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RECORDATION NO. 5889 TIMK 1485

OCT 24 1988 1 05 PM October 24, 1988

INTERSTATE COMMERCE COMMISSION

8-298A050

Ms. Noretta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

No. \_\_\_\_\_  
Date OCT 24 1988  
Fee \$ 13.00

Dear Ms. McGee:

ICC Washington, D. C.

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) fully executed copies of an Equipment Lease dated as of August 31, 1988, a primary document as defined in the Commission's Rules for the Recordation of Documents (49 C.F.R. Section 1177).

The names and addresses of the parties to the enclosed document are:

Lessor: BarclaysAmerican/Leasing, Inc.  
201 South Tryon Street  
P.O. Box 31217  
Charlotte, North Carolina 28231

Lessee: The Timken Company  
1835 Dueber Avenue, S.W.  
Canton, Ohio 44706

OCT 24 1 00 PM '88  
MOTOR OPERATING UNIT  
100 OFFICE OF THE SECRETARY

A description of the railroad equipment covered by the enclosed document is:

Seven (7) remanufactured Caterpillar-powered SW-1200, 130-ton Railroad Switcher Locomotives bearing Serial Numbers 4484-1, 4484-2, 4484-5, 4484-10, 4484-15, 4484-16 and 4484-17, and identification marks and numbers TIMK 201 through TIMK 207, both inclusive.

Also enclosed is a check in the amount of \$13 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

*CT Kappler*  
*Countryman*

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
October 24, 1988  
Page Two

Kindly return a stamped copy of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

A short summary of the enclosed primary document to appear in the Commission's Index is:

Equipment Lease dated as of August 31, 1988 between BarclayAmerican/Leasing, Inc., Lessor, The Timken Company, Lessee, and Latrobe Steel Company, covering seven remanufactured Caterpillar-powered SW-1200, 130-ton Railroad Switcher Locomotives, Serial Numbers 4484-1, 4484-2, 4484-5, 4484-10, 4484-15, 4484-16 and 4484-17, and identification marks and numbers TIMK 201 - TIMK 207, both inclusive.

Very truly yours,

  
Charles T. Kappler

Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

10/24/88

Charles T Kappler

Alvord & Alvord

918 16th Street N.W.

Washington, D.C. 20006

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 10/24/88 at 1:05pm, and assigned recordation number(s). 15889

Sincerely yours,

*Nesta R. McGee*

Secretary

Enclosure(s)

1 5889  
REGISTRATION NO. FILED 2000

OCT 24 1988 1 03 PM

**INTERSTATE COMMERCE COMMISSION**

EQUIPMENT LEASE

Dated as of August 31, 1988

Between

BarclaysAmerican/Leasing, Inc.

And

The Timken Company

AND

Latrobe Steel Company

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EQUIPMENT LEASE

THIS EQUIPMENT LEASE, dated as of August 31, 1988 (the "Lease") between BarclaysAmerican/Leasing, Inc., a North Carolina corporation (the "Lessor") and The Timken Company, an Ohio corporation and Latrobe Steel Company, a Pennsylvania Corporation jointly and severally (together and individually the "Lessee").

W I T N E S S E T H :

SECTION 1. DEFINITIONS; CONSTRUCTION OF REFERENCES.

In this Lease, unless the context otherwise requires:

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

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

(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 Equipment Lease:

Abatements shall have the meaning set forth in Section 6 hereof.

AGREEMENTS shall mean collectively this Lease, any Purchase Documents and each of the agreements, documents and instruments to be executed and delivered by Lessee in connection herewith.

Base Lease Term Commencement Date, Basic Lease Rate Factors, Late Payment Rate, Basic Rent Dates, First Basic Rent Date, Last Basic Rent Date, Expiration Date, Estimated Residual and Daily Lease Rate Factor shall have the meaning set forth in Exhibit C hereto.

Basic Rent shall have the meanings set forth in Section 5(b) hereof.

Bill of Sale shall mean a bill of sale substantially in the form of Exhibit G hereto.

Business Day shall mean any day other than a Saturday, Sunday or other day on which banks located in Canton, Ohio or Charlotte, North Carolina, are authorized to close.

Casualty Value shall have the meaning set forth in Exhibit D hereto.

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

Claims shall have the meaning set forth in Section 15 hereof.

Closing Date with respect to any Item of Equipment shall mean the date on which payment for such Item of Equipment is made to the vendor thereof, or such other party as may be designated or authorized to receive such payment, which date shall occur upon not less than five Business Days' prior written notification of such date delivered by the Lessee to the Lessor or on such other date as may be agreed upon by such parties. The final Closing Date shall not be later than September 30, 1988.

Code shall mean the Internal Revenue Code of 1986.

Delivery and Acceptance Date shall have the meaning set forth in Section 5(a) hereof and shall be no later than June 10, 1988.

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

Equipment, and individually an Item of Equipment, shall have the meanings set forth in Section 3 hereof.

Event of Default shall have the meaning set forth in Section 20 hereof.

Event of Loss shall have the meaning set forth in Section 13(c) hereof.

Impositions shall have the meaning set forth in Section 10 hereof.

Improvement shall have the meaning set forth in Section 11(c) hereof.

Late Payment Rate shall be 18% per annum.

Lease Term shall have the meaning set forth in Section 5(a) hereof.

Lessor's Cost, with respect to any Item of Equipment shall mean the "Lessor's Cost" set forth in the Certificate of Acceptance with respect to such Item of Equipment.

Liens and Lessor Liens shall have the meanings set forth in Section 9 hereof.

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.

Purchase Documents shall mean all invoices and bills of sale, Purchase Order Assignments and Consents, and Certificates of Acceptance of the Equipment.

Purchase Order Assignment and Consent shall mean an assignment substantially in the form of Exhibit E hereto.

Recovery Deduction shall have the meaning set forth in Section 17 hereof.

Requisition of Use shall have the meaning set forth in Section 13(a) hereof.

Rent means, collectively, Basic Rent and Supplemental Rent.

Supplemental Rent shall mean the payments required to be made by the Lessee to the Lessor pursuant to Section 5(c).

Vendor shall mean the seller of the Equipment as identified on each Schedule to each Certificate of Acceptance.

SECTION 2. DOCUMENTATION PRECEDENT TO THE LEASE.

(a) Simultaneous with execution and delivery hereof, the Lessee shall deliver to the Lessor:

(i) a Corporate Certificate in the form Exhibit H hereto;

(ii) a certificate executed by an officer of the Lessee, stating that, to the best knowledge of such officer, no Event of Default, or event which with the passage of time or the giving of notice or both would become an Event of Default, has occurred or is continuing;

(iii) an opinion, dated the date hereof, addressed to the Lessor from counsel to the Lessee, to the effect that:

(1) the Lessee is a corporation duly organized, validly existing and in good standing under the laws of Ohio and has the corporate power to own its assets and to conduct the business in which it is engaged and is duly qualified as a foreign corporation in good standing in each other state in which the nature of its business conducted by it or the assets owned or leased by it make such qualification necessary to avoid any material exposure;

(2) the Lessee has full corporate power, authority and legal right to enter into and to carry out the terms of each of the AGREEMENTS executed or to be executed in connection herewith to which it is or will become a party;

(3) the execution, delivery and performance by the Lessee of any of the AGREEMENTS to which it is or will become a party:

(x) did not and will not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of the Lessee (except as to holders of indebtedness specified in such opinion);

(y) did not and will not contravene any of the provisions of the certificate of incorporation or by-laws of the Lessee or to the best knowledge of such counsel, any law or governmental rule, regulation or order applicable to the Lessee; and

(z) did not and will not result in the violation of, or be in conflict with, or constitute a default under, or subject any property or assets of the Lessee to any lien, charge or encumbrance of, any indenture, contract, agreement or other instrument (other than as contemplated in connection with this transaction) binding on the Lessee or any of its assets;

(4) no approval, consent, order for authorization of, or registration with, or notice to, any governmental authority is or was required to be obtained, effected or given by the Lessee in connection with the execution and delivery of, or the carrying out by the Lessee of any of the transactions contemplated by, any of the AGREEMENTS to which it is or will become a party (except such as have been duly obtained, effected or given, specifying the same);

(5) to the best knowledge of such counsel, there are no actions, suits or proceedings currently pending or presently threatened before any court, arbitrator or governmental body against, or which relate to the Lessee or any of its property or any of the AGREEMENTS to which it is or will become a party which, individually or in the aggregate, if adversely determined:

(A) might have a material adverse effect upon the business, operations or financial condition of the Lessee or upon its ability to perform its obligations under any of the Agreements to which it is or will become a party; or

(B) might be reasonably expected to prevent or significantly impair the carrying out of this transaction; and

(6) assuming that upon acceptance by the Lessor pursuant to the Lease the Lessor will become the sole owner of each unit of Equipment so accepted, the Lessor's interest in the Equipment to the best knowledge of such counsel, will be free and clear of all liens, charges and encumbrances of record arising out of acts or omissions of the Lessee, other than liens, security interest and rights created or permitted by this Lease.

Such counsel may state in rendering the foregoing opinion that (a) counsel has assumed the due authorization, execution and delivery by the Lessor of the AGREEMENTS to which it is a party; (b) such counsel expresses no opinion other than as to the laws of the United States of America and of the State of Ohio and (c) in rendering any opinion regarding enforceability, such opinion is limited by applicable bankruptcy, moratorium or insolvency laws as may, from time to time, be in effect.

(b) On or before the fifth Business Day (as defined in Section 1 hereof) preceding each Closing Date, the Lessee shall deliver to the Lessor executed originals of the following documents and certificates, each reasonably satisfactory in form and substance to the Lessor and its counsel:

(i) Certificates of Acceptance (as defined in Section 1 hereof) in respect of the Equipment;

(ii) If required by Lessor, a Purchase Order Assignment and Consent in the form of Exhibit E hereto;

(iii) an invoice and/or Bill of Sale in respect to each Item of Equipment naming Lessor as the purchaser of the Equipment issued by the vendor thereof;

(iv) a certificate or certificates in respect of the insurance required under Section 14 hereof;

(v) Uniform Commercial Code financing statements required to be filed pursuant hereto.

### SECTION 3. LEASE AND PURCHASE OF EQUIPMENT.

Subject to the terms and conditions of this Lease, the Lessor hereby agrees to lease to the Lessee, and the Lessee hereby agrees to lease from the Lessor, such Items of Equipment described in Exhibit A hereto which the Lessor accepts for lease pursuant to a Certificate of Acceptance (Equipment, and individually an Item of Equipment or Item). Upon delivery of each Item of Equipment the Lessee will cause an authorized representative of the Lessee to inspect the same and, if such Item is found to be in good order and in conformity with the specifications set forth in the Purchase Documents, to accept such Item of Equipment and to execute and deliver a Certificate of Acceptance with respect thereto. Each Item of Equipment shall be subject to the terms and conditions of this Lease upon delivery and acceptance and execution of a Certificate of Acceptance as provided in this Section.

SECTION 4. APPOINTMENT OF AGENT.

(a) Appointment of Authorized Agent. For purposes of accepting the Equipment from the vendor thereof, 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 the Equipment upon 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 the Equipment, and to take such action with respect thereto as is authorized by Section 3 hereof. The Lessee hereby agrees that the acceptance of the Equipment by the Lessee as such authorized representative shall, without further act, irrevocably constitute acceptance by the Lessee of such Equipment for all purposes of this Lease.

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

SECTION 5. TERM AND RENT.

(a) The term of this Lease ("Lease Term") with respect to each Item of Equipment shall begin on the date ("Delivery and Acceptance Date") the Lessor accepts for lease such Item of Equipment pursuant to a Certificate of Acceptance, and shall end on the Expiration Date, unless this Lease shall have been terminated in accordance with the terms hereof.

(b) The Lessee shall pay to the Lessor as basic rent (herein referred to as Basic Rent) for each Item of Equipment, the following:

(i) On the Base Lease Term Commencement Date an amount equal to the Daily Lease Rate Factor multiplied by the Lessor's Cost of such Item for each day elapsed from and including the Delivery and Acceptance Date, with respect to such Item to, but excluding, the Base Lease Term Commencement Date;

(ii) On the First Basic Rent Date, and on each Basic Rent Date after the First Basic Rent Date to, and including, the Last Basic Rent Date, an amount, equal to Basic Lease Rate Factor multiplied by the Lessor's Cost of such Item.

