

June 24, 1992

2-176A022

Secretary  
Interstate Commerce Commission  
Twelfth Street and Constitution Avenue N.W.  
Washington, D.C. 20423

Attention: Ms. Mildred Lee, Room 2303

Re: Documents for Recordation

17824  
RECORDATION NO. \_\_\_\_\_ FILED 123

JUN 24 1992 12 00 PM

INTERSTATE COMMERCE COMMISSION

Dear Secretary:

In accordance with the provisions of Section 11303 of Title 49 of the U.S. Code, and Rules and Regulations of the Interstate Commerce Commission ("ICC") thereunder ("Rules and Regulations"), enclosed herewith for filing and recordation are three (3) executed and acknowledged originals (one of which is marked Counterpart No. 1) of a Lease Agreement dated as of June 25, 1992 between Red Bud Funding, Limited Partnership, as lessor, and Oklahoma Gas and Electric Company, as lessee (the "Lease Agreement"), a primary document as defined in the Rules and Regulations.

The names and addresses of the parties to the enclosed Lease Agreement are:

Lessor: Red Bud Funding, Limited Partnership  
c/o ML Leasing Equipment Corp.  
World Financial Center  
250 Vesey Street  
New York, NY 10281-1327

Lessee: Oklahoma Gas and Electric Company  
321 N. Harvey Avenue  
Oklahoma City, OK 73102

A description of the railroad equipment leased under the Lease Agreement is as follows:

Three hundred thirty-six (336) 120-ton gondola cars with aluminum bodies, approximately 4,700 cu. ft. capacity bearing identification marks and numbers OGEX 2001 through OGEX 2336, A.A.R. car type J311, and any other railroad equipment hereafter acquired by lessor covered by the Lease Agreement intended for use related to interstate commerce.

Also enclosed is a certified check in the amount of \$16.00 to cover the required recordation fee.

JUN 24 12 42 PM '92  
MOTOR OPERATING UNIT

*Stephan Edwards*

Secretary  
Interstate Commerce Commission  
June 24, 1992  
Page 2

Please deliver the stamped original of the Lease Agreement marked Counterpart No. 1 to the representative of Gardner, Carton & Douglas who is delivering this letter and said enclosures to you.

A short summary of the documents to appear in the Index maintained by the Interstate Commerce Commission follows:

Lease Agreement dated as of June 25, 1992 between Red Bud Funding, Limited Partnership, c/o ML Leasing Equipment Corp., World Financial Center, 250 Vesey Street, New York, NY 10281-1327, as lessor, and Oklahoma Gas and Electric Company, 321 N. Harvey Avenue, Oklahoma City, OK 73102, as lessee, covering 336 120-ton gondola cars bearing identification marks and numbers OGEX 2001 through OGEX 2336, A.A.R. car type J311, and any other railroad equipment hereafter acquired by lessor covered by the Lease Agreement intended for use related to interstate commerce.

OKLAHOMA GAS AND ELECTRIC COMPANY

By:   
A. M. Strecker  
Vice President and Treasurer

Enclosures

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

6/24/92

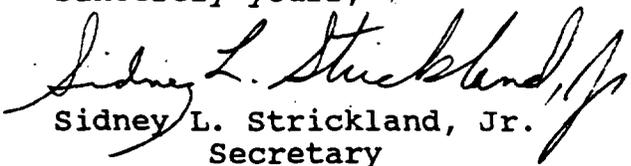
OFFICE OF THE SECRETARY

A.M. Strecker  
Vice President & Treasurer  
OG&E Company  
P.O.Box 321  
Oklahoma City, Oklahoma 73101- 0321

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 6/24/92 at 12:55pm , and assigned recordation number(s). 17824

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

17824

RECORDATION NO. FILED 1992

JUN 24 1992 14 00 PM

INTERSTATE COMMERCE COMMISSION

CONFIDENTIAL AND PROPRIETARY

LEASE AGREEMENT

Dated as of June 25, 1992

BETWEEN

Red Bud Funding, Limited Partnership

as Lessor

AND

Oklahoma Gas and Electric Company

as Lessee

**THIS LEASE HAS BEEN ASSIGNED AS SECURITY  
FOR INDEBTEDNESS OF THE LESSOR. SEE SECTION 21.**

This Lease has been manually executed in 8 counterparts, numbered consecutively from 1 through 8 of which this is No. 2. To the extent, if any, 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 or perfected through the transfer or possession of any counterpart other than the original executed counterpart which shall be the counterpart identified as counterpart No. 1.

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- Exhibit A - Categories of Equipment and Property
- Exhibit B - Form of AFL Unit Leasing Record
- Exhibit C - Form of Unit Leasing Record

CONFIDENTIAL

LEASE AGREEMENT

Lease Agreement, dated as of June 25, 1992 (as the same may be amended, restated, modified or supplemented from time to time, "this Lease"), between Red Bud Funding, Limited Partnership, a Delaware limited partnership, Lessor (the "Lessor"), and Oklahoma Gas and Electric Company, an Oklahoma corporation, Lessee (the "Lessee").

SECTION 1. Defined Terms.

Unless the context otherwise requires, each term defined in this Section 1 shall, when used in this Lease, have the meaning indicated:

"Accrued Default Obligations" has the meaning set forth in Section 19 hereof.

"Acquisition Cost" means, (i) in the case of a Parcel of Property acquired and built pursuant to the Agreement for Lease, an amount equal to the costs incurred by the Lessor in connection with the acquisition, construction and financing of such Parcel pursuant to the Agreement for Lease; (ii) with respect to any Unit of Equipment, an amount equal to the sum of (a) the vendor's invoice price therefor, including any progress payments, costs of labor, delivery or installation, sales, use, excise or similar taxes and any other charges included in such invoice, after deduction for any refundable fleet or other discounts or credits actually used by the Lessor, (b) similar amounts paid or payable with respect to such Unit to parties other than the vendor of such Unit, (c) similar costs incurred with respect to such Unit by the Lessee, and (d) legal, printing, reproduction, closing and other normally capitalizable administrative fees and expenses paid by the Lessee and approved by the Lessor; and (iii) with respect to any Parcel of Property not acquired and built pursuant to the Agreement for Lease, an amount equal to the sum of any amounts included in (ii)(d) above which are applicable to such Parcel plus (a) the vendor's contract price therefor or the appraised value thereof, (b) vendee's closing costs, including, without limitation, title insurance premiums, survey and survey inspection charges, recording and filing fees, title closer fees, vendee's attorneys' fees and brokerage commissions, (c) other costs related to the acquisition, including, without limitation, appraisal, architectural, engineering, soil analysis, environmental analysis and market analysis fees, and (d) any amounts paid by vendee on behalf of vendor in addition to, and not as a credit against the contract price, including, without limitation, payments made in satisfaction of prior liens, and payment of any transfer, transfer gains or similar taxes imposed in respect of the conveyance of such Property.

"Additional Rent" has the meaning set forth in paragraph (d) of Section 7 hereof.

"Adjusted Acquisition Cost" means, at any time, with respect to any Parcel of Property or Unit of Equipment, its Acquisition Cost less the aggregate amount of all Monthly Rent Components paid as portions of Basic Rent for such Parcel of Property or Unit of Equipment as of the time of determination.

**"Affiliate"** of any Person means any other Person controlling, controlled by or under direct or indirect common control with such Person. For the purposes of this definition, **"control,"** when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms **"controlling"** and **"controlled"** have meanings correlative to the foregoing.

**"AFL Unit Leasing Record"** means an instrument, substantially in the form of Exhibit B hereto, evidencing the lease or sublease under this Lease of a Parcel of Property or Unit of Equipment acquired and/or built pursuant to the Agreement for Lease. The terms "lease" or "leased" when used in this Lease shall be deemed to mean "sublease" or "subleased" when referenced to the Property subleased pursuant to the AFL Unit Leasing Record.

**"Agreement for Lease"** means the Agreement for Lease, dated as of the date hereof, between the Lessor, as owner, and the Lessee, as agent, providing for the acquisition of a fee or leasehold interest in real property and the construction of improvements and acquisition of Equipment to be installed on certain parcels of real property, as the same may be amended, restated, modified or supplemented from time to time.

**"Aircraft"** means the aircraft, if any, described in the Unit Leasing Record applicable thereto, together with the Engines and any and all appliances, parts, instruments, appurtenances, accessories, furnishings and other equipment of whatever nature, from time to time incorporated or installed in or attached to such aircraft.

**"Appraisal Procedure"** means an independent appraiser appointed by the Lessor and the Lessee, with the consent of the Assignee, to determine the amount of wear and tear in excess of that attributable to normal use of any Property or Equipment to which the provisions of Section 12(b)(iii), Section 12(c)(iii) or Section 12(d)(iii) apply, or the amount of the reduction in fair market value under the circumstances referred to in Section 16(b). If no such appraiser is appointed by the Lessor and the Lessee within ten (10) days of the written request of either the Lessor or the Lessee that an appraiser be appointed, the Lessor and the Lessee shall each appoint an independent appraiser within fifteen (15) days thereafter, and the two appraisers so appointed shall appoint a third independent appraiser. Each appraiser appointed pursuant to the foregoing procedure shall, within ten (10) days after appointment of the last appraiser, independently determine the amount of wear and tear in excess of that attributable to normal use. If the Lessor or the Lessee shall fail to appoint an independent appraiser within the above-mentioned fifteen (15) day period, the appraiser appointed by the other party shall determine such amount. If a single appraiser is appointed, such appraiser's determination shall be final. If three appraisers are appointed, the amounts determined by the three appraisers shall be averaged, the amount which differs the most from such average shall be excluded, the remaining two amounts shall be averaged and such average shall be final. The expenses of all appraisers shall be paid by the Lessee.

**"Assignee"** means each Person to which any part of the Lessor's interest under this Lease or in any Parcel of Property or Unit of Equipment shall at the time have been assigned, conditionally or otherwise, by the Lessor in accordance with Section 21 of this Lease.

**"Assignment"** means each assignment agreement referred to in Section 21 hereof, between the Lessor and a third party, pursuant to which the Lessor assigns certain of its rights under this Lease to such third party, as the same may be amended, restated, modified or supplemented from time to time.

**"Atomic Energy Act"** means the Atomic Energy Act of 1954, as amended from time to time, and the regulations from time to time issued, published or promulgated pursuant thereto.

