), (ii) the then full fair market value of the Equipment or (iii) the principal amount then outstanding on the Notes.

(c) Lessor and Lender as Additional Insureds; Notice. Any policies of insurance carried in accordance with this Section and any policies taken out in substitution or replacement for any such policies (i) shall be endorsed to name the Lessor (as owner of the Equipment) and the Lender (as the lienholder) as additional named insureds and loss payees, as their respective interests may appear, (ii) with respect to insurance carried in accordance with the preceding paragraph (b) shall, so long as the Security Interest shall not have been terminated, be made payable to the Lender (and after the Security Interest has been terminated, to the Lessor) and shall be disbursed by the Lender (or the Lessor, as the case may be) to the Lessee or other appropriate Person in payment of the costs actually incurred with respect to repairs made to the Equipment so as to restore it to the operating condition required by Section 10 hereof or shall be disbursed as otherwise required by this Lease, (iii) shall provide that if the insurers cancel such insurance for any reason whatever, or any substantial change is made in the coverage which affects the interests of the Lessor or the Lender, or the same is allowed to lapse for nonpayment of premium or such insurance coverage is reduced, such cancellation, change, lapse or reduction shall not be effective as to the Lessor or the Lender for 30 days after receipt by the Lessor or the Lender, respectively, of written notice by such insurers of such cancellation, change, lapse or reduction, (iv) shall provide that in respect of the interest of the Lessor and the Lender in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other Person (other than of the Lessor or the Lender, as the case may be) and shall insure the Lessor's and the Lender's interests, as they appear, regardless of any breach or violation of any warranties, declarations or conditions

contained in such policies by the Lessee or any other Person (other than by the Lessor or the Lender, as the case may be) and (v) shall provide that the insurer's right of subrogation against the Lessor and the Lender shall be waived. Each liability policy (i) shall be primary without right of contribution from any other insurance which is carried by the Lessor or the Lender and (ii) shall expressly provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(d) **Reports, etc.** Annually on or before January 31 of each year commencing January 31, 1984, and each time there is a proposed reduction or material change in the insurance coverage carried on the Equipment, the Lessee shall furnish to the Lessor and the Lender a detailed report signed by independent insurance brokers (who may be the insurance brokers regularly employed by the Lessee) appointed by the Lessee and acceptable to the Lessor and the Lender (which acceptance shall not be unreasonably withheld) describing the insurance policies then carried and maintained on the Equipment (including the names of the underwriters, the types of risk covered by such policies, the amount insured thereunder and the expiration date thereof) and stating that in the opinion of said insurance brokers such insurance is adequate and reasonable for protection of the Lender and the Lessor, is in compliance with the terms of this Section 13 and is comparable with that carried by other responsible operators of similar equipment. At Lessee's expense Lessee will cause such insurance broker to agree to advise the Lender and the Lessor by telegram confirmed by letter of any default in the payment of any premium and of any other act or omission on the part of Lessee of which it has knowledge and which might invalidate or render unenforceable, in whole or in part, any insurance on the Equipment. The Lessee will also advise the Lessor and the Lender in writing at least 30 days prior to the expiration or termination date of any insurance carried and maintained pursuant to this Section. In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its sole option provide such insurance and, in such event, the Lessee shall, upon demand, reimburse the Lessor, as Supplemental Rent, for the cost thereof, without waiver of any other rights the Lessor may have.

SECTION 14. Indemnification.

Whether or not any of the transactions contemplated by the Participation Agreement and this Lease are consummated, the Lessee agrees to assume liability for, agrees to waive, to the extent permitted by applicable laws, any claims it may have against the Lessor for, and does hereby agree to indemnify, protect, save and keep harmless the Lessor from and against, any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability in tort),

actions, suits, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (Claims) which may be imposed on, incurred by or asserted against the Lessor, whether or not the Lessor shall also be indemnified as to any such Claim by any other Person, in any way relating to or arising out of this Lease, the Participation Agreement, the Loan Agreement or any other document contemplated hereby, or the performance or enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or other disposition of the Equipment or any part thereof or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable and any Claim for patent, trademark or copyright infringement); provided, however, that the Lessee shall not be required to indemnify the Lessor for (a) any Claim in respect of the Equipment arising from acts or events which occur after possession of the Equipment has been redelivered to the Lessor in accordance with Section 6 hereof, or (b) any Claim resulting from acts which would constitute the willful misconduct or gross negligence of the Lessor. If any Claim is made against the Lessee or the Lessor, the party receiving notice of such Claim shall promptly notify the other. **THE LESSEE AGREES THAT THE LESSOR SHALL NOT BE LIABLE TO THE LESSEE FOR ANY CLAIM CAUSED DIRECTLY OR INDIRECTLY BY THE INADEQUACY OF THE EQUIPMENT OR ANY PART THEREOF FOR ANY PURPOSE OR ANY DEFICIENCY OR DEFECT THEREIN OR THE USE OR MAINTENANCE THEREOF OR ANY REPAIRS, SERVICING OR ADJUSTMENTS THERETO OR ANY DELAY IN PROVIDING OR FAILURE TO PROVIDE ANY THEREOF OR ANY INTERRUPTION OR LOSS OF SERVICE OR USE THEREOF OR ANY LOSS OF BUSINESS, ALL OF WHICH SHALL BE THE RISK AND RESPONSIBILITY OF THE LESSEE.**