Lessor shall mail bills for each Basic Rent payment to Lessee on or before fifteen (15) days prior to each Basic Rent Date.

(c) The Lessee shall pay to the Lessor the following amounts as Supplemental Rent:

(i) On the dates or at the time provided in this Lease any amount (other than Basic Rent and Casualty Value) which the Lessee assumes the obligation to pay, or agrees to pay, under this Lease to the Lessor;

(ii) On any applicable date provided in this Lease any amount payable hereunder as Casualty Value; and

(iii) On demand, to the extent permitted by applicable law, interest (computed on the basis of a 360-day year of twelve 30-day months) at the Late Payment Rate on any payment of Basic Rent or Supplemental Rent referred to in subparagraph (i) or (ii) above not paid when due for the period commencing after such due date and continuing until the date on which such payment shall have been made.

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.

(d) All payments of Rent hereunder shall be made so that the Lessor shall have immediately available funds in its account number 9-008-370 at Wachovia Bank and Trust Company, South Tryon Street office, Charlotte, North Carolina, no later than 2:00 p.m. North Carolina time on the date

payable hereunder or at such other address or to such other Person as the Lessor may direct by notice in writing to Lessee. If any due date is not a Business Day, the payment shall be payable on the next succeeding Business Day.

SECTION 6. NET LEASE.

This Lease is a net lease, and the Lessee acknowledges and agrees that the Lessee's obligation to pay all Rent and any other amounts and perform all other obligations hereunder, and the rights of the Lessor in and to such Rent, and performance of other obligations 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, or against the manufacturer or vendor of any Item of Equipment or any other Person except as specified herein. Except as otherwise expressly provided in Section 13 hereof, this Lease shall not terminate, nor shall the obligations of the Lessee be affected, by reason of a) any defect in or damage to, or any loss or destruction of, the Equipment or any Item of Equipment thereof from whatsoever cause, or b) the interference with the use thereof by any Person other than Lessor acting in breach of its covenants of quiet enjoyment set forth in Section 28, or c) 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 d) 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 and performance of all other obligations 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.

SECTION 7. DISCLAIMER OF WARRANTY.

The Lessor has made no warranties and representations to the Lessee, whether written, oral or implied, with respect to this Lease or the Equipment and THE LESSOR SHALL NOT BE DEEMED TO HAVE MADE, AND THE LESSOR HEREBY DISCLAIMS, ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE 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 OR CONFORMITY OF THE EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF THE PURCHASE DOCUMENTS, NOR SHALL THE LESSOR BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT OR ABSOLUTE LIABILITY IN TORT), but the Lessor 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 and be continuing hereunder, all of the Lessor's rights under any applicable manufacturer's or Vendor's warranty and the Lessor agrees to cooperate with the Lessee at the Lessee's expense 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, except to the extent of Lessor's gross negligence. Any amount received by the Lessee as payment under any such warranty shall be applied to restore the Equipment to the condition required by Section 11 hereof and with the balance of such amount, if any, shall be retained by the Lessee.

SECTION 8. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE LESSEE.

The Lessee represents, warrants and agrees as follows:

(a) Corporate Organization and Power. The Lessee is a corporation duly organized and validly existing in good standing under the laws of the jurisdiction of its incorporation, is duly qualified to do business in each jurisdiction where its failure to so qualify would have a material adverse effect on its business, operations or financial condition or its ability to perform or observe its agreements hereunder and has the corporate power and authority to hold property under lease and to enter into and perform its obligations under the AGREEMENTS.

(b) Execution and Delivery of Documents. The execution, delivery and performance by the Lessee of the AGREEMENTS have been duly authorized by all necessary corporate action on the part of the Lessee, are not inconsistent with and do not violate the Lessee's Articles of Incorporation, do not and will not contravene any law or governmental rule, regulation or order now in effect applicable to it, and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which the Lessee is a party or by which it is bound. The AGREEMENTS constitute legal, valid and binding agreements of the Lessee, enforceable in accordance with their respective terms except as to laws of bankruptcy, moratorium or insolvency as may from time to time be in effect.

(c) Governmental Approvals. No consent or approval of, giving of notice to, registration with, or taking of any other action in respect of or by, any domestic or foreign state, federal or other governmental authority or agency or any exchange control approval is required to be obtained by the Lessee with respect to the execution, delivery or performance by the Lessee of the AGREEMENTS or, if any such approval, notice, registration or action is required, it has been duly given or obtained.

(d) Litigation. There are no actions, suits or proceedings pending or, to the knowledge of the Lessee, threatened against the Lessee in any court or before any governmental commission, board or authority which in the opinion of Lessee would materially adversely affect the Lessee's financial condition or business or the transactions contemplated hereby or Lessee's ability to perform or observe its obligations under the AGREEMENTS.

(e) Condition of the Equipment. The Lessee represents, warrants and covenants that (i) each Item of Equipment is and, when used as contemplated by this Lease, will be personal property and no Item of Equipment, when subjected to use by the Lessee under this Lease, will be or become a fixture under applicable law, and (ii) Lessor has good title to each Item of Equipment free and clear of any liens, encumbrances or security interests created by, through or under Lessee other than those permitted under Section 9 hereof.

(f) Financial Statements. The consolidated balance sheet and statement of income of the Lessee heretofore delivered to the Lessor dated December 31, 1987 have been prepared in accordance with generally accepted accounting principles and fairly present the financial position of the Lessee on and as of the date thereof and the results of its operations for the period or periods covered thereby. Since December 31, 1987 there has been no material and adverse change in the financial condition of the lessee from that shown in such balance sheet and statement of income dated December 31, 1987.

(g) Access to or Furnishing of Information. During the term of this Lease, including any extensions thereof, the Lessee shall furnish to the Lessor:

(i) Within 90 days after the close of each fiscal year of Lessee a consolidated balance sheet and statement of changes in financial position of the Lessee at and as of the end of such fiscal year, together with a consolidated statement of income of the Lessee for such fiscal year with comparative figures for the immediately preceding fiscal year certified by independent public accountants of recognized international standing amongst the "Big 8" selected by Lessee.

(ii) Within 60 days after the close of each of the first three quarters of each fiscal year of Lessee a 10 Q report which shall include a consolidated balance sheet and a consolidated income statement of Lessee at and as of the end of such quarter.

(iii) From time to time such other non-proprietary financial information as the Lessor may reasonably request.

(h) Merger, Sale, Etc. The Lessee covenants not to sell, exchange, transfer or otherwise dispose of all or any substantial portion of Lessee's property or consolidate with or merge into any other business concern except in the event that such business concern is an affiliate of Lessee thereof and such business concern shall have duly assumed the obligations of the Lessee hereunder.

(i) Chief Executive Office and Chief Place of Business of the Lessee. The chief executive office and chief place of business, as such terms are defined in the Uniform Commercial Code, of the Lessee are located at 1835 Dueber Avenue, S.W.; Canton, Ohio 44706. The Lessee shall notify the Lessor, in writing, of any change in the location of such chief executive office and chief place of business, within 30 days after such change occurs, and shall set forth in such notice the new location of such office(s) and place(s) of business. If the Lessee's chief executive office is relocated to a location outside of the United States, such notice shall set forth the location of the Lessee's major executive office within the United States.

(j) Warranty of Title. The Lessor, on the Delivery and Acceptance Date has good and marketable title to each Item of Equipment, free and clear of all Liens other than Lessor's Liens and the Lessee will at its sole expense defend such title against all claims, liens, encumbrances and interests of all persons whatsoever (other than Lessor's Liens).

#### SECTION 9. LIENS.

The Lessee will not directly or indirectly create, incur, assume or suffer to exist any mortgages, liens, security interests, charges, encumbrances and claims (Liens) on or with respect to the Equipment, the Lessor's title thereto or any interest of the Lessor therein or the Lessee's leasehold interest in the Equipment (and the Lessee will promptly, at its own expense, take such action as may be necessary to duly discharge any such Lien), except (a) as affecting the respective rights of the Lessor and the Lessee as provided herein and in the Agreements, (b) liens for taxes either not yet due or being contested by the Lessee in good faith with due diligence and by appropriate proceedings, if counsel for the Lessor shall have determined that the nonpayment of any such tax or the contest of any such payment in such proceedings does not, in the reasonable opinion of such counsel, adversely affect the title, property or rights of the Lessor in the

Equipment, or if bonded or stayed or if Lessee has set aside an adequate reserve for the payment of any such lien on its books provided the financial condition of the Lessee is satisfactory to the Lessor and (c) 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 due solely to Lessee's delinquent payment, (d) Liens created by the Lessor other than as a result of the occurrence of an Event of Default or resulting from claims against the Lessor not related to the Lessor's ownership of the Equipment (Liens described in clause (d) above being herein referred to as Lessor's Liens).

Lessee shall notify the Lessor in writing of the existence of any attachment, tax lien or other judicial process affecting Items of Equipment, as well as the present status and action taken with respect thereto promptly after learning of the existence thereof.

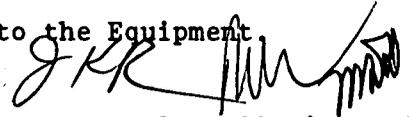
Lessor shall not create, allow to be created or permit to exist any lien, encumbrance or security interest in the Equipment (other than those pursuant to Section 18) arising as a result of any act of Lessor or claim against Lessor which claim does not arise as a result of Lessee's failure to observe or perform an obligation of Lessee.

#### SECTION 10. TAXES.

(a) The Lessee agrees to pay and to indemnify the Lessor for, and hold the Lessor harmless from and against (on a net after-tax basis) all withholdings with respect to taxes and all taxes of any nature, form or description, including, without limitation, license and registration fees and sales and use taxes, together with any penalties, fines or interest thereon but excluding any franchise, estate or inheritance tax (Impositions), arising out of the transactions contemplated by this Lease and imposed against the Lessor, the Lessee or any Item of Equipment by any federal, state, local or foreign government or taxing authority upon or with respect to any Item of Equipment or upon the sale, purchase,

ownership, delivery, leasing, possession, use, operation, return or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon or with respect to this Lease; provided however the foregoing indemnity shall not apply: (i) to any Impositions arising out of any federal or foreign taxes imposed on or measured by the Lessor's net income from or with respect to any Item of Equipment or with respect to the transactions contemplated by this Lease or taxes imposed in substitution thereof; (ii) to the aggregate of any Impositions arising out of any state, local or other governmental authority taxes imposed on or measured by the Lessor's net income from or with respect to any Item of Equipment or with respect to the transactions contemplated by this Lease or taxes imposed in substitution thereof; (iii) to any Impositions imposed as a result of a breach of the Agreements or the misconduct or negligence of the Lessor; (iv) any Impositions which are included in Lessor's Cost; (v) provided that no Default or Event of Default shall have occurred and be continuing hereunder, any Impositions arising out of any federal, state or local taxes (including any federal, state or local capital gain taxes) imposed upon the sale, transfer or other disposition of any Item of Equipment or any portion thereof or any interest therein; (vi) taxes due to the restructuring, merger or reorganization of Lessor; (vii) taxes due to the bankruptcy, insolvency or receivership of Lessor; or (viii) additional taxes due solely as a result of Lessor's own change in its system of accounting; (ix) taxes due solely by reason of Lessor's presence in a state or location or any other basis which exist solely by reason of Lessors act or failure to act (which such act or failure to act is not a result of action or lack of action by Lessee) which is a sufficient basis for a tax upon or with ~~request~~ to the Equipment.

respect



(b) The Lessee agrees to pay all sales or use taxes lawfully imposed with respect to any Basic Rent or Supplemental Rent and property taxes lawfully imposed with respect to the Equipment to the appropriate taxing authorities and to make copies of all returns, receipts and other documents related to such payment available to the Lessor. To the extent the Lessee is not permitted or Lessor elects to file any required reports or returns, or remit the required payments, Lessor shall notify Lessee and then shall file the required returns or reports and remit the required payments and the Lessee shall promptly on demand remit the amount of such taxes to Lessor.