**"Basic Rent"** means, with respect to any Parcel of Property or Unit of Equipment:

(a) for each calendar month during the Lease Term of such Parcel or Unit, the sum of the Monthly Rent Component for such Parcel or Unit plus an amount (the "Variable Component of Basic Rent") computed by multiplying the following:

- (i) the Adjusted Acquisition Cost of such Parcel or Unit before payment of Basic Rent for such month, by
- (ii) a fraction having a numerator equal to the number of days in such month and a denominator of 365, or in a leap year, 366, by
- (iii) the decimal equivalent of a percentage based upon the Lessee's senior secured debt rating as determined by Moody's Investors Service, Inc. (or if Moody's Investors Service, Inc. shall cease to provide such ratings, as determined by the comparable ratings of Standard & Poor's Corporation, or if Standard & Poor's Corporation shall cease to provide such ratings, by the comparable ratings of a successor entity performing similar business functions) as follows: with respect to a Unit of Equipment, if the Lessee's senior secured debt rating is greater than A1, the percentage shall be .75%, if the Lessee's senior secured debt rating is A1 or below but greater than Baa1, the percentage shall be .80%, if the Lessee's senior secured debt rating is Baa1 or below but greater than Ba1, the percentage shall be .90%, if the Lessee's senior secured debt rating is Ba1 or below but greater than B1, the percentage shall be 1.10%, and if the Lessee's senior secured debt rating is B1 or below, the percentage shall be 1.50%, and with respect to a Parcel of Property, if the Lessee's senior secured debt rating is greater than A1, the percentage shall be .77%, if the

Lessee's senior secured debt rating is A1 or below but greater than Baa1, the percentage shall be .82%, if the Lessee's senior secured debt rating is Baa1 or below but greater than Ba1, the percentage shall be .92%, if the Lessee's senior secured debt rating is Ba1 or below but greater than B1, the percentage shall be 1.13%, and if the Lessee's senior secured debt rating is B1 or below, the percentage shall be 1.55%, plus (A) the weighted average bond yield equivalent percentage cost per annum (including as part of such cost any fees for a revolving credit facility or for a letter or letters of credit pursuant to a Credit Agreement, and any dealer discount or placement agency commission payable by the Lessor in respect of its Commercial Paper) on all Commercial Paper of the Lessor issued to finance or refinance the acquisition and ownership of Property and Equipment outstanding at any time during the period from and including the 16th day of the preceding calendar month to and including the 15th day of the calendar month for which Basic Rent is being computed (the "Computation Period"), or (B) if no such Commercial Paper of the Lessor is outstanding during the Computation Period, the Lessor's weighted average percentage cost per annum of other borrowings outstanding at any time during the Computation Period for which Basic Rent is being computed to finance or refinance the acquisition and ownership of Property or Equipment or (C) if both Commercial Paper and other borrowings are outstanding at any time during the Computation Period for which Basic Rent is being computed, a weighted average blended rate based on the calculations referred to in clauses (A) and (B) above;

(b) for any partial first calendar month during the Lease Term of such Parcel or Unit, an amount computed by multiplying the following:

- (i) the Acquisition Cost of such Parcel or Unit, by
- (ii) a fraction having a numerator equal to the number of days such Parcel or Unit is under lease during such partial first month and a denominator of 365, or in a leap year, 366, by
- (iii) the decimal referred to in paragraph (a)(iii) above; provided, that if the Effective Date for such Parcel or Unit falls on or after the Lease Rate Date during such partial first calendar month such decimal shall be the decimal determined as of the next succeeding Lease Rate Date; and

(c) for each calendar month during the Renewal Term, if any, of such Parcel or Unit, an amount equal to the fair market value rental thereof, determined as provided in paragraph (c) of Section 13 hereof.

**"Basic Rent Payment Date"** means the 20th day of any calendar month during the Lease Term or Renewal Term of any Property or Equipment or, if such day is not a Business Day, the next succeeding Business Day.

**"Business Day"** means any day other than a Saturday, a Sunday or a day on which banking institutions in the City of New York are authorized by law to close.

**"Code"** means the Internal Revenue Code of 1986, as amended.

**"Commercial Paper"** means all promissory notes of the Lessor issued pursuant to a Credit Agreement maturing not more than ninety (90) days from the date of issuance thereof.

**"Commonly Controlled Entity"** means an entity, whether or not incorporated, which is under common control with the Lessee within the meaning of Section 4001(b) of ERISA or is part of a group which includes the Lessee and which is treated as a single employer under Section 414 of the Internal Revenue Code of 1986, as amended.

**"Computation Period"** has the meaning set forth in subclause (a)(iii)(A) of the definition of Basic Rent in Section 1 hereof.

**"Consent"** means each consent of the Lessee to an Assignment, pursuant to which the Lessee consents to the terms of such Assignment insofar as they relate to this Lease, as the same may be amended, restated, modified or supplemented from time to time.

**"Credit Agreement"** means each credit or loan agreement between the Lessor and a lender related to the financing of Property or Equipment, as the same may be amended, restated, modified or supplemented from time to time.

**"Effective Date"** means, with respect to any Parcel of Property or Unit of Equipment, the date on which such Parcel or Unit becomes subject to this Lease, as evidenced by execution by the Lessor of an AFL Unit Leasing Record or a Unit Leasing Record with respect to such Parcel or such Unit.

**"Engine"** means (a) each of the engines installed in the Aircraft on the Aircraft's Effective Date and (b) any aircraft engine leased hereunder, together in either case with any and all appliances, parts, instruments, appurtenances, accessories and other equipment of whatever nature from time to time incorporated or installed in or attached to an Engine.

**"Equipment"** means personal property of any type, including, without limitation, any Aircraft and Engines, leased or, if ordered by the Lessee in the name, or on behalf, of

the Lessor, to be leased hereunder and, when leased, evidenced by Unit Leasing Records, and all related appliances, appurtenances, accessions, furnishings, materials and parts leased or, if ordered by the Lessee in the name, or on behalf, of the Lessor, to be leased by the Lessor to the Lessee as provided herein and including all replacements and subsequent replacements of such related appliances, appurtenances, accessions, furnishings, materials and parts. "Unit", when referring to the personal property leased under this Lease, means a particular item of Equipment, as the context may require.

"ERISA" has the meaning set forth in paragraph (n) of Section 2 hereof.

"Event of Default" has the meaning set forth in Section 18 hereof.

"Extended Term" has the meaning set forth in paragraph (b) of Section 6 hereof.

"Federal Power Act" means the Federal Power Act, as amended from time to time, and the regulations from time to time issued, published or promulgated pursuant thereto.

"FERC" means the Federal Energy Regulatory Commission, or any successor agency thereto.

"Governmental Action" has the meaning set forth in paragraph (d) of Section 2 hereof.

"Ground Lease" has the meaning set forth in Section 29 hereof.

"Indemnified Person" has the meaning set forth in Section 11 hereof.

"Initial Term" has the meaning set forth in paragraph (a) of Section 6 hereof.

"Insurance Requirements" means all terms of any insurance policy covering or applicable to any Property or Equipment, all requirements of the issuer of any such policy, all statutory requirements and all orders, rules, regulations and other requirements of any governmental body related to insurance applicable to any Property or Equipment, except non-material requirements the failure to comply with which would not affect the coverage, availability or renewal of any such insurance policy.

"Lease Rate Date" has the meaning set forth in paragraph (b) of Section 7 hereof.

"Lease Term" means, with respect to any Parcel of Property or Unit of Equipment, the Initial Term plus the Extended Term thereof.

"Lease Termination Event" has the meaning set forth in subparagraph (a)(ii) of Section 14 hereof.

**"Legal Requirements"** means all laws, judgments, decrees, ordinances and regulations and any other governmental rules, orders and determinations and all requirements having the force of law, now or hereinafter enacted, made or issued, whether or not presently contemplated, and all agreements, covenants, conditions and restrictions, applicable to each Parcel or Unit and/or the construction, ownership, operation or use thereof, including, without limitation, compliance with all requirements of labor laws and environmental statutes, compliance with which is required at any time from the date hereof through the Lease Term and any Renewal Term, whether or not such compliance shall require structural, unforeseen or extraordinary changes to any Property or Equipment or the operation, occupancy or use thereof.

**"Lessee"** has the meaning set forth in the first paragraph of this Lease.

**"Lessor"** means Red Bud Funding, Limited Partnership or any successor or successors to all of its rights and obligations as the Lessor hereunder and, for purposes of Section 11 hereof, shall include any partnership (general or limited), corporation, trust, individual or other entity which computes its liability for income or other taxes on a consolidated basis with the Lessor or the income of which for purposes of such taxes is, or may be, determined or affected directly or indirectly by the income of the Lessor or its successor or successors.

**"Lien"** means any security interest, mortgage, pledge, hypothecation, assignment, encumbrance, adverse claim to title, lien (statutory or other), or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction in respect of any of the foregoing).

**"Merrill"** means Merrill Lynch Money Markets Inc., a Delaware corporation.

**"Merrill Leasing"** means ML Leasing Equipment Corp., a Delaware corporation.

**"Merrill Lynch"** means Merrill Lynch & Co., Inc., a Delaware corporation.

**"Monthly Rent Component"** means, (i) with respect to each Parcel of Property or Unit of Equipment (other than a Parcel or Unit acquired and/or built pursuant to the Agreement for Lease), for each calendar month during the Lease Term of such Parcel or Unit, the amount determined in accordance with Schedule B, if any, to the Unit Leasing Record relating to such Parcel or Unit or (ii) with respect to a Parcel of Property or Unit of Equipment acquired and/or built pursuant to the Agreement for Lease, the amount determined in accordance with Schedule B, if any, to the AFL Unit Leasing Record relating to such Parcel of Property or Unit of Equipment. Schedule B to the Unit Leasing Record or AFL Unit Leasing Record, unless otherwise agreed by Lessee and Lessor, shall, with respect to each Unit of Equipment, provide or be deemed to provide that the Monthly Rent Component applicable to each Unit shall be the Acquisition Cost of each Unit of Equipment

divided by the number of calendar months in the Lease Term with respect to such Unit. Schedule B to the Unit Leasing Record, or AFL Unit Leasing Record, shall, with respect to each Parcel of Property, be completed as to the Acquisition Cost of the Parcel and the amortization schedule for such Parcel, which schedule shall reflect mortgage amortization over the Lease Term of the Acquisition Cost, unless otherwise agreed by the Lessee and the Lessor, provided that with respect to Parcels of Property, the Lessee shall not be required to amortize the Acquisition Cost of the underlying land.

**"Mortgageable Ground Lease"** means a Ground Lease for a Parcel of Property to be subleased to the Lessee which is delivered to the Lessor for execution by the Lessor, or assigned to the Lessor by an assignment in form and substance satisfactory to the Lessor, and having such terms and characteristics as may be required by the Lessor and any Assignee, which terms and characteristics shall include, without limitation, the following: (a) free assignability to (i) any lender as security for a borrowed money obligation of the Lessor and, upon foreclosure of such security, freely assignable by such lender to any third party, and (ii) any purchaser in connection with a sale of such Parcel of Property pursuant to the provisions of this Lease or the Agreement for Lease (the Lessor and any Assignee being released from liability upon such assignment); (b) a term (including renewals) of at least ten (10) years in excess of the Lease Term of the Parcel of Property to which such Ground Lease relates; (c) no provisions for percentage or variable rent; (d) permit any lawful use; (e) no provision for a security deposit; (f) a requirement that any Assignee or any lender will receive copies of all notices of default delivered under or pursuant to such Ground Lease; (g) a provision that any Assignee or any lender shall have the right to cure any defaults thereunder (whether monetary or nonmonetary in nature), and in the event of such cure to receive a new ground lease on the same terms as the original Ground Lease; (h) a no recourse section in accordance with the language set forth in Section 31 hereof; (i) a prohibition of any mortgages or other Liens on the underlying fee, except Permitted Liens; and (j) no provision requiring the Lessor to indemnify any Person. A Mortgageable Ground Lease shall be delivered with such estoppel certificates, recognition and attornment agreements, or confirmation of customary mortgagee protection as are reasonably acceptable to the Lessor and any Assignee.

**"Natural Gas Act"** means the Natural Gas Act, as amended from time to time, and the regulations from time to time issued, published or promulgated pursuant thereto.

**"1935 Act"** means the Public Utility Holding Company Act of 1935, as amended from time to time, and the regulations from time to time issued, published or promulgated pursuant thereto.