SECTION 15. Limitation on Right to Assign or Sublease; Possession.

(a) **Lessee's Rights** The Lessee shall have the right, but only with the prior written consent of the Lessor, which consent shall not be unreasonably withheld, to sublet or otherwise relinquish possession of any Item of Equipment or any part thereof; provided, however, that (i) no sublease shall be permitted hereunder unless the Equipment would be, and continues to be, in the possession of the sublessee, "section 38 property", within the meaning of section 48 of the Code, used within the continental United States and the rights of the sublessee thereunder are expressly subject and subordinate to the rights of the Lessor and the Lender; (ii) no sublease or other relinquishment of the possession of any Item of Equipment shall in any way discharge or diminish any of the Lessee's obligations to the Lessor hereunder and, (iii) no sublease shall be permitted which would cause the Lessor not to realize the Tax Assumptions set forth in Section 10 of the Participation Agreement and (iv) no sublease shall be

permitted the term of which would extend beyond the Expiration Date. The Lessee shall not have the right to assign this Lease except as permitted by Sections 8(c) of the Participation Agreement and paragraph (b) of this Section 15.

(b) **Special Assignment Provision for Secured Parties under REA Mortgage.** Notwithstanding any provisions herein contained to the contrary, the Lessor hereby consents to the Lessee's assignment of its rights, but not its obligations, under this Lease to the REA and the other secured parties under the REA Mortgage (the REA and such secured parties being herein called the **Secured Parties**) for the purpose of securing notes, bonds or other obligations for borrowed money now or hereafter secured by the REA Mortgage, or the realization on or enforcement of the REA Mortgage or the exercise by the Secured Parties thereunder of the rights, powers, or privileges provided in the REA Mortgage, **provided, however,** that prior to the exercise by any of the Secured Parties of any rights under such assignment, the Secured Parties shall have expressly agreed in a writing addressed and delivered to the Lessor and, so long as the Security Interest has not been terminated, the Lender, and satisfactory to the Lessor and, so long as the Security Interest has not been terminated, the Lender in the reasonable opinion of each of them, to become jointly and severally liable with the Lessee on all of the Lessee's obligations under this Lease and the Participation Agreement. So long as no Event of Default under this Lease (except those enumerated in Section 19(e) through (i) hereof) shall have occurred and be continuing, the Secured Parties may make a further assignment to a utility company, including but not limited to a utility cooperative, of all of their rights under this Lease, as assigned, with the prior written consent of the Lessor and, so long as the Security Interest has not been terminated, the Lender, which consents shall not unreasonably be withheld, after taking into account in determining the reasonableness of giving or withholding such consents, among other circumstances, (i) the tax attributes of such further assignee, (ii) the credit standing of such further assignee and, if the Secured Parties are to remain jointly and severally liable, the credit standing of the Secured Parties and (iii) the capability of such further assignee to properly perform, or cause to be performed, the maintenance and other obligations of the Lessee under this Lease. At the time of such further assignment, such further assignee shall expressly agree in a writing addressed and delivered to the Lessor, and, so long as the Security Interest has not been terminated the Lender, and satisfactory to each of them in the reasonable opinion of each of them, to become jointly and severally liable with the Lessee and the Secured Parties on all of the Lessee's obligations under this Lease and the Participation Agreement. In the event of such a further assignment, if the Lessor and, so long as the Security Interest has not been terminated, the Lender determines that the further assignee meets the then current credit standards of the Lessor and, so long as the Security Interest has not been terminated, the Lender for transactions of similar dollar amount and duration, then the Lessor and, so long as the

Security Interest has not been terminated, the Lender shall execute and deliver to the Secured Parties a release of their obligations under this Lease and the Participation Agreement.