(c) If a claim is made against the Lessor for any Impositions, with respect to which the Lessee is liable for payment or indemnification under this Section 10, the Lessor shall within 30 days (or sooner if said disposition requires a sooner payment date) give the Lessee notice in writing of such claim and shall furnish the Lessee with copies of any request for information from any taxing authority relating to such Impositions, and shall in good faith, with due diligence and at the Lessee's expense, if requested in writing by the Lessee, contest (or shall permit Lessee to contest in the name of Lessor) the validity, applicability, or amount of such Impositions; provided, however, that the Lessor shall not be required to take any action pursuant to this Section (except to provide notice) unless and until (i) the Lessor shall have reasonably determined that the action to be taken shall not result in the forfeiture or loss of any Item of Equipment; (ii) the Lessor shall have received at Lessee's expense a written opinion of counsel mutually acceptable to the Lessee and the Lessor to the effect that there is a reasonable basis to contest such Imposition; (iii) the Lessee agrees that the Imposition to be contested is one against which the Lessee is obligated to indemnify the Lessor under this Section 10, and (iv) the Lessee shall have reimbursed the Lessor for any amounts required to be paid by the Lessor to obtain the right to contest. If the Lessor shall obtain a refund of all or any part of any taxes or other Impositions attributable to any amount paid by the Lessee pursuant to this Section 10, the Lessor shall promptly pay to Lessee the amount of such refund (plus any interest received thereon) together with any additional amounts theretofore paid by the Lessee in respect of such Impositions net of out-of-pocket expenses not otherwise reimbursed by the Lessee, so that the Lessor shall not profit or lose (on a net after-tax basis) from such Imposition, the indemnity and the refund in respect thereof; provided, however, that any such payment may be deferred if a Default or Event of Default shall have occurred and be continuing hereunder.

(d) If a claim is made against the Lessee or the Lessor for any Imposition for which such party denies liability, the party receiving notice of such claim shall notify the other party within 30 days ( or sooner if required by the disposition). In case any report or return is required to be made with respect to any Imposition indemnified against by the Lessee under this Section the Lessee will make and file such report or return in such manner as will show the ownership of the Equipment in the Lessor and be satisfactory to the Lessor and Lessee shall make copies thereof available to Lessor upon its written request. The Lessor agrees to cooperate fully with the Lessee in the preparation and filing of any such report or return.

SECTION 11. USE, MAINTENANCE AND OPERATION.

(a) The Lessee will use or require that each Item of Equipment be used in compliance with any and all statutes, laws, ordinances and regulations of any governmental agency applicable to the use thereof, and will at all times be used solely in the conduct of its business and be and remain in the control of the Lessee. Throughout the term of this Lease, the possession, use and maintenance of each Item of Equipment shall be at the sole risk and expense of the Lessee.

(b) The Lessee shall cause each Item of Equipment to be used only in the manner for which it was designed. The Lessee, at its own cost and expense, shall (a) pay all cost, expenses, fees and charges incurred in connection with the use and operation of the Equipment and (b) maintain, service and repair the Equipment (including following the Equipment manufacturer's recommended maintenance program) so as to keep it in good operating condition as it was when it first became subject to this Agreement, ordinary wear and tear excepted.

(c) The Lessee may, without the prior written consent of the Lessor (which consent will not be unreasonably withheld subject to Section 17d(2) hereof), either (i) repair any Item of Equipment by the installation of a replacement part, or (ii) affix or install any

Accessory, equipment or device on any Item of Equipment or make any improvement or addition thereto (any such accessory, installed equipment or device, improvement or addition affixed or installed pursuant to this clause (ii) being herein referred to as an Improvement) if such Improvement is not material or if such Improvement is readily removable and if such Improvements will not impair the originally intended function or use of any such Item of Equipment. Any other Improvement may be affixed or installed only with the prior written consent of the Lessor (not to be unreasonably withheld) and any such replacement part which is installed shall upon affixation or installation become the property of the Lessor and thereupon each such Improvement shall become a part of the Item of Equipment to which it is affixed or on which it is installed.

(d) The Lessee agrees that each Item of Equipment shall be, and shall continue to be throughout the term of this Lease, personal property under applicable law. The Lessee agrees not to affix or attach any Item of Equipment or permit any Item of Equipment to be affixed or attached to any real property or any personal property if, as a result thereof, any such Item of Equipment will become a fixture or accession under applicable law.

(e) The Lessee agrees that each Item of Equipment shall throughout the term of the Lease, be used exclusively within the United States.

#### SECTION 12. INSPECTION.

Subject to the rights of Lessee, the Lessor shall have the right, but not the duty, to inspect any Item of Equipment at any reasonable time, provided that Lessor complies with the safety and access procedures of Lessee.

#### SECTION 13. LOSS OR DESTRUCTION; REQUISITION OF USE.

(a) In the event that any Item of Equipment shall be or become worn out, destroyed, lost, stolen, or permanently rendered unfit for normal use for any reason whatsoever, including physical damage thereto, or the

Lessee shall be denied the use thereof, or title thereto shall be requisitioned or otherwise taken, by any governmental authority under power of eminent domain or otherwise (any such taking being herein referred to as a Requisition of Use), or any Item of Equipment is permanently returned to the manufacturer thereof or the vendor pursuant to the patent indemnity or warranty provisions, such fact shall promptly be reported by the Lessee to the Lessor and when the Lessee acquires knowledge thereof.

(b) The Lessee shall determine, within 30 days after the date the Lessee acquires knowledge of any such damage or wearing out, whether such Item of Equipment can be repaired.

(c) In the event the Lessee determines that such Item of Equipment cannot be economically repaired or in the event of such destruction, loss, theft, unfitness for use, Requisition of Use, or return of such Item of Equipment to the manufacturer thereof or the vendor without replacement thereof (each of such occurrences being referred to as an Event of Loss, and the date thereof being the date of such damage, wearing out, destruction, loss, theft, unfitness for use, Requisition of Use, or return of such Item of Equipment to the manufacturer thereof or the vendor without replacement thereof), the Lessee shall promptly, except as provided in paragraph (e) below, (i) notify the Lessor of such Event of Loss, and (ii) replace such Item of Equipment with other equipment in accordance with the provisions of paragraph (d) below. The Lessee's obligation to pay Rent in respect of such Item of Equipment shall remain in effect until such Item of Equipment is so replaced and upon such replacement shall continue in effect with respect to the replacement equipment in accordance with the provisions of paragraph (d) below.

(d) In the event the Lessee determines that such Item of Equipment can be economically repaired or replaces such Item, as required pursuant to paragraph (c) above, the Lessee shall continue to make all payments of Basic Rent due with respect to such Item of Equipment and shall (i) cause such Item of Equipment to be repaired or replaced within 180 days after the Lessee shall have acquired knowledge of the occurrence of such damage or wearing out, provided, however, that a period longer than 180 days will be applicable if Lessee notifies Lessor in writing and gives Lessor a reasonable explanation for the extension, but in no case will the period be longer than 270 days; and (ii) in the event of replacement or repair, take such action as may be required to protect and preserve the Lessor's interest. The obligation of the Lessee to pay Rent during the above-described replacement or repair period shall remain in full force and effect and, upon such replacement, each replacement item shall be considered an Item of Equipment for all purposes of this Lease and the Lessee's obligation to pay Basic Rent with respect thereto shall be unchanged from the Basic Rent payable in respect of the replaced Item of Equipment in effect prior to such replacement. The terms of this Section shall not modify or diminish the Lessee's obligation under Section 15 and Section 17 hereof to indemnify the Lessor, due to the Lessee's actions hereunder. Any replacement item provided by the Lessee in accordance with the provisions of this paragraph shall be in substantially the same operating condition, and shall have a value and utility at least equal to, the Item of Equipment replaced, assuming the Item of Equipment replaced was in the condition and state of repair required to be maintained by the terms hereof.

(e) In lieu of repair or replacement of an Item of Equipment as provided in paragraphs (c) and (d) above, Lessee may pay Lessor within the later of the next Basic Rent Date following the date of Event of Loss or ninety (90) days of the date of the Event of Loss the Casualty Value of such Item of Equipment determined as of the date of the Event of Loss in accordance with Exhibit D hereto. If the Casualty Value is not due on a Basic Rent Date, the Casualty Value shall be paid together with an amount equal to the accrued interest thereon from the last Basic Rent

Date to the date such Casualty Value is paid pursuant to this Section at the per annum interest rate of 12.00%. Upon the making of such payment by Lessee, the rental for such Item of Equipment shall cease to accrue and the Lease Term as to such Item of Equipment shall terminate.

(f) Except in the case of loss, theft, destruction, or return to the manufacturer or vendor of any Item of Equipment, the Lessee shall be entitled to recover possession of such Item, unless possession of any such Item of Equipment is required to be delivered to an insurance carrier in order to settle an insurance claim arising out of the Event of Loss. Upon replacement of such Item of Equipment the Lessee shall so long as no Event of Default shall have occurred and be continuing be entitled to retain any salvage value collected by such insurance carrier and be reimbursed by Lessor in the amount, if any, paid to the Lessor by any insurance carrier. The Lessor shall, if requested by the Lessee, pursue any claim against any governmental authority that has requisitioned or confiscated any Item of Equipment, provided that Lessee bears all expenses of such action and indemnifies Lessor against any liability that may arise therefrom, or Lessor may permit Lessee to make said claim provided that Lessee bears all expenses of such action and idemnifies Lessor against any liability that may arise therefrom.

(g) Following replacement of an Item of Equipment in accordance with the provisions of paragraph (c) and paragraph (d) of this Section, Lessor shall transfer to Lessee all of its rights and title in and to the replaced Item of Equipment on an "AS IS, WHERE IS" BASIS WITHOUT RECOURSE, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED FREE AND CLEAR OF LESSOR LIENS. As to each Item of Equipment returned to the manufacturer thereof or the vendor in the manner described in paragraph (a) of this Section and not replaced or modified by such manufacturer or seller pursuant to the patent indemnity or warranty provisions, the Lessor agrees that upon payment by the Lessee to the Lessor of the Casualty Value pursuant to paragraph (e) of this Section together with any amounts of Basic Rent and Supplemental Rent due and owing on such date, the Lessee shall receive and retain all amounts payable to the Lessor by such manufacturer or vendor for the return of such Item of

Equipment so long as no Event of Default has occurred and be continuing and any such amounts received by the Lessor shall be returned to the Lessee if no Event of Default has occurred and be continuing. Lessee's obligation to pay Basic Rent with respect to such Item of Equipment shall terminate. As to each Item of Equipment modified and each replacement item installed by the manufacturer or vendor pursuant to the patent indemnity or warranty provisions, the Lessor and the Lessee agree that possession of such modified item or replacement item shall be delivered to the Lessee and shall, without any further act of the Lessor or the Lessee, be considered an Item of Equipment for all purposes of this Lease.

(h) Except as provided in this Section, the Lessee shall bear the risk of loss and shall not be released from its obligations under this Lease in the event of any damage to any Item of Equipment or any Event of Loss relating thereto.

#### SECTION 14. INSURANCE.

If Lessee maintains a senior debt rating of not less than BA 1 by Moody's and not less than BB+ by Standard and Poor's Lessee may self insure such risks as it deems appropriate provided that such self insurance is in accordance with prudent business standards for similarly situated companies.

In the event that Lessee fails to maintain at least said senior debt ratings, Lessor and Lessee shall, in good faith, mutually agree to Lessee's level of self insurance. In addition, Lessee shall carry, at its sole cost, Fire and Extended Coverage physical damage insurance on the Equipment in amounts not less than the replacement value of the Items of Equipment listed on Exhibit D, attached hereto. Lessee shall also carry, at its costs, comprehensive public liability (both bodily injury and property damage) insurance in such amounts as would be carried by a prudent user of the Equipment provided that such amounts shall not be less than \$5,000,000.00. Such insurance shall insure Lessor's interest as it appears in this Lease. Lessee shall provide Lessor with a Certificate of Insurance as evidence of insurance, which shall include a provision to provide Lessor with notice of any change or cancellation of such insurance 30 days before it becomes effective.

SECTION 15. INDEMNIFICATION.