**"NRC"** means the Nuclear Regulatory Commission, or any successor agency thereto.

**"Pension Plan"** has the meaning set forth in paragraph (n) of Section 2 hereof.

**"Permitted Contest"** has the meaning set forth in paragraph (a) of Section 28 hereof.

**"Permitted Liens"** means the following Liens and other matters affecting the title of any Parcel of Property or Unit of Equipment: (a) Liens securing the payment of taxes, assessments and other governmental charges or levies which are either not delinquent or, if delinquent, are being contested by the Lessee in good faith as a Permitted Contest; (b) zoning and planning restrictions, subdivision and platting restrictions, easements, rights-of-way, licenses, reservations, covenants, conditions, waivers, restrictions on the use of any Parcel of Property, minor encroachments or minor irregularities of title none of which materially impairs the intended use or value of such Parcel of Property by the Lessee; (c) exceptions and reservations of mineral interests provided there are reasonably adequate protections against any surface rights and against subsidence; (d) the Lien created pursuant to a Credit Agreement; (e) leases and licenses in effect with respect to any Parcel of Property which are permitted by this Lease or which are delivered to and accepted by the Lessor, the Lessee and any Assignee prior to such Parcel's Effective Date; (f) the Lien on the Lessee's leasehold interest in Property and Equipment arising under the Trust Indenture; (g) materialmen's and mechanics' Liens, not to exceed the amount of \$500,000 in any single instance or \$1,000,000 in the aggregate, which have arisen during the course of construction of Property under the Agreement for Lease and which are either not yet delinquent or, if delinquent, are the subject of a Permitted Contest; and (h) such other or additional matters as may be approved in writing by the Lessor, the Lessee and any Assignee.

**"Person"** means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

**"Potential Default"** means any event which, but for the lapse of time, or giving of notice, or both, would constitute an Event of Default.

**"Property"** means any and all parcels of land together with all buildings and other improvements (including, without limitation, the attachments, appliances, equipment, machinery and other affixed property which, in each case, would constitute "fixtures" under Section 9-313(1)(a) of the Uniform Commercial Code) now or hereafter located on such parcels of land, leased or, to the extent contracted for or ordered by the Lessee in the name, or on behalf, of the Lessor, to be leased hereunder and when leased, evidenced by Unit Leasing Records or AFL Unit Leasing Records, and the respective easements, rights and appurtenances relating to such parcels of land, buildings and improvements. **"Parcel"** or **"Parcel of Property"** means a specific parcel or parcels of Property.

**"Railcar"** means each of the 120 ton gondola cars with aluminum bodies and approximately 4,700 cu. ft. capacity, level full, or other railcars of similar quality which may be used for similar purposes, constituting a part of the Equipment leased under this Lease and evidenced by a Unit Leasing Record.

"Rate Proceedings" has the meaning set forth in paragraph (f) of Section 2 hereof.

"Reconciliation Amount" has the meaning set forth in paragraph (f) of Section 7 hereof.

"Renewal Term" has the meaning set forth in paragraph (c) of Section 13 hereof.

"Responsible Officer" shall mean the President, any Vice President, the Secretary or the Treasurer of the Lessee, or any other officer or similar official of the Lessee responsible for the administration of the obligations of the Lessee with respect to this Lease.

"Short-term Railcar Lease" has the meaning set forth in paragraph (e) of Section 8 hereof.

"Taking" has the meaning set forth in paragraph (a) of Section 16 hereof.

"Termination Event" has the meaning set forth in subparagraph (a)(ii) of Section 14 hereof.

"Termination Event Date" has the meaning set forth in paragraph (c) of Section 14 hereof.

"Termination Settlement Date" has the meaning set forth in paragraph (c) of Section 14 hereof.

"Trust Indenture" means the Trust Indenture dated February 1, 1945 between the Lessee and Boatmen's First National Bank of Oklahoma, as successor trustee to the First National Bank and Trust Company of Oklahoma City, securing the Lessee's First Mortgage Bonds, as such trust indenture has heretofore and may hereafter be amended and supplemented.

"Utility Termination Event" has the meaning set forth in subparagraph (a)(ii) of Section 14 hereof.

"Unit Leasing Record" means an instrument, substantially in the form of Exhibit C hereto, evidencing, except in the case of any Parcel or Parcels of Property or Unit or Units of Equipment acquired and/or built pursuant to the Agreement for Lease, the lease of any Parcel or Parcels of Property or Unit or Units of Equipment under this Lease.

"Variable Component of Basic Rent" has the meaning set forth in the definition of Basic Rent in Section 1 hereof.

**SECTION 2. Representations, Warranties and Agreements of Lessee.**

The Lessee represents and warrants to, and, in the case of paragraph (h) below, agrees with, the Lessor:

(a) **Corporate Matters.** The Lessee (i) has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Oklahoma, (ii) has full power, authority and legal right to own and operate its properties and to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Lease and any Consent, and (iii) is duly qualified to do business as a foreign corporation in good standing in each jurisdiction in which its ownership or leasing of properties or the conduct of its business requires such qualification.

(b) **Binding Agreement.** This Lease has been duly authorized, executed and delivered by the Lessee and, assuming the due authorization, execution and delivery of this Lease by the Lessor, this Lease is a legal, valid and binding obligation of the Lessee, enforceable according to its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) **Compliance with Other Instruments.** The execution, delivery and performance by the Lessee of this Lease and any Consent (i) will not result in any violation of any term of the articles of incorporation or the by-laws of the Lessee, (ii) do not require stockholder approval, (iii) do not require the approval or consent of any trustee or holders of indebtedness of the Lessee, except such as have been obtained prior to the date hereof with respect to any Property or Equipment subject to this Lease on the date hereof and as will be obtained with respect to any Property or Equipment which becomes subject to this Lease after the date hereof prior to the Effective Date with respect to such Property or Equipment and (iv) will not conflict with or result in a breach of any terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than a Permitted Lien) upon any property or assets of the Lessee under, any indenture, mortgage or other agreement or instrument to which the Lessee is a party or by which it or any of its property is bound, or any existing applicable law, rule, regulation, license, judgment, order or decree of any government, governmental body or court having jurisdiction over the Lessee or any of its activities or properties.

(d) **Governmental Consents.** There are no consents, licenses, orders, authorizations, approvals, waivers, extensions or variances of, or notices to or registrations or filings with (each a "Governmental Action"), any governmental or public body or authority which are or will be required in connection with the valid execution, delivery and performance of this Lease, or any Governmental Action (i) which is or will be required in connection with any participation by the Lessor in the transaction contemplated by any bill of sale, deed, assignment, assumption, ownership agreement, operating agreement, or other

agreement relating to any Property or Equipment or (ii) which is or will be required to be obtained by the Lessor, the Lessee, Merrill, Merrill Leasing, any Assignee or any Affiliate of the foregoing, during the term of this Lease, with respect to any Property or Equipment except such Governmental Actions, (A) as have been duly obtained, given or accomplished, with true copies thereof delivered to the Lessor, (B) as may be required by applicable law not in effect at the time this representation and warranty is made or deemed made, (C) as may be required as a result of the business of the Lessor, Merrill, Merrill Leasing, any Assignee or any Affiliate of the foregoing unrelated to this Lease and the transactions contemplated hereby and (D) with the consent of the Lessor and any Assignee, as shall not be required to have been obtained at the time this representation or warranty is made or deemed made, as disclosed in a certificate signed by a Responsible Officer.

(e) Financial Statements. The Lessee has furnished to the Lessor a copy of its Annual Report to Shareowners for the year ended December 31, 1991 and its Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 1992. The consolidated financial statements contained in such documents fairly present the consolidated financial position, results of operations and changes in financial position of the Lessee and its subsidiaries as of the dates and for the periods indicated therein and have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis.

(f) Changes. Since March 31, 1992, there has been no material adverse change in the financial condition or business of the Lessee nor any change which would materially impair the ability of the Lessee to perform its obligations under this Lease. The Lessor and the Lessee acknowledge that the Lessee in making the representation in the previous sentence has disclosed the fact that proceedings are pending on the date hereof before the Oklahoma Corporation Commission, Cause No. PUD 001055, 000898 and 001005, with respect to the Lessee's electric rates. The Lessor agrees that such proceedings or any decision with respect thereto or any reserves established therefor will not make such representation untrue unless the decision in such proceedings orders a refund or annual reduction in the Lessee's electric rates in excess of \$108,000,000 or \$54,000,000, respectively (such proceedings, to the extent that any refund or reduction in rates is equal to or less than such amounts, "Rate Proceedings").

(g) Litigation. Except for the Rate Proceedings, there is no action, suit, proceeding or investigation at law or in equity by or before any court, governmental body, agency, commission or other tribunal now pending or threatened against or affecting the Lessee or any property or rights of the Lessee which questions the validity of this Lease, which affects any Parcel of Property or Unit of Equipment, or which could, in the Lessee's reasonable judgment, be expected to have a material adverse impact on the financial condition or business of the Lessee or which could be expected to materially impair the ability of the Lessee to perform its obligations hereunder.

(h) Delivery of Information. The Lessee shall deliver to the Lessor from time to time, (i) promptly upon their becoming available and in any event within 120 days after the end of each fiscal year of the Lessee, copies of its Annual Report on Form 10-K, (ii)

promptly after their becoming available and in any event within 60 days after the close of each of the first three quarters of each fiscal year of the Lessee, its Quarterly Reports on Form 10-Q, (iii) promptly upon their becoming available, any other reports the Lessee files with the Securities and Exchange Commission, (iv) promptly upon request, such other information with respect to the Lessee's operations, business, properties, assets, financial condition or litigation as the Lessor or any Assignee shall reasonably request, (v) promptly after a Responsible Officer of the Lessee obtains knowledge of any Event of Default, Potential Default or Termination Event hereunder, a certificate of a Responsible Officer of the Lessee either specifying (A) the nature and period of existence of such Event of Default or Potential Default, and what action, if any, the Lessee has taken, is taking, or proposes to take with respect thereto or (B) the nature of the Termination Event and (vi) promptly after a Responsible Officer of the Lessee obtains knowledge of any material adverse change in the financial condition or business of the Lessee or of any litigation of the type described in paragraph (g) of this Section 2, a certificate of a Responsible Officer of the Lessee describing such change or litigation as the case may be.

(i) Accuracy of Appraisal. The information contained in any appraisal report furnished by the Lessee to the Lessor with respect to any Parcel of Property or Unit of Equipment is accurate and complete in all material respects as of the date of appraisal.

(j) Compliance with Legal Requirements and Insurance Requirements. The operation, use and physical condition of the Property and Equipment are in full compliance with all Legal Requirements and Insurance Requirements, except any Legal Requirements, the non-compliance with which, individually or in the aggregate, (i) will not place either the Lessor or any Assignee in any danger of civil liability for which the Lessor or any Assignee is not adequately indemnified (the Lessee's obligations under Section 11 of this Lease shall be deemed to be adequate indemnification if no Event of Default exists and if such civil liability is reasonably likely to be less than \$1,000,000 in the aggregate) or subject the Lessor or any Assignee to any criminal liability as a result of failure to comply therewith, (ii) will not result in a material diminution in the value of any Property or Equipment and (iii) is consistent with prudent business practices.

(k) Regulation. The Lessor will not be nor become, solely by reason of either its entering into this Lease or any other agreement or document contemplated hereby or entered into in connection herewith to which it is, or is to become, a party, or the transactions contemplated hereby or thereby (including, without limitation, the acquisition, ownership or leasing of any Property or Equipment), subject to regulation (A) under the 1935 Act, the Federal Power Act, the Natural Gas Act or the Atomic Energy Act, (B) by any state or local public utility commission or other similar regulatory body, authority or group or (C) in any manner by the NRC or the FERC.

(l) Liens. No Property or Equipment is subject to any Lien, except Permitted Liens. In making this representation and warranty, the Lessee may assume that the Lessor has complied with the requirements of Section 30(h) hereof.

(m) Agreement for Lease. The Property, if any, acquired and built pursuant to the Agreement for Lease was acquired and built in accordance with the terms of the Agreement for Lease. The representations and warranties of the Lessee, as agent, in the Agreement for Lease are true and correct in all material respects.