(c) **Lessor's Rights.** The Lessor will not assign, convey or otherwise transfer any of its right, title or interest in and to this Lease, or any Item of Equipment without the prior written consent of the Lessee and the Lender, provided that the Lessor may assign, convey or otherwise transfer all or a portion of such right, title or interest, without the consent of any Person (except the Lender and the Lessee if an Event of Default under Section 8.1(b) of the Loan Agreement shall have occurred and be continuing), (a) so long as the agreement of the Guarantor set forth in paragraph (b) of Section 7 of the Participation Agreement shall be the legal, valid and binding obligation of the Guarantor with respect to the recourse obligations of Cumberland Leasing Co. in the Operative Documents, to any corporation under the laws of the United States of America, any State thereof or the District of Columbia, all of the voting stock of which is owned (directly or indirectly) by the Guarantor if (x) such corporation duly assumes all or a portion, as the case may be, of the obligations of the Lessor under each of the Operative Documents or (y) the transferor remains liable for such obligations, or (b) any bank, insurance company, leasing company or other entity with capital and surplus of at least \$50,000,000, if (x) such entity duly assumes all or a portion, as the case may be, of such obligations or (y) the transferor remains liable for such obligations. Except as provided in clause (a)(y) or (b)(y) above, the transferor shall be automatically released from any of its obligations which the transferee has assumed in connection with any such transfer. Upon any such assignment, conveyance or transfer, the transferee shall promptly provide the Lender and the Lessee with a written assumption in form reasonably satisfactory to them, of the transferor's obligations under each of the Operative Documents to the extent transferred, and the transferee shall be deemed a "Lessor", and shall be deemed to have made all payments, in respect of the portion of the right, title or interest so transferred, and shall have a ratable interest therein. No transfer may result in more than three Persons being deemed a Lessor hereunder.

SECTION 16. Voluntary Termination for Obsolescence.

(a) **Right to Terminate, Procedures.** In the event that the Lessee shall in its reasonable judgement determine that the Equipment shall have become economically obsolete (which determination shall not be premised upon comparisons of the capital costs, financing costs or lease rentals of the Equipment and of other railroad cars owned, leased or otherwise available to the Lessee) or surplus to the Lessee's requirements (pursuant to a determination of the Lessee's Board of Trustees as certified in writing to the Lessor by the President or chief operating officer of the Lessee), the Lessee shall have the right, at any time on or after the First Termination Date,

on 180 days prior written notice to the Lessor and the Lender, to terminate this Lease with respect to all but not less than all Items of Equipment, such termination to be effective on the Basic Rent Date next following the expiration of the 180 day notice period but in no event prior to the First Termination Date (the Termination Date); **provided, however,** that no Default or Event of Default shall have occurred and be continuing hereunder and **provided, further,** that (i) on the Termination Date the Items of Equipment shall be in the same condition as if being redelivered pursuant to Section 6 and free and clear of all Liens except the Loan Agreement and this Lease and (ii) the Lessee in making such election to terminate shall not unreasonably discriminate (which unreasonable discrimination shall be deemed to include economic comparisons based solely upon capital costs, financing costs and lease rentals) against the Equipment as compared with other similar railroad cars owned or leased by the Lessee. During the period from the giving of such notice until the Termination Date, the Lessor may, and the Lessee, as agent for the Lessor, shall, use their best efforts to obtain bids for the purchase of the Equipment. 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 at Lessee's expense agents for purposes of fulfilling its obligations set forth in this Section. On the Termination Date, the Lessor shall sell the Equipment for cash to whomsoever shall have submitted the highest bid prior to such date (other than the Lessee or any affiliate of the Lessee) and shall transfer to such purchaser all of the Lessor's right, title and interest in and to the Equipment, and thereupon the Lessee shall deliver possession of the Equipment to the Lessor in accordance with the terms of Section 6 hereof. The Lessor shall certify in writing to the Lessee (i) the amount of such total sale price, (ii) the expenses incurred by the Lessor in connection with such sale, and (iii) that such total sale price represents the highest bid received by the Lessor for the purchase of the Equipment. The total sale price realized at such sale shall, subject to Lessor's obligations to the Lender, be retained by the Lessor, and, in addition, on the Termination Date, the Lessee shall pay to the Lessor the Basic Rent payment payable on such date and the amount, if any, by which (A) the Termination Value, computed as of the Termination Date, exceeds (B) the proceeds of such sale less all expenses incurred by the Lessor in selling the Equipment. In the event no such sale takes place, the Lessee shall pay to the Lessor or, as provided in Section 11 of the Participation Agreement, to the Lender, the Termination Value, computed as of the Termination Date, plus any reasonable expenses incurred by the Lessor in connection therewith and the Basic Rent payment then due. Upon payment of all amounts required to be paid by the Lessee pursuant to this paragraph, the obligation of the Lessee for all Basic Rent accruing hereunder due and payable after, but not on or before, the Termination Date shall cease. The Lessor shall be under no duty to solicit bids (but shall have the right to do so), to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any