The Lessee agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Lessor on an after-tax basis (by paying an amount which after deducting all income, gross receipts and other taxes of the Lessor is sufficient to fully indemnify the Lessor such that Lessor shall not profit or lose from that position which the Lessor would have had prior to the occurrence of the event causing indemnification under Section 15) 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, reasonable expenses and disbursements (including, without limitation, reasonable legal fees and reasonable 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 the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or disposition of any Item of Equipment or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable and any Claim from 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 any Item of Equipment arising from acts or events which occur after possession of such Item of Equipment has been redelivered to the Lessor (or agent) in accordance with Section 22 hereof, or (b) any Claim resulting from the breach of Agreement or by misconduct or negligence of the Lessor. To the extent that the Lessor in fact receives full indemnification payments from the Lessee under the indemnification provisions of this Section, the Lessee shall be subrogated to the

Lessor's rights with respect to the transaction or event requiring or giving rise to such indemnity. THE LESSEE AGREES THAT THE LESSOR SHALL NOT BE LIABLE TO THE LESSEE FOR ANY CLAIM CAUSED DIRECTLY OR INDIRECTLY BY THE INADEQUACY OF ANY ITEM OF EQUIPMENT 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.

SECTION 16. LESSEE'S FAILURE TO PAY TAXES, INSURANCE, ETC.

Should Lessee fail to make any payment or do any act, as herein provided, then Lessor shall have the right, but not the obligation, with prior notice to and demand upon Lessee, and without releasing Lessee from any obligation hereunder, to make or do the same, and to pay, purchase, contest or compromise any encumbrance, charge or lien which in Lessor's judgment appears to affect the Equipment, and in exercising any such rights, incur any liability and expend such amounts it may deem necessary therefore in its reasonable discretion. Lessee shall be obligated to reimburse Lessor for any such payments made by Lessor as Supplemental Rent pursuant to Section 5(c)(1) of this Lease.

SECTION 17. TAX INFORMATION AND INDEMNIFICATION.

(a) Intended Tax Benefits. In entering into this Lease and the transactions contemplated hereby, it is the intention of Lessor and Lessee that such transactions will result in making available to Lessor the following tax benefits (the "Tax Benefits") for the purpose of determining its liability for income taxes imposed by the federal government of the United States based, in part, on the fact that the Lease constitutes a true lease (for Federal Tax Purposes) under which Lessor will be considered the owner of each Item of Equipment and lessor of each Item of Equipment under the Lease, and Lessee will be considered the lessee of each Item of Equipment under the Lease for federal tax purposes:

(1) Lessor will be entitled to Recovery Deductions for "7-year property" as defined in Section 168 [e][1] of the Internal Revenue Code of 1986 (the "Code"), in the full amount of Lessor's Cost in each such Item of Equipment as determined under Sub-section 168(b)(1) of the Code.

(2) All amounts taken into account with respect to the Lease in computing Lessor's gross income will be treated as income or loss derived from or allocable to sources within the United States;

(3) There will not be included in the gross income of Lessor any part of the cost of any improvement, modification or addition to any Item of Equipment made by Lessee whether or not required under the Lease; and

(4) Lessor's Federal tax rates are 34%.

(b) Covenants by Lessee. Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it (all herein called "Affiliated Corporations"), directly or indirectly, will at any time take any action or fail to take any action or file or fail to file any returns, certificates or other documents where any such action, failure to act, filing or failure to file would be inconsistent with the foregoing Section 17 (a) or, which would (i) increase the amount of Rent with respect to any Item of Equipment required to be taken into income by Lessor over the amounts specified to be payable under the Lease on the dates due thereunder with respect to such Item, or (ii) be inconsistent with Lessor's claim to be the owner and lessor of each Item of Equipment for federal income tax purposes. Lessee and such other Affiliated Corporations shall file such returns, take such action, execute such documents and keep and make available for inspection and copying by Lessor such records, or cause the same to be accomplished, all as may be reasonably requested by Lessor to facilitate accomplishment of the intent hereof. The covenants made by Lessee in this Section 17.(b) refer solely to such acts or failures to act with respect to, its federal income tax returns and its assertions or statements made to the Internal Revenue Service ("Service") with respect thereto and corresponding state and local income tax returns for the State of Ohio or any other jurisdiction where the Lessee files and where such jurisdiction has tax provisions similar to relevant federal tax provisions.

(c) Representations and Warranties by Lessee. In connection with the foregoing Sections 17 (a) & (b), Lessee represents and warrants that (A) throughout the Lease Term, the Equipment will constitute "Section 38 property" within the meaning of Section 48 of the Code; (B) on the Delivery and Acceptance Date the Equipment will constitute "recovery property" and "7-year property" within the meaning of Section 168(e)(1) of the Code, and the Lessor's Cost shall constitute the Lessor's basis

for purposes of computing Recovery Deductions; (C) no improvement will be required in order to complete the Items of Equipment for the intended use by Lessee; (D) the Equipment will be used during the Lease Term exclusively within the United States; (E) all amounts includable in the gross income of the Lessor with respect to the Equipment and all deductions and credits allowable to the Lessor with respect to the Equipment will be treated as derived from, or allocable to, sources within the United States; (F) as of the Delivery and Acceptance Date, it is reasonably estimated that each Item of Equipment shall have (x) at least 20% of its useful life remaining at the expiration of its original Lease Term or any renewal thereof (y) a fair market value at the expiration of its Lease Term or any renewal thereof (such fair market value being determined without including in such value any increase or decrease for inflation or deflation during such Lease Term and determined after subtracting from such value the cost, if any, for removal and redelivery of possession to the Lessor at the expiration of such Lease Term) equal to at least (20%) of the Lessor's Cost of such Item of Equipment; (G) at the time Lessor becomes the owner of any Item of Equipment, no Tax Benefits will have been claimed by any person with respect thereto; (H) each Item of Equipment shall have a commercially feasible use, at the expiration of its Lease Term, to the Lessor (or a purchaser or lessee unrelated to the Lessee), within the meaning of Revenue Procedure 75-21, 1975-1 Cum.Bull. 715, as modified in Revenue Procedure 75-28, 1975-1 Cum.Bull. 752 and Revenue Procedure 76-30, 1976-2 Cum.Bull. 647.

(d) Indemnification.

(1) Loss of Tax Benefits. If Lessor shall lose, shall not have the right to claim, shall suffer a deferral or disallowance of or shall be required to recapture all or any portion of the Tax Benefits or shall have to pay any interest, penalties or additions to tax for purposes of federal income taxes with respect to any Item, (a "Loss") resulting from A) any act or failure to act by Lessee including without limitation, the use of any Item of Equipment by Lessee in a manner

inconsistent with the Lessor's claim or entitlement to any of the Tax Benefits, any failure of Lessee to act in accordance with the terms of this Lease, the incorrectness, as to law or fact, of any representation, warranty or covenant made by Lessee in this Lease, including, without limitation, the representations and warranties made in Sections 17b and 17c above, B) the promulgation of any regulation, any administrative interpretation, or the issuance of any published administrative rulings, or technical corrections which relate to the Tax Reform Act of 1986, or C) any change in Federal ~~and/or State~~ <sup>Income Tax</sup> Law, regulations, or administrative interpretations thereof (such change in federal or state tax law herein referred to a "Change in Law") if such Change in Law is enacted by the Congress of the United States by or prior to the date of the end of term of the 102nd Congress of the United States, then the Lessee shall pay to the Lessor as an indemnity after written notice to the Lessee by the Lessor of such Loss, an amount (as Supplemental Rent payable over the term of the Lease) which, after subtracting the amount of all Federal, state and local income taxes payable by the Lessor in respect of the receipt thereof, shall be sufficient to provide to the Lessor the same periodic net after-tax yield and after-tax cash flow as the Lessor would have realized in respect of the Lease if such Loss had not occurred. The Lessee shall also pay to the Lessor, as Supplemental Rent an amount which, after subtracting the amount of all Federal, state and local income taxes payable by the Lessor in respect of the receipt thereof, shall equal any interest, penalties or additions to tax (including any additions to tax because of underpayment of estimated tax) payable by the Lessor in respect of such Loss, less the amount of any decrease in the Federal, state and local income taxes of the Lessor that would result from claiming of allowable deductions from gross income with respect to such interest, penalties or additions to tax. If a Change in Law results in a benefit to Lessor which lessens its tax liability as described herein, Lessor shall promptly indemnify Lessee to the extent necessary to allow Lessor to maintain the same periodic net after-tax yield and after-tax cash flow as Lessor would have realized without the Change in Law.

(2) Inclusion. If for any reason whatsoever (unless due to Lessor's failure to timely and properly claim an offsetting deduction) all or any part of the cost of any Improvement made by the Lessee under and pursuant to the terms of the Lease or otherwise, to any Item of Equipment is required to be included in Lessor's gross income for federal, state or local income tax purposes for any period to the Expiration Date for such Item of Equipment ("Inclusion") and Lessor is not entitled to currently deduct such cost, the Lessee will pay Lessor on demand (A) an amount which, after deduction of all taxes required to be paid by Lessor in respect of the receipt thereof under the laws of any federal, state or local government or taxing authority in the United States, shall be equal to the sum of the net additional federal, state or local income taxes payable by Lessor from time to time as a result thereof, plus (B) the amount of any interest, penalties or additions to taxes payable as a result thereof; it being understood that the amount payable pursuant to this sentence shall not be due and payable by Lessee prior to the payment by Lessor of such additional federal, state or local income taxes. If Lessor realizes a Tax Benefit as a result of any Improvement in respect of which Lessee is required to indemnify Lessor under this Section 17 d(2), Lessor shall pay Lessee an amount equal to such Tax Benefit (plus additional tax savings, if any, realized by Lessor as a result of the payment of such amount or the payment of such tax savings) when, as, if, and to the extent realized; provided, however, such payment shall not be offset against Rent. The Lessor agrees to take all action necessary and appropriate to realize all Tax Benefits and savings available to it as a result of any improvement, repair or replacement under this Section 17 d(2), of which the Lessor is aware.

(3) Determination of Loss or Inclusion. The amount of Loss or Inclusion shall be determined by Lessor. Lessor shall notify Lessee in writing of Lessor's determination of such sum, and provide a statement describing in reasonable detail the manner in which such determination was made within thirty (30) days following the Lessee's receipt of such determination, the Lessee may demand that the accounting firm that

regularly prepares the Lessor's certified financial statements verify in writing whether such determination of the Lessor is mathematically accurate and based on reasonable assumptions including those assumed by the Lessor at the outset of this transaction and contained in Section 17(a). Such accounting firm shall be requested to make its determination within thirty (30) days. If such accounting firm shall determine that the Lessor's determination is unreasonable or mathematically inaccurate, then such firm shall determine what it believes to be the appropriate computation. Upon payment of such sum and/or adjustment of rent pursuant to this Section 17 as determined by the Lessor or its accounting firm, whichever is applicable, the Casualty Values and Termination Values shall be adjusted accordingly. All costs and expenses incurred by the Lessor in connection with such accounting firms determination shall be paid or reimbursed by the Lessee; provided, however, that if the conclusions reached by such accounting firm result in a variation from the Lessor's determination which is favorable to the Lessee, then the Lessor shall be responsible for such costs and expenses.