(n) ERISA. No material unpaid liability to the Pension Benefit Guaranty Corporation ("PBGC"), except for annual termination insurance premiums payable to the PBGC, has been incurred or is expected to be incurred by the Lessee with respect to any "employee pension benefit plan" (as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) which is subject to Title IV of ERISA, which is or has been established or maintained, or to which contributions are or have been made, by the Lessee or any Commonly Controlled Entity (referred to hereinafter as a "Pension Plan"). No Pension Plan is a "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA). The present value of all accrued benefits under each Pension Plan (based on those assumptions used to fund such Pension Plan) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the fair market value of the assets of such Pension Plans allocable to such accrued benefits. No "reportable event" (within the meaning of Section 4043(b) of ERISA), other than those events as to which the thirty-day notice period is waived under subsections .13, .14, .16, .18, .19 or .20 of PBGC Regulation section 2615, has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any Pension Plan.

(o) Lease Term. The Lease Term of each Unit of Equipment subject to this Lease will not exceed the economic useful life of such Unit of Equipment, as reasonably determined by the Lessee at the time such Unit is leased hereunder.

### SECTION 3. Lease of Property or Equipment.

(a) Subject to the terms and conditions hereof, the Lessor shall lease to the Lessee, and the Lessee may lease from the Lessor pursuant to this Lease, any Property or Equipment, when and as the Lessee has need of such Property or Equipment; provided, that:

- (i) such Property or Equipment is available for purchase;
- (ii) except with respect to any Parcel of Property acquired and built pursuant to the Agreement for Lease, the Lessor has approved the purchase order or acquisition with respect to such Equipment or the acquisition with respect to such Property (which approval shall be in the sole discretion of the Lessor);
- (iii) at the time any such Property or Equipment is to be ordered or leased hereunder there exists no Event of Default, Potential Default or Termination Event;

- (iv) with respect to any Property acquired and built pursuant to the Agreement for Lease, Substantial Completion (as defined in the Agreement for Lease) shall have occurred;
- (v) the sum of (A) the Acquisition Cost of such Property or Equipment and (B) the aggregate Adjusted Acquisition Cost of all other Property or Equipment leased hereunder would not, at the time any such Property or Equipment is to be leased hereunder, exceed such amount as the Lessor and the Lessee may from time to time agree; and
- (vi) the Lessee has provided to the Lessor and any Assignee opinions favorably addressing matters reasonably requested by the Lessor and any Assignee in respect of such Property or Equipment, except that no such opinions shall be required, in addition to the opinion delivered at the time of execution and delivery of this Lease with respect to Railcars until the aggregate Acquisition Cost of all Railcars placed under this Lease exceeds \$135,000,000.

(b) The lease hereunder of a Parcel of Property and related Equipment, acquired and built pursuant to the Agreement for Lease shall be evidenced by an AFL Unit Leasing Record. Subject to the terms of paragraph (a) of Section 3 hereof, upon Substantial Completion (as defined in the Agreement for Lease) of a Parcel of Property acquired and built pursuant to the Agreement for Lease, the Lessee shall prepare an AFL Unit Leasing Record. The AFL Unit Leasing Record shall give a full description of the Property and related Equipment, its Acquisition Cost, its Initial Term, Extended Term and Renewal Term, the Monthly Rent Component with respect to such Property and related Equipment, and such other details as the Lessor and the Lessee may from time to time agree. Within five (5) Business Days of the Lessor's receipt of the Certificate of Substantial Completion relating to a Parcel of Property and related Equipment to be leased hereunder, satisfaction of the other requirements of the Agreement for Lease and receipt of a completed and executed AFL Unit Leasing Record, the Lessor shall execute the AFL Unit Leasing Record and deliver it to the Lessee. The AFL Unit Leasing Record shall have an Effective Date of the date of execution by the Lessor of the AFL Unit Leasing Record. Execution and delivery by the Lessee of an AFL Unit Leasing Record shall constitute (i) acknowledgment by the Lessee that the Property and related Equipment specified in such AFL Unit Leasing Record has been delivered to the Lessee in good condition and has been accepted for lease hereunder by the Lessee as of the Effective Date of such AFL Unit Leasing Record, (ii) acknowledgment by the Lessee that the Property and related Equipment specified in such AFL Unit Leasing Record is subject to all of the covenants, terms and conditions of this Lease, and (iii) certification by the Lessee that the representations and warranties contained in Section 2 of this Lease are true and correct in all material respects on and as of the Effective Date of such AFL Unit Leasing Record as though made on and as of such date and that there exists on such date no Event of Default, Potential Default or Termination Event.

(c) The lease of each Parcel of Property or Unit of Equipment, other than a Parcel of Property or Unit of Equipment acquired and built pursuant to the Agreement for Lease, to the Lessee under this Lease shall be evidenced by a Unit Leasing Record. The Lessee shall prepare and execute a Unit Leasing Record with respect to each Parcel of Property or Unit of Equipment (which Unit Leasing Record may relate to more than one Unit of Equipment) and deliver it promptly to the Lessor. Contemporaneously with the payment required by paragraph (b) of Section 5 hereof, the Lessor shall execute the acceptance of such Unit Leasing Record and promptly return one copy of such Unit Leasing Record to the Lessee.

(d) The Lessee shall prepare each Unit Leasing Record pursuant to the procedures provided by the Lessor. Each Unit Leasing Record shall give a full description of the Parcel or Parcels of Property or Unit or Units of Equipment covered thereby, the Acquisition Cost of each such Parcel or Unit, the Initial Term, Extended Term and Renewal Term for each such Parcel or Unit, the Monthly Rent Component with respect to each such Parcel or Unit, the location of each Parcel of Property or Unit of Equipment (other than Railcars) and such other details as the Lessor and the Lessee may from time to time agree.

(e) Execution by the Lessee of a Unit Leasing Record shall constitute (i) acknowledgment by the Lessee that the Property or Equipment specified in such Unit Leasing Record has been delivered to the Lessee in good condition and has been accepted for lease hereunder by the Lessee as of the Effective Date, (ii) acknowledgment by the Lessee that the Property or Equipment specified in such Unit Leasing Record is subject to all of the covenants, terms and conditions of this Lease, and (iii) certification by the Lessee that the representations and warranties contained in Section 2 of this Lease are true and correct on and as of the Effective Date as though made on and as of the Effective Date and that there exists on the Effective Date no Event of Default, Potential Default or Termination Event.

(f) In connection with any Parcel of Property acquired and built pursuant to the Agreement for Lease, within three (3) months of the Effective Date of such Parcel, the Lessee may deliver to the Lessor a Certificate of Increased Cost (as defined in the Agreement for Lease) pursuant to the Agreement for Lease setting forth the actual amount expended by the Lessee for items included in the Unit Budget (as defined in the Agreement for Lease) with respect to such Parcel while it was subject to the Agreement for Lease. If, based upon such Certificate of Increased Cost, a Completion Advance (as defined in the Agreement for Lease) is to be made, the Lessor shall execute within five (5) days of receipt of such Certificate of Increased Cost from the Lessee a revised AFL Unit Leasing Record to amend the Adjusted Acquisition Cost for such Parcel to reflect the increase in the Acquisition Cost.

#### SECTION 4. Operating Lease.

The Lessor and the Lessee hereby declare that it is their mutual intent that for accounting and regulatory purposes this Lease be treated as an operating lease and not an instrument or evidence of indebtedness, and that the relationship between the Lessor and the Lessee under this Lease shall be that of lessor and lessee only. Title to and ownership of

any Property or Equipment shall at all times remain in the Lessor and at no time become vested in the Lessee except in accordance with an express provision of this Lease. The Lessee does not hereby acquire any right, equity, title or interest in or to any Property or Equipment except pursuant to the terms hereof.

**SECTION 5. Delivery.**

(a) The Lessee shall acquire or order and accept Property or Equipment, other than Property and Equipment which has been acquired and/or built pursuant to the Agreement for Lease, pursuant to the procedures reasonably provided by the Lessor. The Lessor shall not be liable to the Lessee for any failure to obtain, or delay in obtaining, any Property or Equipment or any delay in the delivery of title to the Lessor or possession of the Property or Equipment to the Lessee.

(b) Upon acceptance for lease of a Parcel of Property or Unit of Equipment by the Lessee and the Lessor, other than Property or Equipment acquired and/or built pursuant to the Agreement for Lease, and receipt by the Lessor of (i) the vendor's invoice or invoices for such Unit of Equipment and a contract of sale and deed with respect to each Parcel of Property, (ii) invoices or other evidence satisfactory to the Lessor for any amounts included in the Acquisition Cost of such Parcel or Unit payable to parties other than the vendor, (iii) invoices or other evidence satisfactory to the Lessor (including an appraisal with respect to a Parcel of Property or Unit of Equipment) for any amounts included in the Acquisition Cost of such Parcel or Unit that have been paid to the vendor or other parties by the Lessee and for any costs included in the Acquisition Cost of such Parcel or Unit incurred by the Lessee, (iv) with respect to each Parcel of Property, an ALTA form title insurance commitment from a title insurance company satisfactory to the Lessor, subject to no title exceptions other than those approved by the Lessor, (v) a Unit Leasing Record with respect to such Parcel or Unit prepared and duly executed by the Lessee, (vi) in the case of the Aircraft, (1) a letter, certificate or other evidence satisfactory to the Lessor as to the due compliance with the insurance provisions of Section 10 of this Lease; (2) an opinion of counsel to the Lessee with respect to matters, if any, requested by the Lessor, (3) an AC Form 8050-2 Bill of Sale (or such other form of bill of sale as may be approved by the Federal Aviation Administration on the Effective Date for the Aircraft) covering the Aircraft, executed by the owner of the Aircraft in favor of the Lessor, (4) evidence satisfactory to the Lessor that application for registration of the Aircraft in the name of the Lessor has been duly made with the Federal Aviation Administration, (5) evidence satisfactory to the Lessor that the Aircraft has been certificated by the Federal Aviation Administration with an appropriate airworthiness certificate and such certificate is in full force and effect and (6) a certificate pursuant to which the Lessee shall certify that, to the best of the Lessee's knowledge, neither the execution and delivery by the Lessee of a Unit Leasing Record relating to Aircraft nor any of the transactions relative to Aircraft contemplated by this Lease, require the consent or approval of the Federal Aviation Administration, except for notice pursuant to Federal Aviation Administration Regulation §91.23 (14 C.F.R. §91.23) and (vii) such other documentation as the Lessor may reasonably require, the Lessor shall (A) pay to such vendor the amount of the vendor's invoice or invoices and/or contract of sale for such Parcel or Unit except to the

extent previously paid by the Lessee, (B) pay to such other parties such amounts payable, except to the extent previously paid by the Lessee and (C) reimburse or pay to the Lessee for such amounts paid to the vendor or other parties by the Lessee, for such costs incurred by the Lessee and, if agreed between the Lessor and the Lessee, for the appraised value of the Property or Equipment; provided, however, that in no event shall the sum of all payments made pursuant to clauses (A), (B) and (C) above exceed the Acquisition Cost of such Property or Equipment.

(c) The requirements for acceptance for lease hereunder of the Property and Equipment which has been acquired and/or built pursuant to the Agreement for Lease shall be the requirements set forth in the Agreement for Lease.

(d) The Lessee shall ensure that the installation or erection of any Equipment is in accordance with the specifications and requirements of the vendor thereof.

(e) The obligations of the Lessee to pay all amounts payable pursuant to this Lease (including specifically and without limitation amounts payable under Sections 7 and 11 hereof) shall be absolute and unconditional under any and all circumstances of any character, and such amounts shall be paid without notice, demand, defense, setoff, deduction or counterclaim and without abatement, suspension, deferment, diminution or reduction of any kind whatsoever, except as herein expressly otherwise provided. The obligation of the Lessee to lease and pay Basic Rent for any and all Property or Equipment accepted for use pursuant to this Lease is without any warranty or representation, express or implied, as to any matter whatsoever on the part of the Lessor or any Assignee or any Affiliate of either, or anyone acting on behalf of any of them.