cost or expense in connection with any sale pursuant to this Section 16 other than to transfer or to cause to be transferred to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided all the Lessor's right, title and interest in and to the Equipment. Any sale pursuant to this Section 16 shall be free and clear of the Lessee's rights to the Equipment and shall be made on an **as is, where is** basis, without any warranty whatsoever on the part of the Lessor except that the Lessor shall warrant to the purchaser that the Equipment is free and clear of all Lessor's Liens and Liens as to which the Lessee has indemnified the Lessor. The foregoing provisions of this Section 16(a) to the contrary notwithstanding, the Lessor may, by notice in writing given to the Lessee on or prior to the Termination Date, elect to retain the Equipment if the Lessor shall have delivered to the Lessee a release of all obligations of the Lessee to pay Basic Rent with respect to the Equipment on any and all Basic Rent Dates occurring after (but not on or before) the Termination Date and of the obligation of the Lessee to pay Termination Value in respect of the Equipment.

(b) **Lessee's Election to Rescind.** Notwithstanding the foregoing, provided that no Default or Event of Default shall have occurred and be continuing hereunder, upon written notification given to the Lessor not less than 90 days prior to the Termination Date, the Lessee may elect to rescind the Lessee's notice of termination, in which case this Lease shall not terminate as set forth in this Section, but shall continue in full force and effect as though no such notice of termination had been given by the Lessee. The Lessee shall have the right to rescind a notice of termination pursuant to this paragraph (b) only one time.

SECTION 17. Lease Extensions.

(a) **Lease Extension Periods.** Provided that this Lease has not been terminated and provided that no Default or Event of Default shall have occurred and be continuing hereunder, the Lessee shall have the option to extend this Lease with respect to all (but not less than all) of the Items of Equipment at the Expiration Date and, in the event this Lease shall have been extended, at the expiration date of any such extension and at the expiration date of successive extensions thereafter (any such expiration date being referred to in this Section as the **Extension Date**) for an unlimited number of periods (each a **Lease Extension Period**) each of which shall not be for a period of less than three years, at a rental equal to the Fair Market Rental Value of such Items of Equipment, payable as provided in clause (2) of paragraph (b) of Section 3 hereof.

(b) **Lease Extension Procedures.** Not less than 180 days prior to each Extension Date the Lessee may, by expressly irrevocable written notice to the Lessor, exercise the Lessee's lease extension option described above, which notice shall set forth the Lessee's

estimate of the Fair Market Rental Value of the Equipment as of the Extension Date. If, on or before a date 90 days prior to the Extension Date, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental Value of the Equipment, such Fair Market Rental Value shall be determined in accordance with the procedure for Appraisal.

SECTION 18. Purchase Option.

(a) **Right to Purchase.** Provided that this Lease has not been terminated and provided that no Default or Event of Default shall have occurred and be continuing hereunder, the Lessee shall have the option to purchase all, but not less than all, of the Items of Equipment on the Expiration Date and, in the event this Lease shall have been extended pursuant to the provisions of Section 17 hereof, on the expiration date of any Lease Extension Period (any such expiration date being referred to in this Section as the **Purchase Date**) for a purchase price equal to the Fair Market Value thereof, determined as of the Purchase Date.

(b) **Notice.** Not less than 180 days prior to the Purchase Date, the Lessee may, by expressly irrevocable written notice to the Lessor, exercise the Lessee's purchase option described above, setting forth, in such written notification, the Lessee's estimate of the Fair Market Value as of the Purchase Date of the Equipment. If, on or before a date 90 days prior to the Purchase Date, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of such Items, such Fair Market Value shall be determined in accordance with the procedure for Appraisal.

(c) **Sale of Equipment.** On the Purchase Date, if no Default or Event of Default shall have occurred and be continuing hereunder, the Lessee shall purchase from the Lessor and the Lessor shall sell to the Lessee, without recourse or warranty, the Equipment for a cash consideration equal to the Fair Market Value thereof. Upon payment of such purchase price, the Lessor shall, upon request of the Lessee, execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that each such Item of Equipment is free and clear of all Liens by or in favor of any Person claiming by, through or under the Lessor) for such Items, and such other documents as may be required to release such Items from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense. The fees of all brokers and any other costs or expenses and transfer or other taxes (other than federal, state or local income taxes) incurred in connection with a purchase of the Equipment by the Lessee pursuant to this Section 18 shall be borne by the Lessee.

SECTION 19. Events of Default.