(4) Adjustment and Contest Right. If any auditing agent of the Internal Revenue Service proposes an adjustment which, if sustained, would result in a Loss or Inclusion for which the Lessee may be required to indemnify Lessor pursuant to the provisions of this Section 17, Lessor hereby agrees (A) promptly to notify Lessee in writing of such proposed adjustment (which notice shall include all relevant information relating to such adjustment which may be particularly within the knowledge of Lessor), (B) to advise Lessee of all action taken or proposed to be taken by Lessor, in respect of any such adjustment, (C) not to enter into any settlement or agreement with the Internal Revenue Service with respect to any such adjustment, or to make any payment of the additional federal income tax assessed as a result of any such adjustment for at least 45 days after the giving of such notice (provided; however, that if Lessor determines that a 45-day delay would unreasonably jeopardize its position, then Lessor shall, in such notice, notify Lessee of such shorter reasonable period after which Lessor intends to so act), and (D)

if (1) Lessee shall within 45 days after receipt of such notice request in writing that such adjustment be contested (which request is accompanied by an opinion of tax counsel selected by Lessee and reasonably satisfactory to Lessor to the effect that chances are more likely than not that a contest will be successful), (2) Lessee agrees that the adjustment to be contested is one for which the Lessee is obligated to indemnify Lessor under this Section 17, and (3) Lessee agrees to pay on demand all reasonable out-of-pocket expenses incurred by Lessor in connection with contesting such adjustment (including, without limitation, reasonable attorneys' fees and disbursements), then Lessor shall take such action in connection with contesting any such adjustment (including such judicial proceedings and appeals from any lower court decision) as Lessee shall reasonably request in writing from time to time; provided; however, that at any time after having received such initial request from Lessee, Lessor may, at its sole option, either pay the additional federal income tax assessed as a result of such adjustment and sue for a refund in the appropriate United States District Court or the United States Court of Claims as Lessor shall elect or contest such proposed adjustment in the United States Tax Court, considering, however, in good faith such request as Lessee shall make concerning the most appropriate forum in which to proceed, and provided, further, that if Lessor agrees to waive indemnification under this Section 17, Lessor may refuse the Lessee's request that such adjustment be contested. If, preliminary to a suit for refund, the Lessor pays additional federal income tax assessed together with any related interest and penalties, the Lessee shall immediately reimburse Lessor in full for that portion paid by the Lessor for which the Lessee had indemnified the Lessor hereunder. If the Lessee does not request Lessor to contest such adjustment or proposed adjustment within 45 days after Lessor has given the Lessee notice by Certified Mail of such adjustment or if tax counsel does not render the written opinion described above within the prescribed period, and the Lessor accepts such adjustment the Lessee shall indemnify Lessor in the manner set forth in this Section 17. Upon receipt by Lessor of a refund (including interest, if any,) of any tax paid by it in respect of which

the Lessee has reimbursed Lessor as provided for in this Section, such refund to the extent reimbursed by the Lessee shall be paid by Lessor to the Lessee including any related interest received by the Lessor.

(e) Definition of Lessor. The term "Lessor", solely for purposes of any indemnity contained herein or any verification of any such indemnity payment shall include any affiliated group, within the meaning of Code Section 1504, of which Lessor is a member if consolidated returns are filed for such affiliated group for federal income tax purposes, or the comparable definition under a combined report for state income tax purposes.

#### SECTION 18. ASSIGNMENT

Without Lessor's prior written consent, not to be unreasonably withheld, Lessee shall not (a) assign, transfer, pledge, hypothecate or otherwise dispose of this Lease or any interest therein, or (b) lend or otherwise transfer the Equipment; provided, however, that (i) Lessee shall have the right to allow third parties, under Lessee's supervision, to use the Equipment so long as Lessee shall retain uninterrupted possession and control of the Equipment.

Lessor may assign this Lease and/or mortgage the Equipment, in whole or in part with notice to Lessee; and its assignee or mortgagee may reassign this Lease and/or such mortgage, with notice to Lessee. Each such assignee and/or mortgagee shall have all of the rights but none of the obligations of Lessor under this Lease. Lessee shall execute and deliver an acknowledgment of each such assignment and/or mortgage and shall not assert against the assignee and/or mortgagee any defense, counterclaim, or offset, provided, the assignee or mortgagee takes the assignment for value, in good faith and without notice of any claim or defense, except as to the defenses of a type which may be asserted against a holder in due course of a negotiable instrument under UCC Article III. Each such assignment or reassignment shall not have an

unfavorable impact on the Lessee's rights and interest under this Lease. Notwithstanding the foregoing, nothing herein shall be deemed to relieve Lessor of any of its obligations to Lessee hereunder nor diminish any claim Lessee may have against Lessor or such assignee and/or mortgagee. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the heirs, legatees, personal representatives, successors and assigns of the parties hereto.

SECTION 19. EVENTS OF DEFAULT.

The term Event of Default, wherever used herein shall mean any of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary, or 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 on or before the date any such payment of Rent is due; or

(b) There shall occur any termination of, or adverse alteration in the scope of coverage of, or reduction in the amounts payable under, any insurance required to be maintained by Lessee pursuant to Section 14 hereof; or

(c) The Lessee shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it under this Lease, or any agreement, document or certificate delivered by the Lessee in connection herewith, and such failure shall continue for 10 days or more after written notice thereof from the Lessor to the Lessee; or

(d) Any representation or warranty made by the Lessee in this Lease that affects Lessee's ability to perform under this Lease, or any agreement, document or certificate delivered by the Lessee in connection herewith or therewith shall prove to have been incorrect in any material

respect when any such representation or warranty was made or given (provided, however, that Lessee shall have a period of 30 days to cure or correct the same, to the extent curable or correctable, after receipt of written notice from Lessor to Lessee); or

(e) The Lessee shall dissolve, liquidate or discontinue business operations, consent to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or the Lessee shall fail to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors, or the Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization or arrangement in a proceeding under any bankruptcy laws (as now or hereafter in effect) or an answer admitting the material allegation of a petition filed against the Lessee in any such proceedings, or the Lessee shall by voluntary petition, answer or consent, seek relief under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors; or

(f) An order, judgment or decree shall be entered by any court of competent jurisdiction appointing, without the consent of the Lessee, a receiver, trustee or liquidator of the Lessee or of any substantial part of the property of the Lessee, or any substantial part of the property of the Lessee shall be sequestered, and any such order, judgment or decree of appointment or sequestration shall remain in force undismissed, unstayed or unvacated for a period of 60 days after the date of entry thereof; or

(g) A petition against the Lessee in a proceeding under bankruptcy laws or other insolvency laws (as now or hereafter in effect) in any jurisdiction shall be filed and shall not be withdrawn or dismissed within 60 days thereafter, or if, under the provisions of any law

providing for reorganization or winding-up of corporations which may apply to the Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of the Lessee or of any substantial part of its property, and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 60 days.

SECTION 20.        REMEDIES

Shall any Event of Default occur, Lessor shall notify Lessee in writing of said Event of Default. Should Lessee fail to correct said Event of Default within 5 days of notice (or longer, as set forth in Section 19) and said Event of Default shall continue, Lessor, at its sole option, and in addition to any other remedies may exercise any one or more of the following: (a) declare all sums due and to become due hereunder immediately due and payable; (b) demand that Lessee surrender all Equipment to Lessor in accordance with Section 21 hereof; (c) reasonably, in accordance with state law, enter upon the premises where Equipment is located and take immediate possession all without liability to Lessor or its agents for such entry, or for damage to property or otherwise; (d) terminate this Lease in which event Lessee shall immediately pay to Lessor the sum of Rents and other amounts due, accrued and unpaid as of the date of termination (the "Termination Date") plus as liquidated damages for loss of the bargain and not as a penalty, the Casualty Value in respect of the Equipment determined as of the Termination Date in accordance with Exhibit D hereto together with interest at the Late Payment Rate to the date of receipt by Lessor of all amounts payable hereunder from the Termination Date and together with interest at the Late Payment Rate on all other costs, expenses and losses for which Lessor is entitled to payment under this Lease from the respective dates that such costs, expenses and losses have been incurred by Lessor to the date of receipt by Lessor of the amounts payable therefor; or (e) elect to sell any or all the Equipment at one or more

commercially reasonable public or private sales, or to lease the Equipment in such manner, and at such time or times and upon such terms as Lessor may determine. In the event Lessor shall lease or sell the Equipment, Lessee shall be liable for and Lessor may recover from Lessee as liquidated damages and not as a penalty, an amount equal to the amount, if any, by which the sum enumerated in Section 20(d) exceeds the amount received by Lessor from such public or private sales or such leases of such Equipment. For purposes of determining the worth to Lessor of any such amounts received from the sale or release of such Equipment, said amounts shall be discounted to their present value at the rate of ten percent (10%) per annum. Lessee shall also be liable for all costs and expenses incurred by Lessor in connection with any action taken under this Section including but not limited to reasonable attorney's fees and fees and expenses for repossessing, transporting, repairing, storing, leasing, selling or otherwise handling the Equipment.

Each and every right, remedy and power granted to Lessor hereunder shall be cumulative and in addition to any other right, remedy or power herein specifically granted or now or hereafter existing in equity, at law, by virtue of statute or otherwise and may be exercised by Lessor from time to time concurrently or independently and as often and in such order as Lessor may deem expedient. Any failure or delay on the part of Lessor in exercising any such right, remedy, or power, or abandonment or discontinuance of steps to enforce the same, shall not operate as a waiver thereof or affect Lessor's right thereafter to exercise the same, and any single or partial exercise of any such right, remedy or power shall not preclude any other or further exercise thereof or the exercise of any other right, remedy or power.

Notwithstanding anything to the contrary herein, Lessor and Lessee agree that (i) Lessee and Lessor shall be bound by an obligation of good faith (as defined by the Uniform Commercial Code) in the performance or enforcement of the Agreements, (ii) upon a default by Lessor, Lessee shall have any and all rights and remedies, at law or equity, and

(iii) provided that Lessee returns the Equipment to Lessor as set forth in Section 20(b) hereof, Lessee's maximum monetary liability to Lessor in an Event of Default shall be that amount enumerated in Section 20(d) less the net proceeds received by Lessor as a result of sale or lease of the Equipment as stated in Section 20(e) plus the cost, expenses and fees set forth in the last sentence of the first paragraph of this Section 20.

**SECTION 21. RETURN OF EQUIPMENT.**

Upon termination or expiration of the Lease Term with respect to any Item of Equipment unless the Lessee shall have duly exercised any purchase option with respect thereto, the Lessee at its own risk and expense, shall cause the delivery of possession of the Equipment to such location(s) in the continental United States as specified by Lessor. For a period of up to 90 days, Lessee shall, at Lessee's expense, and at Lessor's written request, retain the Equipment at space on storage tracks. Lessee's responsibility for such storage shall be that of a bailee pursuant to a gratuitous bailment for the benefit of Lessor.

Upon delivery, the Equipment shall be in first class operating condition, meeting all current AAR and FRA standards and certifications, normal wear and tear excluded, including but not limited to: (a) all equipment originally furnished with the Equipment or the substantial equivalent thereof, shall be installed and intact; (b) the Equipment shall be free from all accumulations and deposits from usage; (c) Lessee shall have maintained the Equipment at least as prescribed and recommended by the component manufacturers and the Federal Railroad Administration, in full repair not with abuse, weathering, wall holes, floor holes, body dents, nor dilapidation to have excluded normal wear and tear; (d) upon return the Equipment shall have: (i) no less than one-half time (hours and/or mileage) remaining until the next scheduled major reconditioning as such major reconditioning is set forth in the component manufacturers recommended maintenance program; (ii) no cracks or corrosion to running gear, wheels, gear cases, electrical cabinets, axle caps, interior and exterior locomotive body, or trucks; (iii) no damage nor excessive wear on brake rigging and brake shoes; (iv) no thermal cracks on wheels; (v) all safety/signal equipment and lights

operational; (vi) wheel wear limits: flange height: 1-7/16", flange thickness: 1", rim thickness: 1-1/8";, locomotive rail clearance: min. 3", coupler height: max. 34-1/2", min. 33-1/3", pilot height: max. 6", min. 4"; (e) all decals, numbers, and other customer identification shall have been removed; and (f) upon surrender, Lessee shall return to Lessor with the Equipment applicable plates, and any certificates, maintenance and repair records, and similar documents in the Lessee's possession or under its control.

Lessor shall have the right, but not the obligation, to have a Lessor-appointed representative survey and inspect the Equipment prior to the Equipment's return to Lessor. Unless any material violations of current AAR and FRA Standards and Certifications are proven, the cost of the survey and inspection shall be Lessor's cost. If material violations are proven, Lessee shall pay for the cost of the survey and inspection.

#### SECTION 22. PURCHASE OPTION

Lessee shall have the option to purchase all, but not less than all, of the items of Equipment leased pursuant to this Lease upon expiration of the Lease Term or any renewal thereof for an amount equal to the lesser of 35% of Lessor's Cost of the Equipment and the Equipment's then Fair Market Value which 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 under no compulsion to buy and an informed and willing seller under no compulsion to sell (in such determination cost of removal from the location of current use shall not be a deduction from such amount) provided that Lessee has paid in full all rentals owing hereunder and all other amounts due under the Agreement and is not then otherwise in default, and further, provided that Lessee gives Lessor notice in writing of its desire to exercise such purchase option not less than 90 days prior to expiration of the Lease Term or any renewal thereof. In the event Lessee exercises its option, payment in full of the amount to be paid to Lessor by Lessee shall be made in cash upon the expiration of the Lease Term or any renewal thereof, whereupon the Lessor will transfer to Lessee all its right, title and interest in the Equipment, as is, where is, without representation and warranty of any kind expressed or implied.