THE LESSEE HAS SELECTED AND SHALL SELECT ALL PROPERTY OR EQUIPMENT ACQUIRED OR ORDERED ON THE BASIS OF ITS OWN JUDGMENT. NEITHER THE LESSOR NOR ANY ASSIGNEE NOR ANY AFFILIATE OF EITHER, NOR ANYONE ACTING ON BEHALF OF ANY OF THEM MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE SAFETY, TITLE, CONDITION, QUALITY, QUANTITY, FITNESS FOR USE, MERCHANTABILITY, CONFORMITY TO SPECIFICATION, OR ANY OTHER CHARACTERISTIC, OF ANY PROPERTY OR EQUIPMENT, OR AS TO WHETHER ANY PROPERTY OR EQUIPMENT OR THE OWNERSHIP, USE, OCCUPANCY OR POSSESSION THEREOF COMPLIES WITH ANY LAWS, RULES, REGULATIONS OR REQUIREMENTS OF ANY KIND.

AS BETWEEN THE LESSEE AND THE LESSOR, ANY ASSIGNEE OR ANY INDEMNIFIED PERSON, THE LESSEE ASSUMES ALL RISKS AND WAIVES ANY AND ALL DEFENSES, SET-OFFS, DEDUCTIONS, COUNTERCLAIMS (OR OTHER RIGHTS), EXISTING OR FUTURE, AS TO THE LESSEE'S OBLIGATION TO PAY BASIC RENT AND ALL OTHER AMOUNTS PAYABLE HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY RELATING TO:

(A) THE SAFETY, TITLE, CONDITION, QUALITY, QUANTITY, FITNESS FOR USE, MERCHANTABILITY, CONFORMITY TO SPECIFICATION, OR ANY OTHER QUALITY OR CHARACTERISTIC OF ANY PROPERTY OR EQUIPMENT, LATENT OR NOT;

(B) ANY SET-OFF, COUNTERCLAIM, RECOUPMENT, ABATEMENT, DEFENSE OR OTHER RIGHT WHICH THE LESSEE MAY HAVE AGAINST THE LESSOR, ANY ASSIGNEE OR ANY INDEMNIFIED PERSON FOR ANY REASON WHATSOEVER ARISING OUT OF THIS OR ANY OTHER TRANSACTION OR MATTER;

(C) ANY DEFECT IN TITLE OR OWNERSHIP OF PROPERTY OR EQUIPMENT OR ANY TITLE ENCUMBRANCE NOW OR HEREAFTER EXISTING WITH RESPECT TO THE PROPERTY OR EQUIPMENT;

(D) ANY FAILURE OR DELAY IN DELIVERY OR ANY LOSS, THEFT OR DESTRUCTION OF, OR DAMAGE TO, ANY PROPERTY OR EQUIPMENT, IN WHOLE OR IN PART, OR CESSATION OF THE USE OR POSSESSION OF ANY PROPERTY OR EQUIPMENT BY THE LESSEE FOR ANY REASON WHATSOEVER AND OF WHATEVER DURATION, OR ANY CONDEMNATION, CONFISCATION, REQUISITION, SEIZURE, PURCHASE, TAKING OR FORFEITURE OF ANY PROPERTY OR EQUIPMENT, IN WHOLE OR IN PART;

(E) ANY INABILITY OR ILLEGALITY WITH RESPECT TO THE USE, OWNERSHIP, OCCUPANCY OR POSSESSION OF THE PROPERTY OR EQUIPMENT BY THE LESSEE;

(F) ANY INSOLVENCY, BANKRUPTCY, REORGANIZATION OR SIMILAR PROCEEDING BY OR AGAINST THE LESSEE OR THE LESSOR OR ANY ASSIGNEE;

(G) ANY FAILURE TO OBTAIN, OR EXPIRATION, SUSPENSION OR OTHER TERMINATION OF, OR INTERRUPTION TO, ANY REQUIRED LICENSES, PERMITS, CONSENTS, AUTHORIZATIONS, APPROVALS OR OTHER LEGAL REQUIREMENTS;

(H) THE INVALIDITY OR UNENFORCEABILITY OF THIS LEASE OR ANY OTHER INFIRMITY HEREIN OR ANY LACK OF POWER OR AUTHORITY OF THE LESSOR OR THE LESSEE TO ENTER INTO THIS CONTRACT;

(I) THE INVALIDITY OR UNENFORCEABILITY OF ANY BILL OF SALE OF ANY PROPERTY OR EQUIPMENT EXECUTED IN CONNECTION WITH THIS LEASE OR ANY OTHER INFIRMITY THEREIN OR LACK OF POWER OR AUTHORITY OF ANY PARTY THERETO TO ENTER INTO SUCH BILL OF SALE; OR

**(J) ANY OTHER CIRCUMSTANCES OR HAPPENING WHATSOEVER, WHETHER OR NOT SIMILAR TO ANY OF THE FOREGOING.**

**THE LESSEE HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS WHICH IT MAY NOW HAVE OR WHICH AT ANY TIME HEREAFTER MAY BE CONFERRED UPON IT, BY STATUTE OR OTHERWISE, TO TERMINATE, CANCEL, QUIT, RESCIND OR SURRENDER THIS LEASE EXCEPT IN ACCORDANCE WITH THE EXPRESS TERMS HEREOF. Each payment of Basic Rent, Additional Rent and any other amount due hereunder made by the Lessee shall be final, and the Lessee, without waiving any other remedies it may have, will not seek or have any right to recover all or any part of such payment from the Lessor or any Assignee for any reason whatsoever. The making of payments under this Lease by the Lessee shall not prejudice, nor be deemed to be a waiver of, any claim or cause of action that the Lessee may assert against the Lessor or any other Person.**

**(f) Notwithstanding any other provision contained in this Lease, it is specifically understood and agreed that neither the Lessor nor any Assignee nor any Affiliate of either, nor anyone acting on behalf of any of them makes any warranties or representations or has any responsibility to disclose any relevant information, or has any other responsibility or duty not otherwise specifically provided herein, nor, except as set forth in Section 22 of this Lease, has the Lessor or any Assignee or any Affiliate of either, or anyone acting on behalf of any of them made any covenants or undertakings, as to the accounting treatment to be accorded the Lessee or as to the U.S. Federal or any state income or any other tax consequences, if any, to the Lessee as a result of or by virtue of the transactions contemplated by this Lease.**

**(g) In the event the title insurance policy insuring the Lessor's interest in any Parcel of Property would not, in the absence of special insurance by the Lessee, become effective until the date of recordation of the deed, then the Lessee shall furnish such indemnity to the title insurance company as it shall require in order to insure the Lessor's interest in such Parcel of Property, effective as of the date of the Effective Date.**

#### **SECTION 6. Initial Term; Extended Term.**

**(a) The "Initial Term" with respect to any Parcel of Property or Unit of Equipment leased hereunder shall commence on the Effective Date set forth in the Unit Leasing Record or the AFL Unit Leasing Record for such Parcel of Property or Unit of Equipment and shall continue for any partial first calendar month plus the number of calendar months set forth opposite such Parcel of Property or type of Equipment under the heading "Initial Term" in Exhibit A hereto, unless terminated earlier pursuant to Section 12, 13, 14, 15, 16, 19 or 20 hereof. Notwithstanding the preceding sentence, if any Ground Lease is terminated prior to the expiration of the then current term of such Ground Lease, then, as provided in paragraph (d) of Section 29 hereof, the lease of any Parcel of Property subject to such Ground Lease shall terminate on the date of termination of such Ground**

Lease and all of the other terms and provisions of paragraph (d) of Section 29 hereof shall apply to such termination.

(b) The "Extended Term" with respect to any Parcel of Property or Unit of Equipment shall commence on the first day of the calendar month following the last day of the Initial Term of such Parcel or Unit and shall continue for the number of calendar months set forth opposite such Parcel of Property or type of Equipment under the heading "Extended Term" in Exhibit A hereto and specified in the Unit Leasing Record or the AFL Unit Leasing Record for such Parcel of Property or Unit of Equipment, unless terminated earlier pursuant to Section 12, 13, 14, 15, 16, 19 or 20 hereof. Notwithstanding the preceding sentence, if any Ground Lease is terminated prior to the expiration of the then current term of such Ground Lease, then, as provided in paragraph (d) of Section 29 hereof, the lease of any Parcel of Property subject to such Ground Lease shall terminate on the date of termination of such Ground Lease and all of the other terms and provisions of paragraph (d) of Section 29 hereof shall apply to such termination.

(c) With respect to each Unit of Equipment or Parcel of Property, it is understood and agreed that the Initial Term of each Parcel of Property or Unit of Equipment shall in no event exceed 75% of its economic useful life.

(d) Notwithstanding anything contained in this Section 6, the provisions of Sections 10 and 11 hereof and paragraph (a) of Section 15 hereof shall apply with respect to any Property or Equipment from the time such Property or Equipment is ordered by the Lessee, with the approval of the Lessor, pursuant to procedures supplied by the Lessor.

#### SECTION 7. Rent and Other Payments.

(a) The Lessee hereby agrees to pay the Lessor (i) on each Basic Rent Payment Date, Basic Rent for the calendar month (or part thereof) in which such Basic Rent Payment Date falls, with respect to each Parcel of Property or Unit of Equipment leased during any part of such calendar month hereunder for which the Effective Date is before the Lease Rate Date for such calendar month, and (ii) on the Basic Rent Payment Date in the next succeeding calendar month, Basic Rent for any partial first calendar month, with respect to each Parcel of Property or Unit of Equipment for which the Effective Date is on or after the Lease Rate Date for such calendar month.

(b) The Lessor shall furnish to the Lessee on the 16th day of each calendar month the percentage referred to in paragraph (a)(iii) of the definition of "Basic Rent" in Section 1 hereof for such calendar month, or, if such day is not a Business Day, on the next succeeding Business Day (the "Lease Rate Date"). Prior to each Basic Rent Payment Date the Lessor shall furnish the Lessee with a summary of the calculations of Basic Rent payable on such Basic Rent Payment Date.

(c) The Lessee hereby agrees to pay on demand all amounts (other than Basic Rent) payable hereunder, including, without limitation, all amounts payable to any Indemnified Person pursuant to Section 11 hereof.

(d) Without prejudice to the full exercise by the Lessor of its rights under Sections 18 and 19 hereof, the Lessee shall pay to the Lessor from time to time, on demand, as additional rent ("Additional Rent") (i) amounts required to reimburse the Lessor for its obligations, costs and expenses (not previously included in Basic Rent) incurred in acquiring, financing (including equity financing) and leasing the Property or Equipment, and (ii) to the extent legally enforceable, an amount computed by multiplying (a) all sums not paid by the Lessee to the Lessor as provided in this Lease on or before the date such payments are due, by (b) the decimal equivalent of the percentage referred to in paragraph (a)(iii) of the definition of "Basic Rent" as most recently furnished by the Lessor, and by (c) a fraction having a numerator equal to the number of days in the period from but excluding such due date to and including the date of payment thereof and a denominator of 365, or in a leap year, 366. The Lessee shall also pay to the Lessor on demand an amount equal to any expenses (including reasonable attorneys' fees) incurred by the Lessor in collecting such unpaid sums. The difference between the Adjusted Acquisition Cost of any Unit of Equipment or Parcel of Property and amounts the Lessee shall be required to pay in respect of such Equipment or Property pursuant to Sections 12(b)(iii), 12(c)(iii) and 12(d)(iii) of this Lease, under circumstances when such Sections are applicable, shall not constitute Additional Rent. If the Lessor shall receive Additional Rent from the Lessee which it applies to reduce the principal amount of borrowings pursuant to a Credit Agreement or to reduce Commercial Paper, then, at the option of the Lessee, such amounts shall, without duplication (i) be treated as prepayments of, and be credited against the Lessee's obligation to pay, the Monthly Rent Component of Basic Rent payable hereunder or, (ii) be credited to amounts owing to the Lessor from the Lessee in respect of the Adjusted Acquisition Cost of any Property or Equipment acquired by the Lessee pursuant to the terms of this Lease.