The term **Event of Default**, wherever used herein, shall mean any of the following events under this Lease (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary, or shall come about or be effected by operation of law, or be pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) The Lessee shall fail to make any payment of Rent within 5 days after the same shall become due; or

(b) The Lessee shall fail to maintain in effect insurance with respect to any Item of Equipment as required by Section 13 hereof or shall fail to pay any premium when due in respect thereof; or

(c) The Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Lease, the Participation Agreement or the Equipment Contract, and such failure shall continue for 30 days after notice thereof is given by the Lessor or the Lender to the Lessee or, in the case of the Lessee's failure to pay any indemnity as provided in the Participation Agreement such failure shall continue unremedied for a period of 15 days after written notice thereof is given by or on behalf of the Lessor or the Lender; or

(d) Any representation or warranty made by the Lessee in this Lease, the Participation Agreement or any agreement, document or certificate delivered by the Lessee in connection herewith or therewith or pursuant hereto or thereto (other than any representation or warranty made by the Lessee in paragraph (b) of Section 10 of the Participation Agreement) shall prove to have been incorrect in any material respect when any such representation or warranty was made or given and shall remain material and incorrect at the time in question; or

(e) Other than with respect to indebtedness secured by or loan agreements in respect of indebtedness secured by the REA Mortgage, (i) the Lessee shall fail to pay, on the due date for payment thereof (whether at maturity, upon acceleration or otherwise) after the expiration of any grace period, any obligation with respect to any borrowed monies or advances for borrowed monies in the unpaid principal amount of \$1,000,000 or more (including any obligation with respect to any borrowed monies or advances directly or indirectly guaranteed by the Lessee or in respect of which the Lessee is contingently liable); or (ii) the Lessee shall fail to observe or perform any term, covenant or agreement contained in any indenture, contract, agreement or other instrument by which the Lessee is bound evidencing or securing borrowed monies or advances, or pursuant to which the

Lessee has given its guarantee, in each case in the unpaid principal amount of \$1,000,000 or more, if the effect of such failure referred to in this clause (ii) is to accelerate, the maturity thereof or of any such obligations; or

(f) The Lessee shall fail to pay, on the due date for payment thereof (whether at maturity, upon acceleration or otherwise) after the expiration of any grace period, any obligation with respect to borrowed monies secured under the REA Mortgage or any other event of default shall have occurred under the REA Mortgage and, in the case of any such other event, the mortgagee under the REA Mortgage shall have declared the Lessee to be in default thereunder or shall have proceeded to enforce remedies available to it in the event of an "event of default" thereunder; or

(g) The Lessee shall (1) be adjudicated a bankrupt or become subject to an order for relief under any federal bankruptcy law, (2) not pay, or admit in writing its inability to pay, its debts generally as they become due, (3) make an assignment for the benefit of creditors, (4) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property, (5) institute any proceedings seeking an order for relief or to adjudicate it a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (6) take any action to authorize or effect any of the foregoing actions, or (7) fail to contest in good faith any appointment or proceeding described in Section 19(i) hereof; or

(h) Without the application, approval or consent of the Lessee, a receiver, trustee, examiner, liquidator or similar official shall be appointed for the Lessee or any part of its property, or a proceeding described in Section 19(g) shall be instituted against the Lessee and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty consecutive days; or

(i) Final judgment for the payment of money in excess of \$1,000,000 shall be rendered by a court of record against the Lessee and the Lessee shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereon within 90 days from the entry thereof, and within said period of 90 days, or such longer period during which execution on such judgment shall have been stayed, appeal therefrom and cause the execution thereon to be stayed during such appeal, and except for any such final judgment which the Lessee is contesting in good faith by

appropriate proceedings and for which the Lessee has established adequate reserves and/or possesses adequate insurance coverage.

SECTION 20. Remedies.

(a) Upon the occurrence of any Event of Default and so long as the same shall be continuing, the Lessor may exercise one or more of the following remedies, as the Lessor in its sole discretion shall lawfully elect:

(i) Proceed by appropriate court action, 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;

(ii) By notice in writing terminate this Lease, whereupon all rights of the Lessee to the use of the Equipment or any part thereof shall absolutely cease and terminate but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessee, if so requested by the Lessor, shall at its expense promptly return the Equipment to the possession of the Lessor at such place as the Lessor shall designate and in the condition required upon the return thereof pursuant to and in accordance with the terms of Section 10 hereof, or the Lessor, at its option, may, but shall be under no obligation to, to the extent permitted by applicable law, enter upon the premises where the Equipment is located and take immediate possession of and remove the same, irrespective of whether the Lessee, any sublessee or any other person may be in possession of any Item of Equipment, all without prior demand, by summary proceedings or otherwise. The Lessee shall, without further demand, forthwith pay to the Lessor an amount equal to any unpaid Rent due and payable for all periods up to and including the Basic Rent Date following the date on which the Lessor has terminated this Lease, plus, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the Casualty Value, computed as of the Basic Rent Date following the date on which the Lessor has terminated this Lease. Following the return of the Equipment to the Lessor pursuant to this paragraph the Lessor shall, as soon as commercially practicable, proceed to either sell or re-let the Equipment in a commercially reasonable manner. If the Lessor re-lets the Equipment, the present value of the rental which shall be payable to the Lessor in connection with such re-letting for the period from the Basic Rent Date following the date on which the Lessor has terminated this Lease to the end of the Basic Lease Term or the Lease Extension Period, as the case may be, computed on the basis of a discount rate equal to one percentum (1%) above the