**SECTION 23. RENEWAL OPTION**

Unless an Event of Default (or other event which would constitute an Event of Default but for the lapse of time or giving of notice or both) has occurred and is continuing, Lessee shall have the option to extend the term of lease with respect to all, but not less than all of the Items of Equipment leased pursuant to this Lease for up to two Renewal Periods of one year each at the Equipment's then Fair Market Rental Value (as hereinafter defined) as determined by agreement between Lessor and Lessee, provided that Lessee gives Lessor notice in writing of its desire to exercise such extension option not less than 90 days prior to the expiration of the original Lease Term or any extension thereof. For the purpose of this Section 23 Fair Market Rental Value shall mean and be determined on the basis of, and shall be equal in amount to, the value which would be obtained in an arm's length transaction between an informed and willing lessee (other than Lessee), and an informed and willing lessor, under no compulsion to lease and, in such determination, costs of relocation shall not be a deduction from such value.

**SECTION 24. LESSEE'S RIGHT TO TERMINATE.**

(a) After three (3) years from the Base Lease Term Commencement Date provided that no Event of Default (or other event which would constitute an Event of Default but for the lapse of time or giving of notice or both) shall have occurred and be continuing, if any Item of Equipment shall become obsolete or surplus for continued use in Lessee's business, then Lessee may, not less than 90 days before any Basic Rent Date, give notice to Lessor of its intention to terminate the Lease Term with respect to such Equipment on any Basic Rent Date which occurs not less than 90 days after the giving of such notice (the Termination Date). Such notice shall state the Equipment, the Lease Term of which is to be terminated, and the amount of Termination Value required to be paid by Lessee in respect of the termination of the Lease Term of such Equipment pursuant to Section 24(b) below and shall include a certificate signed by

a responsible director, officer or authorized signatory of Lessee stating that Lessee has determined that such Equipment will be obsolete or surplus for continued use in Lessee's business on the Termination Date and that Lessee will discontinue use of such Equipment on such date.

(b) On the Termination Date, Lessee shall pay to Lessor in immediately available funds to the sum of (i) the Termination Value in respect of the Equipment, the Lease Term of which is being terminated, determined as of the Termination Date in accordance with Exhibit F hereto, and (ii) all Basic Rent, Supplemental Rent and other sums remaining unpaid under this Lease with respect to such Equipment. Lessee's obligations hereunder are absolute, separate and independent from the sale procedure set forth below and shall bind Lessee whether or not a sale actually occurs. Upon payment of all amounts required to be paid by the Lessee pursuant to this Section 24(b), the obligation of the Lessee for all Basic Rent accruing hereunder with respect to such Items due and payable after but not on or before, the Termination Date shall cease.

(c) During the period from the giving of such notice until the Termination Date, Lessor may and Lessee shall use reasonable efforts to solicit and to obtain firm written bids for purchase of such Equipment from third parties unrelated to the Lessee and each shall promptly submit to the other a copy of each and every bid so received by it and the name and address of the party submitting such bid.

(d) On or after the Termination Date, Lessor shall, upon receipt of the amounts set forth in subparagraph (b) hereof, sell such Equipment, free and clear of all rights of Lessor and Lessee, to the bidder named in the highest bid on an "AS IS, WHERE IS" BASIS WITHOUT RECOURSE OR WARRANTY OF ANY KIND TO LESSOR.

(e) At the closing of the sale, Lessor shall forthwith determine the Net Sales Proceeds (meaning the cash purchase price of the Equipment received pursuant to paragraph (d) above, less all reasonable out-of-pocket expenses incurred by Lessor, if any, in connection with such sale, including fees and commissions, and any amount required to put any Item of Equipment in the condition of repair required pursuant to Section 11 hereof) and pay to Lessee an amount equal to the Net Sale Proceeds which shall not exceed the Termination Value paid to Lessor by Lessee. Any excess of Net Sales Proceeds over Termination Value shall be retained by Lessor.

SECTION 25. SUCCESSORS, ASSIGNS AND INDEMNIFIED PARTIES.

This Lease, including all agreements, covenants, representations and warranties shall, except as provided in Section 18 hereof be binding upon and inure to the benefit of (a) the Lessor and its successors, assigns, agents and servants and (b) the Lessee and its successors and, to the extent permitted hereby, assigns.

SECTION 26. POWER OF ATTORNEY.

For purposes of endorsing checks from third parties which are erroneously made payable to Lessee (instead of Lessor) and for Lessor's tax filings that are required to be signed by both Lessor and Lessee, Lessor shall request in writing that Lessee endorse such checks or sign such filings. Should Lessee unreasonably refuse to make such endorsement or sign such filings, Lessor is hereby appointed as Lessee's attorney-in-fact to endorse such checks and/or sign such filings.

SECTION 27. QUIET ENJOYMENT.

The Lessor covenants that during the Lease Term, so long as no Event of Default has occurred and is continuing and the Lessee continues to make payments of Basic Rent and other payments required to be made by Lessee hereunder, the Lessee's use of the Equipment shall not be interrupted by the Lessor.

SECTION 28. NOTICES.

All communications and notices provided for in this Lease shall be in writing and shall become effective five (5) days after being deposited in the United States mail, prepaid certified mail, return receipt requested, addressed (a) if to the Lessor, 201 South Tryon Street, P. O. Box 31217, Charlotte, North Carolina 28231; Attention: Director of Credit and Administration, and (b) if to the Lessee, 1835 Dueber Avenue, S.W., Canton, Ohio 44706; Attention: Legal Services.

SECTION 29. 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.

(b) All agreements, indemnities, representations and warranties contained in the AGREEMENTS 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 such prohibition or unenforceability in any such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee and Lessor hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

(d) 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) The single executed original of this Lease marked "Original" shall be the "Original"; and all other counterparts hereof shall be marked and be "Duplicates". 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 shall be governed by and construed in accordance with the laws of the State of North Carolina.

(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.

IN WITNESS WHEREOF, the parties hereto have each caused this Lease to be duly executed by their respective officers thereunto duly authorized.

ATTEST:

\_\_\_\_\_  
(Corporate Seal)

ATTEST: *J. Kevin Ramsey*

\_\_\_\_\_  
(Corporate Seal)

BARCLAYSAMERICAN/LEASING, INC.

By: *[Signature]*

Title: *[Signature]*

THE TIMKEN COMPANY

By: *[Signature]*

Title: \_\_\_\_\_

LATROBE STEEL COMPANY

By: *[Signature]*

Title: \_\_\_\_\_

STATE OF OHIO)

COUNTY OF STARK ) ss.

Before me a notary public in and for the said county appeared R W Lang and J Kevin Ramsey to me personally known and who being first duly sworn, stated that they were respectively the Vice President and Secretary of The Timken Company, and that they signed the foregoing document as the duly authorized act and deed of said corporation

[Notarial Seal]

Mark W Bump  
NOTARY PUBLIC

My Commission expires:

MARK W. BUMP

Notary Public, State of Ohio

Continuing Commission ORC 147.03

STATE OF NORTH CAROLINA)

COUNTY OF MECKLENBURG ) ss.

Before me a notary public in and for the said county appeared P D Thompson and Beverly W. Wentz to me personally known and who being first duly sworn, stated that they were respectively the Vice President and Asst. Secretary of BarclaysAmerican/Leasing, Inc., and that they signed the foregoing document as the duly authorized act and deed of said corporation

[Notarial Seal]

Beverly W. Wentz  
NOTARY PUBLIC

My Commission expires:

February 15, 1993

EXHIBIT A  
TO EQUIPMENT LEASE  
DATED AS OF ~~September 10~~, 1988 BETWEEN   
August 31  
BARCLAYSAMERICAN/LEASING, INC.

and  
THE TIMKEN COMPANY  
and  
LATROBE STEEL COMPANY

DESCRIPTION OF EQUIPMENT

The Items of Equipment covered by this Equipment Lease are Five (5) remanufactured Caterpillar-powered SW1200, 130-ton Railroad Switcher Locomotives, having a total estimated Lessor's Cost of \$2,500,000.00, which are more fully described on Certificates of Acceptance executed pursuant to this Equipment Lease.

With respect to the foregoing Equipment the term "Lessee" as set forth in the Lease shall be deemed not to include Latrobe Steel Company.

Lessee's Initials:   
JKR

Lessor's Initials: \_\_\_\_\_

EXHIBIT B  
TO EQUIPMENT LEASE  
DATED AS OF \_\_\_\_\_, 1988 BETWEEN

BARCLAYSAMERICAN/LEASING, INC.

and

THE TIMKEN COMPANY

and

LATROBE STEEL COMPANY

CERTIFICATE OF ACCEPTANCE NO. \_\_\_\_\_

under

EQUIPMENT LEASE dated as of \_\_\_\_\_, 1988 (the Lease) between BarclaysAmerican/Leasing, Inc., as lessor (the Lessor) and The Timken Company, as lessee (the Lessee).

1. Items of Equipment.

The Lessee hereby certifies that the Items of Equipment set forth and described in Schedule 1 hereto (which Schedule includes the amount of the Lessor's Cost of each such Item), constituting Items of Equipment, have been delivered to the location indicated below, inspected by the Lessee, found to be in good order and in conformity with the specifications in the purchase orders and Purchase Documents furnished to the Lessor and accepted as Items of Equipment under the Lease, all on the Date of Delivery and Acceptance set forth below:

Location of Equipment: \_\_\_\_\_

Date of Delivery and Acceptance: \_\_\_\_\_.

2. Representations by the Lessee.

The Lessee hereby represents and warrants to the Lessor, as such terms are defined in the Lease, that on the Date of Delivery and Acceptance set forth above:

(a) The representations and warranties of the Lessee set forth in Sections 8 and 17 of the Lease are true and correct in all material respects as though made on and as of such Date of Delivery and Acceptance.

(b) The Lessee has satisfied or complied with all requirements set forth in any certificate of the Lessee and in the Lease to be satisfied or complied with on or prior to such Date of Delivery and Acceptance.

(c) No Default or Event of Default under the Lease has occurred and is continuing on such Date of Delivery and Acceptance.

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

(e) All necessary action to convey title to each of the Items of Equipment herein described to Lessor has been completed. Lessee represents and warrants to Lessor that Lessor had good and lawful title to each Item of Equipment accepted pursuant hereto free and clear of liens and encumbrances created or arising by, through or under Lessee. Lessee agrees with Lessor, its successors and assigns, that it will warrant and defend such title to such Items of Equipment to Lessor, its successors and assigns against any claim of any party claiming by, through or under Lessee.

(f) Lessee has obtained and delivered to Lessor counterpart original copies of Certificates of Insurance, or counterpart certificates with respect thereto, insuring each of the Items of Equipment described herein pursuant to the requirements set forth in Section 14 of the Lease.

(g) No Item of Equipment accepted pursuant hereto has been the subject of, or collateral for, any other financing by or on behalf of the Lessee.

THE TIMKEN COMPANY

By: 

LATROBE STEEL COMPANY

By: \_\_\_\_\_

ACCEPTED on the Date of  
Acceptance set forth in  
paragraph 1 above.

BARCLAYSAMERICAN/LEASING, INC.