(e) Basic Rent and Additional Rent and any other amount payable by the Lessee to the Lessor shall be paid sufficiently in advance of the date due to assure that immediately available funds in the full amount due are available on the date due, to such account of the Lessor at such bank, or to such account of such other Person at such bank, or otherwise as the Lessor may from time to time designate.

(f) During the Lease Term of any Parcel of Property or Unit of Equipment, the Lessor shall furnish to the Lessee on each Lease Rate Date (except the first Lease Rate Date hereunder) a statement of the difference, if any, between (i) the Variable Component of Basic Rent paid by the Lessee for the previous calendar month and (ii) an amount equal to what the Variable Component of Basic Rent would have been for such calendar month had the Variable Component of Basic Rent been calculated using the weighted average bond yield equivalent percentage cost per annum on all Commercial Paper of the Lessor outstanding at any time or the weighted average percentage cost per annum of other borrowings outstanding at any time or a blended rate if both Commercial Paper and other borrowings are outstanding at any time (as specified in clauses (A), (B) and (C), respectively, in subparagraph (a)(iii) of

the definition of Basic Rent) during the previous calendar month (rather than during the applicable Computation Period). On or about August 16, 1992 (or such other date that the Lessor so chooses), and thereafter on or about August 16 of each year, the Lessor shall furnish to the Lessee a calculation of the aggregate difference between the amounts determined under clause (i) above and the correlating amounts determined under clause (ii) above (the "Reconciliation Amount") for each calendar month since the date of this Lease or each calendar month since the last time the Reconciliation Amount was calculated, whichever is later. The Lessor and the Lessee agree that if the Reconciliation Amount is a positive number, then such amount shall be credited against the amount of Basic Rent that the Lessee is required to pay on the next Basic Rent Payment Date which shall be not less than 10 days after the Lessee's receipt of the calculation of the Reconciliation Amount (or Basic Rent Payment Dates, if such amount shall exceed the amount of Basic Rent payable in the next succeeding month), and if the Reconciliation Amount is a negative number, then such amount shall be payable by the Lessee on the next Basic Rent Payment Date which shall be not less than 10 days after the Lessee's receipt of the calculation of the Reconciliation Amount in addition to the amount of Basic Rent due and payable on such Basic Rent Payment Date. Any notices required by this paragraph (f) which are furnished to the Lessee by the Lessor shall be conclusive, absent manifest error, as to the contents thereof.

#### SECTION 8. Restricted Use; Compliance with Laws.

(a) So long as no Event of Default shall have occurred and be continuing, the Lessee may (i) use the Property or Equipment in the regular course of its business for any lawful purpose, (ii) be entitled to the possession and use of the Railcars by the Lessee or any of its Affiliates upon lines of railroad over which the Lessee or any such Affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such Affiliate is regularly operated pursuant to contract and (iii) be entitled to permit the use of the Railcars upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements. The Lessee will not do or permit any act or thing which is contrary to any Legal Requirement or Insurance Requirement (including with respect to the use, maintenance and operation of each Railcar, compliance with all laws of the jurisdiction in which its operations involving any Railcar may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any Railcar), or which might impair, other than in the normal use thereof, the value or usefulness of any Property or Equipment, except any Legal Requirements, the non-compliance with which, individually or in the aggregate, (i) will not place either the Lessor or any Assignee in any danger of civil liability for which the Lessor or any Assignee is not adequately indemnified (the Lessee's obligations under Section 11 of this Lease shall be deemed to be adequate indemnification if no Event of Default exists and if such civil liability is reasonably likely to be less than \$1,000,000 in the aggregate) or subject the Lessor or any Assignee to any criminal liability as a result of failure to comply therewith, (ii) will not result in a material diminution in the value of any Property or Equipment and (iii) is consistent with prudent business practices.

(b) The Lessee shall promptly and duly execute, deliver, file and record, at the Lessee's expense, all such documents, statements, filings and registrations, and take such further action, as the Lessor shall from time to time reasonably request in order to establish, perfect and maintain the Lessor's title to and interest in the Property or Equipment and any Assignee's interest in this Lease or any Property or Equipment as against the Lessee or any third party in any applicable jurisdiction. The Lessee, at its own expense, will cause this Lease to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on or before the Effective Date on which Railcars are first placed under lease. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor and any Assignee for the purpose of proper protection, to their satisfaction, of the interest of the Lessor and any Assignee in the Railcars, or for the purpose of carrying out the intention of this Lease. The Lessee shall in this regard, on or before the Effective Date relating to all additional Railcars placed under this Lease, cause this Lease and any agreement assigning an interest therein to any Assignee to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, in respect of such additional Railcars. The Lessee may, after notice in writing to the Lessor and at the Lessee's own cost and expense, change the place of principal location of any Equipment; provided, that prior notice shall not be required in the case of Equipment used for transportation (such as, without limitation, Aircraft, automobiles and trucks), but in such event the Lessee shall notify the Lessor in writing of the change of the principal location of such transportation Equipment not later than thirty (30) days after such change is made. Notwithstanding the foregoing, no change of location shall be undertaken unless and until all Legal Requirements shall have been met. At least once each year prior to the anniversary of the date of this Lease, and more frequently at the reasonable request of the Lessor, the Lessee shall advise the Lessor in writing where all Equipment leased hereunder (other than Railcars) as of such date is principally located. Notwithstanding anything in this Section 8(b) to the contrary, the Lessee may, without any notice to the Lessor with respect thereto, change the location of the Railcars within the continental United States. Upon the reasonable request of the Lessor, the Lessee shall advise the Lessor in writing as to the location at which the Railcars may be inspected.

(c) The Lessee shall use every reasonable precaution to prevent loss or damage to Property or Equipment and to prevent injury to third persons or property of third persons. The Lessee shall cooperate fully with the Lessor and all insurance companies providing insurance pursuant to Section 10 hereof in the investigation and defense of any claims or suits arising from the ownership, operation or use of any Equipment or ownership, use, or occupancy of the Property; provided, that nothing contained in this paragraph (c) shall be construed as imposing on the Lessor any duty to investigate or defend any such claims or suits. The Lessee shall comply and shall cause all Persons using or operating Equipment or using or occupying Property to comply with all Insurance Requirements and Legal Requirements applicable to such Property or Equipment, except any Legal Requirements, the non-compliance with which, individually or in the aggregate, (i) will not place either the Lessor or any Assignee in any danger of civil liability for which the Lessor or any Assignee is not

adequately indemnified (the Lessee's obligations under Section 11 of this Lease shall be deemed to be adequate indemnification if no Event of Default exists and if such civil liability is reasonably likely to be less than \$1,000,000 in the aggregate) or subject the Lessor or any Assignee to any criminal liability as a result of failure to comply therewith, (ii) will not result in a material diminution in the value of any Property or Equipment and (iii) is consistent with prudent business practices, and to the acquiring, titling, registering, leasing, insuring, using, occupying, operating and disposing of Property or Equipment, and the licensing of operators thereof.

(d) The Lessor or any Assignee or any authorized representative of either may during reasonable business hours from time to time inspect Property or Equipment and deeds, registration certificates, certificates of title and related documents covering Property or Equipment wherever the same may be located, but neither the Lessor nor any Assignee shall have any duty to make any such inspection.

(e) The Lessee shall not, without the prior written consent of the Lessor, permit, or suffer to exist, any Lien on any Property or Equipment, other than Permitted Liens or those Liens placed thereon by, or arising from, the Lessor's own actions or which are subject to a Permitted Contest, nor may it assign any right or interest herein or in any Property or Equipment, except any such assignment which constitutes a Permitted Lien. The Lessee shall not, without the prior written consent of the Lessor, sublease or otherwise relinquish possession of any Property or Equipment, other than pursuant to a Short-term Railcar Lease, as defined below, except that (i) the Lessee may relinquish possession of Property or Equipment to any contractor for use in performing work for the Lessee on such Property or Equipment; provided, that such relinquishment of possession shall in no way affect the obligations of the Lessee or the rights of the Lessor hereunder and with respect to the Property or Equipment and (ii) the Lessee may sublease any Parcel of Property or Unit of Equipment; provided, that (A) the terms of the instrument of sublease and the identity of the sublessee, if other than an Affiliate of the Lessee, shall be subject to the prior written approval of the Lessor and any Assignee, which consent will not be unreasonably withheld or delayed, (B) each such sublease shall expressly be made subject and subordinate to this Lease and shall, at the sole option of the Lessor, by its terms be subject to termination upon the termination for any reason of this Lease, (C) no such sublease shall modify or limit any right or power of the Lessor hereunder or affect or reduce any obligation of the Lessee hereunder, and all such obligations shall continue in full force and effect as obligations of a principal and not of a guarantor or surety, as though no such subletting had been made, and (D) any such sublease made otherwise than as expressly permitted by this paragraph (e) shall be void and of no force and effect. The foregoing notwithstanding, the Lessee may sublease Railcars for a term not in excess of six (6) months ("Short-term Railcar Lease") so long as no Event of Default shall have occurred and be continuing and so long as clauses (ii)(B), (C) and (D) are complied with. As additional security to the Lessor for the performance of the Lessee's obligations under this Lease, the Lessee hereby assigns to the Lessor all of its right, title and interest in and to all subleases permitted hereby and agrees, except in the case of a Short-term Railcar Lease, to cause any sublessee to enter into attornment agreements with the Lessor as the Lessor shall request. The Lessor shall have the present and continuing right to

collect and enjoy all rents and other sums of money payable under any such sublease, and the Lessee hereby irrevocably assigns such rents and other sums to the Lessor for the benefit and protection of the Lessor; provided, that unless an Event of Default shall have occurred and be continuing hereunder, the Lessee shall be entitled to collect and enjoy such rents and other sums. The Lessee shall, within thirty (30) days after the execution of any such sublease, except in the case of a Short-term Railcar Lease, deliver a conformed copy thereof to the Lessor. Nothing contained in this Lease shall be construed as constituting the consent or request of the Lessor, express or implied, to or for the performance by any contractor, laborer, materialman or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to any Property or Equipment or any part thereof. Notice is hereby given that the Lessor will not be liable for any labor, services or materials furnished or to be furnished to the Lessee, or to anyone holding any Property or Equipment or any part thereof through or under the Lessee, and that no mechanics' or other liens for any such labor, services or materials shall attach to or affect the interest of the Lessor in and to the Property or Equipment. Consent of the Lessor shall not be required for the Lessee to contract for the maintenance of any Property or Equipment as required by the second sentence of Section 9(b) and to the extent contemplated by Section 9(d) and 9(e).

(f) The Lessee shall register and title all automotive Equipment in the name of the Lessor except that, where required or permitted by law or regulation, Equipment may, with the written approval of the Lessor be registered (but not titled) in the name of the Lessee. If requested by the Lessor, the Lessee shall cause one of its officers to hold in his custody and control all registration certificates and certificates of title covering automotive Equipment, as custodian for the Lessor. The Lessee agrees to cause such officer to furnish to the Lessor, upon reasonable request, a certificate to the effect that all registration certificates and certificates of title pursuant to any Legal Requirement have been obtained and are being held on behalf of the Lessor.