rate of interest prevailing at such time on Treasury obligations of a maturity equal (or as nearly so as possible) to the period from the termination of the Lease to the Expiration Date or the end of the Lease Extension Period, as applicable (compounded for the periodicity of the payment of rents under such re-letting), shall be referred to hereinafter as the **Proceeds of Re-letting**. The proceeds of such sale or the Proceeds of Re-letting, as the case may be, shall be applied by the Lessor (A) **first**, to pay all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor as a result of the default and the exercise of its remedies with respect thereto, (B) **second**, to pay to the Lessor an amount equal to any unpaid Rent due and payable, and (C) **third**, to reimburse the Lessee for the Casualty Value to the extent previously paid by the Lessee as liquidated damages. Any surplus remaining thereafter shall be retained by the Lessor. To the extent that all Rent then due and payable has not been previously paid, the Lessee shall forthwith pay to the Lessor, except as otherwise provided in Section 11(a) of the Participation Agreement, the sum of (1) the amount by which (X) all Rent then due and payable exceeds (Y) the sale price or the Proceeds of Re-letting, as the case may be, of the Equipment, and (2) interest at the Overdue Rate on that portion of Rent required to discharge amounts payable to the Lender under the Notes, the Loan Agreement, the Participation Agreement and this Lease and (3) interest at the Late Payment Rate on the remaining portion of Rent, the interest under (2) and (3), above to be computed from the date or dates such Rent is payable hereunder until such Rent is paid by the Lessee.

(b) The Lessee shall be liable for all costs, charges and expenses, including reasonable legal fees and disbursements, incurred by the Lessor by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, whether or not suit is instituted.

(c) No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any Default or Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default. The failure or delay of the Lessor in exercising any rights granted it hereunder upon occurrence of any Default or Event of Default or any similar Default or Event of Default shall not constitute a waiver of such right upon the continuation or recurrence of such Default or any similar Default or Event of Default or Event of Default and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any

other right provided herein. To the extent permitted by applicable law, the Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require the Lessor to sell, lease or otherwise use any Item of Equipment in mitigation of the Lessor's damages except to the extent expressly set forth in this Section 20.

SECTION 21. Notices.

All communications, consents and notices provided for herein shall be in writing and shall become effective when received and shall be made by registered or certified mail or by hand delivery to the recipient and addressed (a) if to the Lessor, at 8501 West Higgins Road, Chicago, Illinois, Attention: Vice President and General Counsel (with copies to the Lender and to GATX Leasing Corporation at Four Embarcadero Center, San Francisco California 94111, Attention: Contracts Administration), (b) if to the Lessee, at P.O. Box 272000, Tampa, Florida 33688, Attention: Manager of Financial Services (with a copy to the Southeast Area - Electric, REA, Washington, D.C. 20250), and (c) if to the Lender, at 1115 30th Street, N.W., Washington, D.C. 20007, Attention: Ira Shesser; or at such other address as any of the foregoing Persons may from time to time designate by notice duly given in accordance with the provisions of this Section to such other Persons.

SECTION 22. Successors, Assigns and Indemnified Parties.

This Lease, including all agreements, covenants, representations and warranties, shall be binding upon and inure to the benefit of, and may be enforced by, (i) the Lessor and its successors, permitted assigns and agents, (ii) the Lender, as assignee and secured party, and (iii) the successors, assigns and agents of the Lender, and (2) the Lessee and its successors and, to the extent permitted hereby, assigns. With respect to the provisions of Sections 7, 9 and 14 hereof, the Lessor, the Lender and any subsequent holder of a Note and the successors, assigns and agents of the foregoing shall each be indemnified thereunder as though specifically named therein as "Lessor" and, with respect to clause (b) of the proviso to Section 14 hereof, the willful misconduct or gross negligence of the Lessor or any one such Person shall not affect the rights of any other person indemnified thereunder.

SECTION 23. Amendments and Miscellaneous.