By: \_\_\_\_\_  
(Lessee as agent for Lessor)

SCHEDULE 1  
TO CERTIFICATE OF ACCEPTANCE NO. \_\_\_\_\_

<u>Quantity</u>	<u>Equipment Description</u>	<u>Serial No.</u>	<u>Lessor's Cost</u>
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Lessee's Initials: \_\_\_\_\_

EXHIBIT C  
TO EQUIPMENT LEASE  
DATED AS OF / ~~September 10~~ 1988 BETWEEN  
August 31   
BARCLAYSAMERICAN/LEASING, INC.  
and  
THE TIMKEN COMPANY  
and  
LATROBE STEEL COMPANY

SCHEDULE OF CASUALTY VALUES

Base Lease Term Commencement Date:	September 10, 1988
Expiration Date:	September 10, 1998
Basic Lease Rate Factor: payments 1-54	1.046364% of Lessor's Cost <u>a/</u>
payments 55-120	1.278891% of Lessor's Cost <u>a/</u>
Daily Lease Rate Factor:	.039142% of Lessor's Cost <u>b/</u>
Late Payment Rate:	18% per annum
First Basic Rent Date:	September 10, 1988
Last Basic Rent Date:	August 10, 1998
Basic Rent Dates:	10th day of each month of each year of the Lease Term

a/ The Basic Lease Rate Factor shown is predicated on a ten year U. S. Treasury Constant Maturity Rate of 8.89% ("Benchmark Rate"). The Base Lease Rate Factor as shown shall be adjusted up or down by .011542% of Lessor's Cost for payments 1 through 54 and by .014106% of Lessor's Cost for payments 55 through 120 for every corresponding .25% change in the ten year U. S. Treasury Constant Maturity Rate from Benchmark Rate. The Base Lease Rate Factor shall be determined on the last business day of the month preceding the Base Lease Term Commencement Date predicated on the ten year U. S. Treasury Constant Maturity Rate on that date and such Base Lease Rate Factor shall apply to all applicable Items of Equipment accepted by the Lessee pursuant to Section 3 of the Lease, and such Base Lease Rate Factor shall apply to such Items of Equipment throughout its Lease Term.

b/ The Daily Lease Rate Factor as shown is predicated on the Basic Lease Rate Factor shown. For any change in the Basic Lease Rate Factor as described in a/ above, the Daily Lease Rate Factor shall be adjusted accordingly.

Lessee's Initials:   
JKR

EXHIBIT D  
 TO EQUIPMENT LEASE  
 DATED AS OF ~~September 10~~, 1988 BETWEEN  
~~August 31~~ *JKR*  
 BARCLAYSAMERICAN/LEASING, INC.  
 and  
 THE TIMKEN COMPANY  
 and  
 LATROBE STEEL COMPANY

SCHEDULE OF CASUALTY VALUES

The Casualty Value of any item of a Group of Equipment as of the date on which such amount is due shall be as follows:

- (i) On any Basic Rent Date, an amount equal to the sum of (1) the Basic Rent due on such date plus (2) an amount equal to the percentage shown below opposite the Basic Rent Date indicated below next following the date on which the Event of Loss occurred multiplied by the Lessor's Cost of such Item of Equipment.
- (ii) On any date other than a Basic Rent Date an amount equal to the percentage shown below opposite the Basic Rent Date indicated below next following the date on which the Event of Loss occurred multiplied by the Lessor's Cost of such Item of Equipment.

Any change to the Basic Lease Rate Factor as described in Exhibit A shall also create a corresponding change in the Casualty Percentages presented below.

<u>Basic Rent Number</u>	<u>Percentage (%)</u>	<u>Basic Rent Number</u>	<u>Percentage (%)</u>
1	100.000	19	96.084
2	99.685	20	95.803
3	99.528	21	95.517
4	99.367	22	95.226
5	99.195	23	94.926
6	99.018	24	94.618
7	98.838	25	94.304
8	98.646	26	93.983
9	98.450	27	93.656
10	98.250	28	93.324
11	98.043	29	92.984
12	97.824	30	92.638
13	97.600	31	92.287
14	97.363	32	91.927
15	97.121	33	91.562
16	96.875	34	91.192
17	96.616	35	90.815
18	96.353	36	90.432

Lessee's Initials *JKR*

EXHIBIT D - SCHEDULE OF CASUALTY VALUES  
(continued)

<u>Basic Rent Number</u>	<u>Percentage (%)</u>	<u>Basic Rent Number</u>	<u>Percentage (%)</u>
37	90.044	79	62.868
38	89.650	80	61.978
39	89.251	81	61.079
40	88.846	82	60.171
41	88.436	83	59.255
42	88.020	84	58.338
43	87.599	85	57.411
44	87.171	86	56.482
45	86.738	87	55.544
46	86.300	88	54.596
47	85.855	89	53.647
48	85.407	90	52.687
49	84.953	91	51.718
50	84.497	92	50.747
51	84.034	93	49.766
52	83.565	94	48.776
53	83.093	95	47.779
54	82.615	96	46.783
55	82.130	97	45.777
56	81.374	98	44.771
57	80.646	99	43.756
58	79.909	100	42.731
59	79.165	101	41.706
60	78.418	102	40.671
61	77.662	103	39.626
62	76.902	104	38.582
63	76.133	105	37.528
64	75.356	106	36.463
65	74.575	107	35.393
66	73.785	108	34.323
67	72.987	109	33.243
68	72.185	110	32.163
69	71.374	111	31.073
70	70.554	112	29.972
71	69.727	113	28.872
72	68.896	114	27.761
73	68.056	115	26.640
74	67.212	116	25.518
75	66.359	117	24.386
76	65.496	118	23.244
77	64.629	119	22.095
78	63.753	120	20.954
		121	20.000

Lessee's Initials

*JKR*  
JKR

EXHIBIT E

ASSIGNMENT OF PURCHASE ORDER

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, \_\_\_\_\_ ("Assignor"), a \_\_\_\_\_ (partnership/corporation), hereby sells, assigns, transfers and sets over unto BarclaysAmerican/Leasing, Inc., ("Assignee"), all of Assignor's right, title and interest in and to the equipment ("Equipment") as set forth and described in the purchase order agreement ("Purchase Order") between \_\_\_\_\_ ("Seller") and Assignor, which Purchase Order is dated \_\_\_\_\_, 19\_\_\_\_ and attached hereto; and in addition, Assignor sells, assigns transfers and sets over unto Assignee all of Assignor's rights and interests in and to said Purchase Order, including without limitation, (a) the right, upon valid tender by Seller, to purchase the Equipment pursuant to the Purchase Order, and the right to take title to the Equipment and to be named the purchaser in each bill of sale to be delivered by Seller for the Equipment and to be named as owner in any document or filing to be made upon public records, and (b) any and all rights of Assignor to compel performance of the terms of the Purchase Order in respect of the Equipment.

Assignor expressly agrees that, anything herein contained to the contrary notwithstanding: (a) Assignor shall at all times remain liable to Seller under the Purchase Order to perform all of the duties and obligations of Assignor thereunder to the same extent as if this Assignment had not been executed; (b) the exercise by Assignee of any of the rights assigned hereunder shall not release Assignor from any of its duties or obligations to Seller under the Purchase Order except to the extent that such exercise by Assignee shall constitute performance of such duties and obligations; and (c) Assignee shall have no obligation or liability under the Purchase Order by reason of, or arising out of, this Assignment, or be obligated to perform any of the obligations or duties of Assignor under the Purchase Order or to make any payment or to make any inquiry as to the sufficiency of any payment or to present or file any claim or to take any other action with respect to the Purchase Order.

Assignor agrees that at any time and from time to time upon the written request of Assignee, Assignor will properly and duly execute any and all such further instruments and take such further action as Assignee may reasonably request in order to obtain the full benefits of this Assignment of Purchase Order and of the rights and powers herein granted.

Assignor hereby represents and warrants that the Purchase Order is in full force and effect and that Assignor is not in default thereunder. Assignor hereby further represents and warrants that Assignor has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Assignment of Purchase Order shall remain in effect, the whole or any part of the rights hereby assigned or any of its rights with respect to the Equipment to anyone other than Assignee.

IN WITNESS WHEREOF, Assignor has caused this Assignment of Purchase Order to be duly executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Assignor)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BARCLAYSAMERICAN/LEASING, INC. (Assignee)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

SELLER CONSENT TO ASSIGNMENT OF PURCHASE ORDER

Seller hereby consents to the Assignment of the Purchase Order from Assignor to Assignee upon the terms and conditions therein contained and hereby confirms to Assignee that:

(a) all representations, warranties and agreements of Seller under the Purchase Order or otherwise with respect to the Equipment shall inure to the benefit of Assignee to the same extent as if it was originally named the buyer therein; (b) Assignee shall not be liable for any of the obligations or duties of Assignor under the Purchase Order or otherwise, nor shall the Assignment of Purchase Order give rise to any duties or obligations whatsoever on the part of Assignee owing to Seller; and (c) Seller hereby agrees that it will comply with the requirements of any applicable law in producing and constructing the Equipment or performing services to be furnished under the Purchase Order.

\_\_\_\_\_  
(Seller)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT F  
 TO EQUIPMENT LEASE  
 DATED AS OF ~~September 10~~ August 31 1988 BETWEEN  
 BARCLAYSAMERICAN/LEASING, INC.  
 and  
 THE TIMKEN COMPANY  
 and  
 LATROBE STEEL COMPANY

SCHEDULE OF TERMINATION VALUES

The Termination Value of any Item of Equipment as of the date on which such amount is due shall be equal to the sum of (1) the Basic Rent due on such date plus (2) an amount equal to the percentage shown below opposite the applicable Basic Rent Payment Number, multiplied by the Lessor's Cost of such Item of Equipment.

<u>Basic Rent Number</u>	<u>Percentage (%)</u>	<u>Basic Rent Number</u>	<u>Percentage (%)</u>
37	90.044	65	74.575
38	89.650	66	73.785
39	89.251	67	72.987
40	88.846	68	72.185
41	88.436	69	71.374
42	88.020	70	70.554
43	87.599	71	69.727
44	87.171	72	68.896
45	86.738	73	68.056
46	86.300	74	67.212
47	85.855	75	66.359
48	85.407	76	65.496
49	84.953	77	64.629
50	84.497	78	63.753
51	84.034	79	62.868
52	83.565	80	61.978
53	83.093	81	61.079
54	82.615	82	60.171
55	82.130	83	59.255
56	81.374	84	58.338
57	80.646	85	57.411
58	79.909	86	56.482
59	79.165	87	55.544
60	78.418	88	54.596
61	77.662	89	53.647
62	76.9022	90	52.687
63	76.133	91	51.718
64	75.356	92	50.747

Lessee's Initials JKR  
JKR

EXHIBIT F - SCHEDULE OF TERMINATION VALUES  
(continued)

<u>Basic Rent Number</u>	<u>Percentage (%)</u>	<u>Basic Rent Number</u>	<u>Percentage (%)</u>
93	49.766	108	34.323
94	48.776	109	33.243
95	47.779	110	32.163
96	46.783	111	31.073
97	45.777	112	29.972
98	44.771	113	28.872
99	43.756	114	27.761
100	42.731	115	26.640
101	41.706	116	25.518
102	40.671	117	24.386
103	39.626	118	23.244
104	38.582	119	22.095
105	37.528	120	20.954
106	36.463	121	20.000
107	35.393		

Lessee's Initials

  
JKR

EXHIBIT G

CONDITIONAL BILL OF SALE

PURCHASER: BarclaysAmerican/Leasing, Inc.  
201 South Tryon Street  
Charlotte, North Carolina 28202

\_\_\_\_\_ ("Seller") in consideration of the payment of the  
sum of \_\_\_\_\_  
( \_\_\_\_\_ ), and other good and valuable consideration, the receipt of which  
is acknowledged, sells and transfers to the Purchaser named above the following  
equipment (the "Equipment"):

to have and to hold each and every item listed above to the Purchaser, its  
successors and assigns forever.

WARRANTY OF TITLE

Seller hereby warrants that on \_\_\_\_\_, Seller was the lawful  
owner of the Equipment and that Seller has good and lawful right to sell the  
same and that title to the same was free from any charge or encumbrance whatso-  
ever except for the purchase money security interest in the Equipment listed  
above in the amount of the purchase price reserved by the vendor and that the  
Seller will defend said title.

IN WITNESS WHEREOF, Seller has caused this instrument to be executed in its  
name by a duly authorized representative on the \_\_\_\_\_ day of \_\_\_\_\_, 1988.