(g) On or prior to the pertinent Effective Date, the Lessee shall affix or cause to be affixed to each Unit of Equipment, except for motor vehicles in states with documents of title, in the place designated by the Lessor (or, if no such place shall have been designated, in a prominent place), labels, plates or other markings stating that such Unit of Equipment is owned by the Lessor, and with respect to each Railcar, shall cause each Railcar to be kept numbered with the identification number set forth in the Unit Leasing Record relating to such Railcar, and shall keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each Railcar, in letters not less than one inch in height, the words "OWNED BY A LIMITED PARTNERSHIP, OWNERSHIP SUBJECT TO A LEASE AGREEMENT AND A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or with respect to Railcars not yet marked pursuant to this Section 8(g) other appropriate words designated by the Lessor. The Lessee shall not without the prior permission of the Lessor change or remove (or permit to be changed or removed or otherwise permit a decrease in the visibility of) any insignia or lettering which is on any Equipment at the time of delivery thereof or which is thereafter placed thereon indicating the Lessor's ownership thereof.

(h) If any Lien or charge of any kind or any judgment, decree or order of any court or other governmental authority (including, without limitation, any state or local tax lien affecting the Property or Equipment), whether or not valid, shall be asserted or entered which might interfere with the due and timely payment of any sum payable or the exercise of any of the rights or the performance of any of the duties or responsibilities under this Lease, the Lessee shall, upon obtaining knowledge thereof or upon receipt of notice to that effect from the Lessor, promptly take such action as may be necessary to prevent or terminate such interference.

(i) The Lessee, at its own cost and expense, shall forthwith upon the Effective Date with respect to any Aircraft, cause the Aircraft to be duly registered and at all times thereafter to remain duly registered in the name of the Lessor, as owner, except as may be otherwise required by the Federal Aviation Act of 1958, as amended.

#### SECTION 9. Maintenance, Improvement and Repair of Property or Equipment.

(a) Upon request of the Lessee, the Lessor will, so long as no Event of Default shall have occurred and be continuing, assign or otherwise make available to the Lessee any and all rights the Lessor may have under any vendor's or manufacturer's warranties or undertakings with respect to any Property or Equipment.

(b) The Lessee shall pay all costs, expenses, fees and charges incurred in connection with the ownership, use or occupancy of any Parcel of Property or ownership, use and operation of any Unit of Equipment. Except as otherwise provided in Section 15 hereof, the Lessee shall at all times, at its own expense, and subject to normal wear and tear, keep Property or Equipment in good operating order, repair, condition and appearance, and with respect to any Railcar, in accordance with the interchange rules of the American Association of Railroads. The foregoing undertaking to maintain Property or Equipment in good repair shall apply regardless of the cause necessitating repair and regardless of whether the Lessee has possession of the Property or Equipment, and as between the Lessor and the Lessee all risks of damage to Property or Equipment are assumed by the Lessee. With respect to any Parcel of Property, the undertaking to maintain in good repair shall include, without limitation, all interior and exterior repairs, whether structural or nonstructural, foreseen or unforeseen, ordinary or extraordinary and all common area maintenance including, without limitation, removal of dirt, snow, ice, rubbish and other obstructions and maintenance of sidewalks and landscaping. The Lessee hereby agrees to indemnify and hold the Lessor harmless from and against all costs and expenses, claims, losses, damages, fines or penalties, including reasonable counsel fees, arising out of or due to the Lessee's failure to fulfill its obligations under this paragraph (b).

(c) With respect to any Parcel of Property, the Lessee shall pay: (i) all taxes, assessments, levies, fees, water and sewer rents and charges, and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, at any time, imposed or levied upon or assessed against (A) the Parcel, (B) any Basic

Rent, any Additional Rent or other sum payable hereunder or (C) this Lease, the leasehold estate hereby created, or which arises in respect of the ownership, operation, occupancy, possession or use of the Parcel; (ii) all gross receipts or similar taxes (i.e., taxes based upon gross income which by the terms thereof fail to take into account all customary deductions (e.g., ordinary operating expenses, depreciation and interest) relating to the Parcel) imposed or levied upon, assessed against or measured by any Basic Rent, or any Additional Rent or other sum payable hereunder; (iii) all sales, value added, use and similar taxes at any time levied, assessed or payable on account of the acquisition, leasing or use of the Parcel; and (iv) all charges of utilities and communications services serving the Parcel. The Lessee shall not be required to pay any franchise, estate, inheritance, transfer, income or similar tax of the Lessor (other than any tax referred to in clause (ii) above) unless such tax is imposed, levied or assessed as a direct substitute for any other tax, assessment, charge or levy in effect at any time during the term of this Lease which the Lessee is required to pay pursuant to this paragraph (c); provided, however, that if at any time the method of taxation shall be such that there shall be levied, assessed or imposed on the Lessor a capital levy or other tax directly on the rents received therefrom, or upon the value of any Parcel or any present or any future improvement or improvements on any Parcel, then all such taxes, assessments, levies or charges or the part thereof so measured or based, shall be payable by the Lessee, but only to the extent that such taxes would be payable if the Property affected were the only property of the Lessor, and the Lessee shall pay and discharge the same as herein provided. The Lessee will furnish to the Lessor, promptly after demand therefor, proof of payment of all items referred to above which are payable by the Lessee. If any such assessments may legally be paid in installments, the Lessee may pay such assessment in installments; in such event, the Lessee shall be liable only for installments which become due and payable during the Lease Term and any Renewal Term.

(d) Unless required by Legal Requirements or for the ongoing operation of any Equipment for its intended use, the Lessee shall not make any material alterations to any Equipment without the prior written consent of the Lessor. Any improvements or additions to any Equipment, including any and all parts installed on and additions and replacements made to any Railcar which are required for the operation or use of such Railcar by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body, shall become and remain the property of the Lessor, except that any addition to Equipment made by the Lessee shall remain the property of the Lessee if it can be removed from such Equipment without impairing the functioning of such Equipment or reducing its resale value below its Adjusted Acquisition Cost after removal of such addition, and, with respect to a Railcar, if it can be removed without resulting in the failure of the Railcar to comply with the interchange rules of the Association of American Railroads or the regulations of the Interstate Commerce Commission, the Department of Transportation or any applicable regulatory body. Any improvements or additions which do not remain property of the Lessee shall be evidenced by a revised Unit Leasing Record.

(e) So long as no Event of Default shall have occurred and be continuing, the Lessee may, at its expense, make additions to and alterations to any Parcel of Property;

provided, that upon completion of such additions or alterations (i) neither the fair market value of the Parcel of Property shall be lessened thereby nor the condition of such Parcel of Property impaired, below the value, utility or condition thereof immediately prior to such action (assuming such Parcel of Property was then of a condition and repair required to be maintained pursuant to paragraph (b) of Section 9 hereof), (ii) such additions or alterations shall not result in a change of use of such Parcel of Property, (iii) such work shall be completed in a good and workmanlike manner and in compliance with all applicable Legal Requirements and Insurance Requirements and (iv) no exterior walls of any building or other improvement constituting a part of a Parcel of Property shall be demolished unless (A) the Lessee has made adequate provision according to nationally recognized sound and prudent engineering and architectural standards to preserve and maintain the structural integrity of the Parcel of Property and for the restoration of such Parcel of Property to a structurally sound architectural whole and (B) if such addition or alteration costs more than \$500,000, the obligations of the Lessee to preserve, maintain and restore are bonded, for the benefit of the Lessor and in an amount not less than one hundred percent (100%) of the amount reasonably estimated by an independent qualified architect licensed in the state in which such Parcel of Property is located, or a contractor of recognized standing and reputation, to be necessary to accomplish such preservation, maintenance and restoration, by a nationally recognized insurance company rated in one of the two highest rating classifications by the then current A.M. Best's Insurance Reports (or if such is no longer published, a similar insurance industry standard publication) or otherwise reasonably assured to the Lessor's satisfaction. Any and all such additions and alterations shall be and remain part of the Parcel of Property and shall be subject to this Lease. Notwithstanding anything contained herein, except for any additions or alterations required by Legal Requirements or for the ongoing operation of any Parcel of Property for its intended use, the Lessee shall not perform any addition or alteration to any Parcel of Property which would have an estimated cost in excess of \$500,000, without the Lessor's prior written consent, which consent may be conditioned upon, among other things, the Lessor's approval of the plans and specifications for such additions and alterations, which approval shall not be unreasonably withheld or delayed, and the Lessee's furnishing of such security as the Lessor may reasonably require to protect the Lessor against any Liens or claims affecting the Property as a result of such addition or alteration.

(f) The Lessee, at its own cost and expense, shall: (i) maintain, service, repair, overhaul and test the Aircraft (A) so as to keep the Aircraft in operating condition as good as when delivered to the Lessee hereunder, ordinary wear and tear excepted, and (B) so as to keep the Aircraft in such operating condition as may be necessary to enable the airworthiness certification of the Aircraft to be maintained in good standing at all times under the Federal Aviation Act of 1958, as amended, except during such period or periods as the Aircraft is being overhauled, maintained, serviced, repaired or tested; (ii) maintain all records, logs and other materials required by the Federal Aviation Administration to be maintained in respect of the Aircraft; and (iii) promptly furnish to the Lessor such notification and take such other action on the Lessor's behalf as may be required to be filed by the Lessor with any governmental authority because of the Lessor's interest in the Aircraft.

**SECTION 10. Insurance.**

(a) **Liability Insurance with Respect to Equipment.** The Lessee will carry at its own expense public liability insurance and property damage liability insurance with respect to all Equipment (i) in amounts which are not less than the public liability and property damage insurance applicable to similar equipment owned, leased or held by the Lessee; provided, that in no event shall such amounts be less than \$15,000,000 per occurrence, (ii) as carried by corporations engaged in the same or a similar business, similarly situated with the Lessee, and owning or operating similar equipment and which cover risk of the kind customarily insured against by such corporations, and (iii) which are maintained in effect with insurers of recognized responsibility. The insurance required by this paragraph (a) may be subject to such deductibles and the Lessee may self-insure with respect to the required coverage to the extent consistent with prudent business practices.

(b) **Insurance Against Loss or Damage to Equipment.** The Lessee will maintain in effect with insurers of recognized responsibility, at its own expense, physical damage insurance with respect to all Equipment, as carried by corporations engaged in the same or similar business, similarly situated with the Lessee, and owning or operating similar equipment and which covers risk of the kind customarily insured against by such corporations, and in substantially the amount applicable to similar equipment owned, leased or held by the Lessee; provided, that such insurance shall at all times be in an amount not less than the aggregate Adjusted Acquisition Cost of all Equipment. The insurance required by this paragraph (b) may be subject to such deductibles and the Lessee may self-insure with respect to the required coverage to the extent consistent with prudent business practices.

(c) **Insurance with respect to Property.** The Lessee will maintain or cause to be maintained insurance of the following character, on each Parcel of Property:

- (i) All risk insurance coverage against losses by fire and lightning and other risks for the full insurable replacement value of each Parcel of Property, with agreed amount endorsement or endorsements providing equivalent protection, including loss by windstorm, hail, explosion, riot (including riot attending a strike), civil commotion, aircraft, vehicles, smoke damage, and vandalism and malicious mischief, in amounts not less than the full insurable replacement value of all buildings and other improvements on each Parcel of Property, but in no event less than the Adjusted Acquisition Cost of each Parcel of Property. The term "full insurable replacement value" as used herein means the actual replacement cost, including the costs of debris removal, but excluding the cost of constructing foundation and footings.
- (ii) General public liability insurance covering the legal liability of the Lessor and the Lessee against claims for bodily injury, death or property damage, occurring on, in or about each Parcel of Property

or occurring as a result of ownership of facilities located on each Parcel of Property or as a result of the use of products or materials manufactured, stored, processed, constructed or sold, or services rendered, on each Parcel of Property, in the minimum amount of \$15,000,000 with respect to any one occurrence, accident or disaster or incidence of negligence.