(a) The terms of this Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever except by written instrument signed by the Lessor and the Lessee; provided, however, that, so long as the Security Interest has

not been terminated, no such waiver, alteration, modification, amendment or supplement shall make any change, and no termination shall be made, without the consent of the Lender; and provided, further, however, that no such waiver, alteration, modification, amendment or supplement shall be or become effective until approved by the Rural Electrification Administration.

(b) All agreements, indemnities, representations and warranties contained in this Lease, the Participation Agreement or any agreement, document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery of this Lease and the expiration or other termination of this Lease.

(c) Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(d) This Lease and the Participation Agreement represent the entire agreement of the parties hereto with respect to the subject matter hereof and supersede any and all prior understandings. This Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title or interest in or to the Equipment, except as lessee only.

(e) This Lease may be executed in any number of counterparts and by the different parties hereto on separate counterparts. The single executed original of this Lease marked "Original" shall be the "Original" and all other counterparts hereof shall be duplicates and be marked "Duplicate". To the extent that this Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Lease may be created through the transfer or possession of any counterpart other than the "Original".

(f) This Lease has been negotiated and delivered in the State of New York and shall be governed by, and construed in accordance with, the laws of the State of New York.

(g) The division of this Lease into sections, the provision of a table of contents and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Lease.

(h) Although this Lease is dated as of the date first above written for convenience, the actual dates of execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto, and this Lease shall be effective on the later of (i) the latest of such dates or (ii) the date on which it is approved by the Rural Electrification Administration.

IN WITNESS WHEREOF, the parties hereto have each caused this Lease to be duly executed by their respective officers thereunto duly authorized as of the date set forth below.

CUMBERLAND LEASING CO.,
as Lessor

By 

Title:

David B. Smith
Vice President & Treasurer

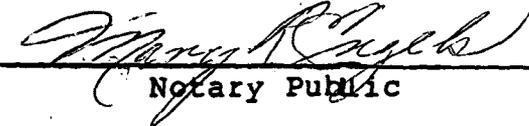
[SEAL]

Date: December 30, 1983

State of Illinois)
) ss:
County of COOK)

On this 30th day of December, 1983, before me personally appeared David Smith, to me personally known, who being by me duly sworn, says that he is the Treasurer of Cumberland Leasing Co., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]



Notary Public

My commission expires: 3/31/87

SEMINOLE ELECTRIC COOPERATIVE, INC.,
as Lessee

By P. H. S. Haller
Title:

Date: December 30, 1983

[SEAL]

State of Florida)
County of *Hillsborough*) SS:

On this *30th* day of December, 1983, before me personally appeared *P.W. Helfer*, to me personally known, who being by me duly sworn, says that he is the *President* of Seminole Electric Cooperative, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Mary Ann East

Notary Public

My commission expires:

Notary Public, State of Florida
My Commission Expires Sept. 19, 1986
Bonded thru Troy Ebin - Insurance, Inc.

**EXHIBIT A
to Lease**

DESCRIPTION OF EQUIPMENT

The Equipment shall consist of the following items:

<u>Quantity</u>	<u>Description</u>
98	100-ton nominal capacity gondola cars with single rotary dump features manufactured by Ortner Freight Car Company having road numbers SEMX 84200 through SEMX 84297.
2	100-ton nominal capacity gondola cars with double rotary dump features manufactured by Ortner Freight Car Company having road numbers SEMX 84904 and SEMX 84905.

**EXHIBIT B
to Lease**

CERTIFICATE OF ACCEPTANCE

under

EQUIPMENT LEASE dated as of December 20, 1983 (the Lease) between **CUMBERLAND LEASING CO.**, as lessor (the Lessor), and **SEMINOLE ELECTRIC COOPERATIVE, INC.**, as lessee (the Lessee).

(1) The Equipment.

The Lessee hereby certifies that the Equipment set forth and described in Schedule 1 hereto (which Schedule includes the amount of the Lessor's Cost thereof) have been delivered to the Lessee at _____, inspected by the Lessee, found to be in good order and accepted under the Lease, all on the date hereof.

(2) Representations by the Lessee.

The Lessee hereby represents and warrants to the Lessor and the Lender, as such term is defined in the Lease, that on the date hereof:

(a) The Lessee has satisfied or complied with all requirements set forth in any certificate of the Lessee, in the Lease and in the Participation Agreement to be satisfied or complied with on or prior to the date hereof.

(b) No Default or Event of Default under the Lease has occurred and is continuing on the date hereof.

(c) The Lessee has obtained, and there are in full force and effect, such insurance policies with respect to the Equipment as are required to be obtained under the terms of the Lease.

IN WITNESS WHEREOF, the Lessee has caused this Certificate of Acceptance to be duly executed by one of its officers thereunto duly authorized this _____ day of _____, 1984.