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT H  
CORPORATE CERTIFICATE

Equipment Lease dated as of \_\_\_\_\_ between BarclaysAmerican/leasing, Inc. as Lessor and the Timken Company and Latrobe Steel Company as Lessee

The undersigned Secretary of \_\_\_\_\_

\_\_\_\_\_ corporation, ("Company")

DOES HEREBY CERTIFY:

1. That the Company is a duly incorporated and existing corporation in good standing under the laws of the state first above mentioned; and
2. That, having due regard to all restrictions contained in the Articles of Incorporation, Charter, Code of Regulations and Bylaws of the Company and all outstanding agreements and commitments of the Company, the Company has the power and authority to do the character of business conducted by it and to transact the business hereinafter described; and
3. That the following are either (1) the true, complete and correct resolutions from the minutes of a meeting of the board of directors of the Company duly called and held on \_\_\_\_\_, 19\_\_\_\_, at which a quorum was present and voting, or (2) the valid and effective actions taken without meeting by the board of directors of the Company in compliance with all notice and voting provisions and other requirements of the law under which the Company is organized, whichever the case may be, and that in either case the same are now in full force and effect.

RESOLVED, that the officers of the Company named below or their duly elected or appointed successors in office are, and each of them is, hereby authorized and empowered in the name and on behalf of the Company and under its corporate seal to lease or purchase certain equipment and to borrow from BarclaysAmerican/Leasing, Inc., from time to time, in such amounts as in the judgment of such officer or officers the Company may require, and to execute on behalf of the Company and to deliver to BarclaysAmerican/Leasing, Inc. in the form required by BarclaysAmerican/Leasing, Inc., the leases, conditional sales contracts and promissory note or notes of the Company, evidencing the equipment leased or purchased and the amount or amounts borrowed or any renewals or extensions thereof, plus charges, if any, such leases, conditional sales contracts, note or notes to bear such charges or rate of interest and be payable in such installments as BarclaysAmerican/Leasing, Inc. may require; and

FURTHER RESOLVED, that the aforesaid officers or their duly elected or appointed successors in office are, and each of them is, hereby authorized and empowered to do any acts including but not limited to the assigning, mortgaging, pledging, or hypothecating from time to time of any or all assets of the Company to secure such leases, purchases, loan or loans, renewals and extensions thereof, and to execute and deliver in the name and on behalf of the Company and under its corporate seal or otherwise, any instruments or agreements deemed necessary or proper by Barclays American/Leasing, Inc. in respect of the collateral securing any indebtedness of the Company to BarclaysAmerican/Leasing, Inc.; and

FURTHER RESOLVED, that the officers referred to in the foregoing resolutions are as follows:

\_\_\_\_\_ President

\_\_\_\_\_ Vice President

\_\_\_\_\_ Treasurer

\_\_\_\_\_

FURTHER RESOLVED, that these resolutions shall continue in full force and effect and may be relied upon by BarclaysAmerican/Leasing, Inc. until receipt by it of a written notice of any change therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Secretary

(Corporate Seal)

DESCRIPTION OF EQUIPMENT

<u>Chassis Serial Number</u>	<u>Road Markings</u>
4484-1	TIMK 201
4484-2	TIMK 202
4484-5	TIMK 203
4484-10	TIMK 204
4484-15	TIMK 205
4484-16	TIMK 206
4484-17	TIMK 207

CONDITIONAL BILL OF SALE

PURCHASER: BarclaysAmerican/Leasing, Inc.  
201 South Tryon Street  
Charlotte, North Carolina 28202

The Timken Company ("Seller") in consideration of the payment of the sum of Nine Hundred Ninety Thousand, Eight Hundred Eleven Dollars and Two Cents (990,811.02), and other good and valuable consideration, the receipt of which is acknowledged, sells and transfers to the Purchaser named above the following equipment (the "Equipment"):

Two(2) EMD Model SW1200 130 Ton Caterpillar Switcher Locomotives with serial numbers 4484-16 and 4484-17.

to have and to hold each and every item listed above to the Purchaser, its successors and assigns forever.

WARRANTY OF TITLE

Seller hereby warrants that on September 29, 1988, Seller was the lawful owner of the Equipment and that Seller has good and lawful right to sell the same and that title to the same was free from any charge or encumbrance whatsoever except for the purchase money security interest in the Equipment listed above in the amount of the purchase price reserved by the vendor and that the Seller will defend said title.

IN WITNESS WHEREOF, Seller has caused this instrument to be executed in its name by a duly authorized representative on the 29th day of September, 1988.

By: J. Kevin Ramsey

By: J. Kevin Ramsey

Title: Vice President - Finance and Law, Secretary and Treasurer

AMENDMENT TO EQUIPMENT LEASE

Amendment No. 1 dated as of September 29, 1988 to that certain Equipment Lease ("Lease") dated as of August 31, 1988 between Barclays-American/Leasing, Inc. ("Lessor") and The Timken Company and Latrobe Steel Company ("Lessee");

For consideration, the value and sufficiency of which is hereby expressly acknowledged, the undersigned parties hereto agree as follows:

1. The terms used herein shall have the same meaning as in the Lease unless otherwise specified.
2. With respect to Items of Equipment accepted on Certificate of Acceptance No. 2, Exhibit A of the Lease is hereby amended by adding thereto Exhibit A-1 which is attached hereto and incorporated herein in reference.
3. With respect to Items of Equipment accepted on Certificate of Acceptance No. 2, Exhibit C of the Lease is hereby amended by adding thereto Exhibit C-1 which is attached hereto and incorporated herein by reference.
4. All other terms, conditions and agreements as set forth in the Lease shall not be changed or otherwise affected by the Amendment.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Amendment to be executed as of the date first above written.

ATTEST:

\_\_\_\_\_  
(Corporate Seal)

ATTEST

\_\_\_\_\_  
(Corporate Seal)

ATTEST

\_\_\_\_\_  
(Corporate Seal)

BARCLAYSAMERICAN/LEASING, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

THE TIMKEN COMPANY

By: J. Kevin Ramsey

Title: \_\_\_\_\_

LATROBE STEEL COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A-1  
TO EQUIPMENT LEASE  
DATED AS OF August 31, 1988 BETWEEN

BARCLAYSAMERICAN/LEASING, INC.  
and  
THE TIMKEN COMPANY  
and  
LATROBE STEEL COMPANY

DESCRIPTION OF EQUIPMENT

The Items of Equipment covered by this Equipment Lease are Two (2) remanufactured Caterpillar-powered SW1200, 130-ton Railroad Switcher Locomotives, having a total estimated Lessor's Cost of \$1,000,000.00, which are more fully described on Certificates of Acceptance executed pursuant to this Equipment Lease.

With respect to the foregoing Equipment the term "Lessee" as set forth in the Lease shall be deemed not to include Latrobe Steel Company.

Lessee's Initials: 

EXHIBIT C-1  
TO EQUIPMENT LEASE  
DATED AS OF August 31, 1988 BETWEEN

BARCLAYSAMERICAN/LEASING, INC.  
and  
THE TIMKEN COMPANY  
and  
LATROBE STEEL COMPANY

SCHEDULE OF CASUALTY VALUES

Base Lease Term Commencement Date:	October 10, 1988
Expiration Date:	October 10, 1998
Basic Lease Rate Factor: payments 1-54	1.046364% of Lessor's Cost <u>a/</u>
payments 55-120	1.278891% of Lessor's Cost <u>a/</u>
Daily Lease Rate Factor:	.039142% of Lessor's Cost <u>b/</u>
Late Payment Rate:	18% per annum
First Basic Rent Date:	November 10, 1988
Last Basic Rent Date:	October 10, 1998
Basic Rent Dates:	10th day of each month of each year of the Lease Term

a/ The Basic Lease Rate Factor shown is predicated on a ten year U. S. Treasury Constant Maturity Rate of 8.89% ("Benchmark Rate"). The Base Lease Rate Factor as shown shall be adjusted up or down by .011542% of Lessor's Cost for payments 1 through 54 and by .014106% of Lessor's Cost for payments 55 through 120 for every corresponding .25% change in the ten year U. S. Treasury Constant Maturity Rate from Benchmark Rate. The Base Lease Rate Factor shall be determined on the last business day of the month preceding the Base Lease Term Commencement Date predicated on the ten year U. S. Treasury Constant Maturity Rate on that date and such Base Lease Rate Factor shall apply to all applicable Items of Equipment accepted by the Lessee pursuant to Section 3 of the Lease, and such Base Lease Rate Factor shall apply to such Items of Equipment throughout its Lease Term.

b/ The Daily Lease Rate Factor as shown is predicated on the Basic Lease Rate Factor shown. For any change in the Basic Lease Rate Factor as described in a/ above, the Daily Lease Rate Factor shall be adjusted accordingly.

Lessee's Initials: JKR

CERTIFICATE OF NO DEFAULT

This Certificate of No Default is prepared and executed pursuant to Section 2(a)(ii) of the Equipment Lease dated August 31, 1988.

As Vice President - Finance and Law, Secretary and Treasurer of The Timken Company, to the best of my knowledge, no Event of Default, or event which with the passage of time or the giving of notice or both would become an Event of Default, has occurred or is continuing.

The Timken Company

By

  
\_\_\_\_\_  
J. Kevin Ramsey  
Vice President - Finance and  
Law, Secretary and Treasurer

88-9-29

1761.mwb

CERTIFICATE OF ACCEPTANCE NO. 2

under

EQUIPMENT LEASE dated as of August 31, 1988 (the Lease) between BarclaysAmerican/Leasing, Inc., as lessor (the Lessor) and The Timken Company, as lessee (the Lessee).

1. Items of Equipment.\*

The Lessee hereby certifies that the Items of Equipment set forth and described in Schedule 1 hereto (which Schedule includes the amount of the Lessor's Cost of each such Item), constituting Items of Equipment, have been delivered to the location indicated below, inspected by the Lessee, found to be in good order and in conformity with the specifications in the purchase orders and Purchase Documents furnished to the Lessor and accepted as Items of Equipment under the Lease, all on the Date of Delivery and Acceptance set forth below:

Location of Equipment: 1835 Dueber Avenue, S.W., Canton, Ohio

Date of Delivery and Acceptance: September 29, 1988.

2. Representations by the Lessee.

The Lessee hereby represents and warrants to the Lessor, as such terms are defined in the Lease, that on the Date of Delivery and Acceptance set forth above:

(a) The representations and warranties of the Lessee set forth in Sections 8 and 17 of the Lease are true and correct in all material respects as though made on and as of such Date of Delivery and Acceptance.

(b) The Lessee has satisfied or complied with all requirements set forth in any certificate of the Lessee and in the Lease to be satisfied or complied with on or prior to such Date of Delivery and Acceptance.

(c) No Default or Event of Default under the Lease has occurred and is continuing on such Date of Delivery and Acceptance.

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

\*The locomotive identified by serial number 4484-17 was accepted by Lessee in Greenville, South Carolina and put into service by Lessee on September 29, 1988. Lessee is currently relocating the locomotive from Greenville, South Carolina to Canton, Ohio.

(e) All necessary action to convey title to each of the Items of Equipment herein described to Lessor has been completed. Lessee represents and warrants to Lessor that Lessor had good and lawful title to each Item of Equipment accepted pursuant hereto free and clear of liens and encumbrances created or arising by, through or under Lessee. Lessee agrees with Lessor, its successors and assigns, that it will warrant and defend such title to such Items of Equipment to Lessor, its successors and assigns against any claim of any party claiming by, through or under Lessee.

(f) Lessee has obtained and delivered to Lessor counterpart original copies of Certificates of Insurance, or counterpart certificates with respect thereto, insuring each of the Items of Equipment described herein pursuant to the requirements set forth in Section 14 of the Lease.

(g) No Item of Equipment accepted pursuant hereto has been the subject of, or collateral for, any other financing by or on behalf of the Lessee.

THE TIMKEN COMPANY

By: J. Kevin Ramsey

LATROBE STEEL COMPANY

By: \_\_\_\_\_

ACCEPTED on the Date of  
Acceptance set forth in  
paragraph 1 above.

BARCLAYSAMERICAN/LEASING, INC.

By: J. Kevin Ramsey  
(Lessee as agent for Lessor)

SCHEDULE 1  
TO CERTIFICATE OF ACCEPTANCE NO. 2

<u>Quantity</u>	<u>Equipment Description</u>	<u>Serial No.</u>	<u>Lessor's Cost</u>
2	EMD Model SW1200	4484-16	\$495,405.51
	130 Ton Caterpillar	4484-17	<u>495,405.51</u>
	Diesel Switcher Locomotives		\$990,811.02

Lessee's Initials: 