EXHIBIT B
to Lease

SEMINOLE ELECTRIC COOPERATIVE, INC.,
as Lessee

By _____
Title: Assistant Treasurer

Accepted on the date set
forth above on behalf of the
Lessor:

CUMBERLAND LEASING CO.,
as Lessor

By **SEMINOLE ELECTRIC**
COOPERATIVE, INC.,
as Authorized Representative

By _____
(Title)

EXHIBIT B
to Lease

SCHEDULE 1 TO
CERTIFICATE OF ACCEPTANCE

Description of Equipment, Lessor's Expenses and Lessor's Cost:

<u>Description</u>	<u>Amount Payable to Vendor</u>	<u>Lessor's Cost</u>	<u>Lessor's Expenses</u>
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Total Lessor's Cost \$ _____

Total Lessor's Expenses \$ _____

**EXHIBIT C
to Lease**

CASUALTY VALUES and TERMINATION VALUES

The Casualty Value and Termination Value of the Equipment shall be the percentage of Lessor's Cost set forth opposite the applicable Basic Rent Date:

<u>Basic Rent Payment Date</u>	<u>Casualty Value(a)</u>	<u>Termination Value(a)</u>
7/30/1984	105.244 %	
1/30/1985	107.485	
7/30/1985	109.409	
1/30/1986	108.179	
7/30/1986	109.407	
1/30/1987	107.486	
7/30/1987	108.006	
1/30/1988	105.348	
7/30/1988	105.099	
1/30/1989	101.643	
7/30/1989	100.737	100.737 %
1/30/1990	96.978	96.978
7/30/1990	95.937	95.937
1/30/1991	94.956	94.956
7/30/1991	93.825	93.825
1/30/1992	92.754	92.754
7/30/1992	91.533	91.533
1/30/1993	90.373	90.373
7/30/1993	89.061	89.061
1/30/1994	87.809	87.809
7/30/1994	86.410	86.410
1/30/1995	84.129	84.129
7/30/1995	81.634	81.634
1/30/1996	79.151	79.151
7/30/1996	76.467	76.467
1/30/1997	73.791	73.791
7/30/1997	70.908	70.908

(a) Subject to adjustment as provided in Sections 3(e) and 10 of the Lease and Section 10 of the Participation Agreement.

EXHIBIT C
to Lease

<u>Basic Rent Payment Date</u>	<u>Casualty Value (a)</u>	<u>Termination Value (a)</u>
1/30/1998	68.033 %	68.033%
7/30/1998	64.945	64.945
1/30/1999	61.861	61.861
7/30/1999	58.561	58.561
1/30/2000	55.263	55.263
7/30/2000	51.746	51.746
1/30/2001	48.226	48.226
7/30/2001	44.485	44.485
1/30/2002	40.740	40.740
7/30/2002	36.772	36.772
1/30/2003	32.800	32.800
7/30/2003	28.602	28.602
1/30/2004	24.401	24.401
7/30/2004	20.000	20.000

(a) Subject to adjustment as provided in Sections 3(e) and 10 of the Lease and Section 10 of the Participation Agreement.

EXHIBIT D
to Lease

SCHEDULE A

RAILCARS

	<u>Basic Rent</u> <u>Date (as of 30th</u> <u>Day of each month)</u>	<u>Basic Lease</u> <u>Rate Factor</u>
1	1/1985	.6467128
2	7/1985	.685515
3	1/1986	.726646
4	7/1986	.770244
5	1/1987	.816459
6	7/1987	.865447
7	1/1988	.917373
8	7/1988	.972416
9	1/1989	1.030761
10	7/1989	1.092606
11	1/1990	1.158163
12	7/1990	1.227652
13	1/1991	1.269581
14	7/1991	1.314026
15	1/1992	1.361137
16	7/1992	1.411075
17	1/1993	1.464009
18	7/1993	1.520119
19	1/1994	1.579596
20	7/1994	1.642642
21	1/1995	2.668422
22	7/1995	2.739260
23	1/1996	2.814348
24	7/1996	2.893942
25	1/1997	2.978311

EXHIBIT D
to Lease

SCHEDULE A

RAILCARS

	<u>Basic Rent</u> <u>Date (as of 30th</u> <u>Day of each month)</u>	<u>Basic Lease</u> <u>Rate Factor</u>
26	7/1997	3.0677428
27	1/1998	3.162539
28	7/1998	3.263024
29	1/1999	3.369538
30	7/1999	3.482443
31	1/2000	3.602122
32	7/2000	3.728982
33	1/2001	3.863453
34	7/2001	4.005993
35	1/2002	4.157085
36	7/2002	4.317243
37	1/2003	4.487010
38	7/2003	4.666963
39	1/2004	4.857714
40	7/2004	5.059894