- (iii) The Lessee shall comply with applicable workers' compensation laws of the states where each Parcel of Property is located, and shall maintain such insurance if and to the extent necessary for such compliance.
- (iv) Explosion insurance in respect of any boilers and similar apparatus located on each Parcel in the minimum amount of \$250,000 or in such greater amounts as are then customary for property similar in use to each Parcel.
- (v) Such other insurance, in such amounts and against such risks, as is customarily maintained by operators of similar properties, similarly situated.

The insurance required under this paragraph (c) shall be maintained in effect with insurers of recognized responsibility. Such insurance may be subject to such deductibles and the Lessee may self-insure with respect to the required coverage to the extent consistent with prudent business practices.

The Lessee may, at its cost and expense, prosecute any claim against any insurer or contest any settlement proposed by any insurer, and the Lessee may bring any such prosecution or contest in the name of the Lessor, the Lessee, or both, and the Lessor will join therein at the Lessee's request; provided, that the Lessee shall indemnify the Lessor against any losses, costs or expenses (including reasonable attorneys' fees) which the Lessor may incur in connection with such prosecution or contest.

Insurance claims by reason of damage or destruction to any Parcel of Property shall be adjusted by the Lessee, provided that any such claim with respect to any Parcel of Property with an Acquisition Cost in excess of \$5,000,000 and which claim totals in excess of the greater of \$1,000,000 or 5% of such Adjusted Acquisition Cost, shall be adjusted by the Lessee, subject to the approval of the Lessor, which approval the Lessor shall not unreasonably withhold or delay.

(d) **Public Liability and Property Damage Insurance with Respect to Aircraft.** The Lessee shall, at its own cost and expense, procure or cause to be procured and maintain or cause to be maintained, with insurers of recognized responsibility satisfactory to the Lessor, public liability insurance with respect to the Aircraft, covering both bodily personal injury and damage to property (as to all Persons, including employees of the Lessee or the

Lessor). Policies covering bodily injury and property damage shall provide for coverage in an amount which is not less than the public liability and property damage insurance usually carried with respect to aircraft similar to the Aircraft by corporations of a similar size engaged in the same or similar business and similarly situated with the Lessee; provided, that such insurance shall at all times be in an amount not less than \$30,000,000 per occurrence.

(e) Insurance Against Loss or Damage to Aircraft. The Lessee shall, at its own cost and expense, procure or cause to be procured and maintain or cause to be maintained, with insurers of recognized responsibility satisfactory to the Lessor, all risk aircraft hull insurance with respect to the Aircraft, as and in substantially the amounts usually carried by corporations engaged in the same or similar business and similarly situated with the Lessee; provided, that such insurance shall at all times be in an amount not less than the Adjusted Acquisition Cost of the Aircraft at such time.

(f) Additional Insureds; Notice. The Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor, and each Assignee shall be additional insureds, as their respective interests may appear under any policies of insurance carried in accordance with this Section 10 (but without imposing upon any such Person any obligation imposed on the insured, including, without limitation, the liability to pay the premium for any such policy). With respect to insurance carried in accordance with the preceding paragraphs (b), (c)(i), (c)(iv), (c)(v) and (e) the Assignee, if any, or the Lessor, if no Assignment has been made, shall be named as loss payee. With respect to insurance carried in accordance with the preceding paragraphs (b), (c) and (e), the Lessee hereby waives pursuant to, and as permitted by, said policies of insurance the insurers' rights of subrogation against the Lessor. The insurance carried in accordance with this Section 10 (i) shall provide that if the insurers cancel such insurance for any reason whatsoever, or the same is allowed to lapse for nonpayment of premium or such insurance coverage is reduced, such cancellation, lapse or reduction shall not be effective as to the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor, or any Assignee for thirty (30) days after receipt by the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor, or such Assignee, as the case may be, of written notice by such insurers of such cancellation, lapse or reduction, and (ii) shall provide that in the case of insurance provided pursuant to Section 10(b) and 10(c)(i), in respect of the interest of the Lessor and each Assignee in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other Person (other than of the Lessor or any such Assignee in respect of its own interest) and shall insure the interests of the Lessor and each such Assignee, as they appear, regardless of any breach or violation of any warranties, declarations or conditions contained in such policies by the Lessee or any other Person. Each liability policy (A) shall be primary without right of contribution from any other insurance which is carried by the Lessor with respect to its interest as such in the Property or Equipment and (B) shall expressly provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

(g) Application of Insurance Proceeds for Loss or Taking. As between the Lessor and the Lessee it is agreed that any insurance payments received as the result of the occurrence of (i) any event of loss described in paragraph (c) of Section 15 hereof with respect to any Parcel of Property or Unit of Equipment, or (ii) any event of Taking described in Section 16 hereof shall be paid to an account of the Lessor and disposed of, as set forth in paragraph (c) of Section 15 hereof.

(h) Application of Insurance Proceeds for Other than Loss or Taking. The insurance proceeds of any property damage loss to any Property or Equipment (in excess of \$2,000,000) will be held in an account of the Lessor and applied in payment (or to reimburse the Lessee) for repairs or replacement in accordance with the terms of paragraph (b) of Section 15 hereof. The Lessee shall be entitled (i) to receive the amounts so deposited against certificates, invoices or bills satisfactory to the Lessor, delivered to the Lessor from time to time as such work or repair progresses, and (ii) to direct the investment of the amounts so deposited as provided in paragraph (i) of this Section 10. To the extent that the Lessor estimates that the cost of such work or repair shall exceed the amount of proceeds, the Lessee shall make adequate provisions for the payment thereof, which provisions shall be reasonably acceptable to the Lessor. Any moneys remaining in the aforesaid account after final payment for repairs has been made shall be paid to the Lessee. If insurance proceeds are less than \$2,000,000, such proceeds shall be paid to the Lessee.

(i) Investment. The Lessor, at the Lessee's instruction, may invest the amounts deposited with the Lessor pursuant to paragraph (h) of this Section 10 in any investments permitted under any applicable Credit Agreement. Such investments shall mature in such amounts and on such dates so as to provide that amounts shall be available on the draw dates sufficient to pay the amounts requested by and due to the Lessee. Any interest earned on investments of such funds shall be paid to the Lessee. The Lessor shall not be liable for any loss resulting from the liquidation of each and every such investment and the Lessee shall bear the risk of such loss, if any.

(j) Application in Default. Any amount referred to in paragraphs (f), (g) or (h) of this Section 10 which is payable to the Lessee shall not be paid to the Lessee or, if it has been previously paid to the Lessee, shall not be retained by the Lessee, if at the time of such payment an Event of Default shall have occurred and be continuing. In such event, all such amounts shall be paid to and held by the Lessor as security for the obligations of the Lessee hereunder or, at the Lessor's option, applied by the Lessor toward payment of any of such obligations of the Lessee at the time due hereunder as the Lessor may elect. At such time as there shall not be continuing any Event of Default, all such amounts at the time held by the Lessor in excess of the amount, if any, which the Lessor shall have elected to apply as above provided shall be paid to the Lessee.

(k) Certificates, etc. On or before the execution of this Lease, on the Effective Date with respect to any Parcel of Property or Unit of Equipment, and annually on or before the anniversary of the date of this Lease, the Lessee will furnish to the Lessor certificates or other evidence reasonably acceptable to the Lessor certifying that the insurance then carried

and maintained on each Parcel of Property or Unit of Equipment complies with the terms hereof.

(l) The Lessee covenants that it will not use or operate any Equipment or use or occupy any Property or permit the use or occupancy of any Property or the use or operation of any Equipment at a time when insurance to the extent required by this Section 10 is not in force with respect to such Property or Equipment.

#### SECTION 11. Indemnities.

The Lessee shall indemnify and hold harmless the Lessor, Merrill, Merrill Lynch, Merrill Leasing, any Assignee, any successor or successors and any Affiliate of each of them, and their respective officers, directors, incorporators, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor), employees, agents and servants (each of the foregoing an "Indemnified Person") from and against all liabilities (including strict liability in tort), taxes, losses, obligations, claims (including strict liability in tort), damages, penalties, causes of action, suits, costs and expenses (including, without limitation, attorneys' and accountants' fees and expenses) or judgments of any nature relating to or in any way arising out of:

(a) The ordering, delivery, acquisition, construction, title on acquisition, rejection, installation, possession, titling, retitling, registration, reregistration, custody by the Lessee of title and registration documents, ownership, use, non-use, misuse, financing, operation, transportation, repair, control or disposition, including, without limitation, disposition at the end of any Extended or Renewal Term, of any Property or Equipment or the release of hazardous substances on, under, to or from, or the generation or transportation of hazardous substances to or from, any Property, leased or to be leased hereunder, (i) except to the extent that such costs are included in the Acquisition Cost of such Property or Equipment within the limitations provided in paragraph (a)(v) of Section 3 hereof (or within any change of such limitations agreed to in writing by the Lessor and the Lessee), (ii) except for any general administrative expenses of the Lessor, (iii) except the income taxes with respect to which indemnification is excluded under paragraph (c) of this Section 11 and (iv) except that this indemnity shall not increase any payment required to be made by the Lessee pursuant to paragraphs (b)(iii)(A), (c)(iii)(A), or (d)(iii)(A) of Section 12 of this Lease;

(b) The assertion of any claim or demand based upon any infringement or alleged infringement of any patent or other right, by or in respect of any Property or Equipment; provided, however, that the Lessor will make available to the Lessee the Lessor's rights under any similar indemnification arising from any manufacturer's or vendor's warranties or undertakings with respect to any Property or Equipment;

(c) All U.S. Federal, state, county, municipal, foreign or other fees and taxes of whatsoever nature, including but not limited to license, qualification, franchise, sales, use, gross income, gross receipts, ad valorem, business, personal property, real estate, value added, excise, motor vehicle, occupation fees and stamp or other taxes or tolls of any nature

whatsoever, and penalties and interest thereon, whether assessed, levied against or payable by the Lessor or otherwise, with respect to any Property or Equipment or the acquisition, purchase, sale, rental, use, operation, control, ownership or disposition of any Property or Equipment (including, without limitation, any claim by any governmental authority for transfer tax, transfer gains tax, mortgage recording tax, filing or other similar taxes or fees in connection with the acquisition of any Property by the Lessor or otherwise in connection with this Lease) or measured in any way by the value thereof or by the business of, investment in, or ownership by the Lessor with respect thereto; provided, that this indemnity shall not apply to Federal net income taxes, or to state and local net income taxes, except that such indemnity shall apply to state and local net income taxes (A) to the extent imposed by reason in whole or in part of (1) a relation or asserted relation of any such taxing jurisdiction to the Property or Equipment or to the transactions contemplated herein or (2) the actual or deemed use by any Person of the Property or Equipment in such taxing jurisdiction, other than in the case of both clauses (1) and (2), taxes to the extent such taxes would have been imposed by a taxing jurisdiction because of a relationship between the Lessor and such taxing jurisdiction without regard to the circumstances described in clauses (1) and (2), and (B) to the extent imposed as a result of the inability to claim, disallowance or other loss by Red Bud Funding, Limited Partnership, of deductions customarily allowed in computing net income (e.g., interest expense, financing, administrative, ordinary operating expenses and other fees and expenses); or

(d) Any violation, or alleged violation by the Lessee, of this Lease or of any contracts or agreements to which the Lessee is a party or by which it is bound or of any laws, rules, regulations, orders, writs, injunctions, decrees, consents, approvals, exemptions, authorizations, licenses and withholdings of objection, of any governmental or public body or authority and all other Legal Requirements.

The Lessee shall forthwith upon demand reimburse any Indemnified Person for any sum or sums expended with respect to any of the foregoing or, upon request from any Indemnified Person, shall pay such amounts directly. Any payment made to or on behalf of any Indemnified Person pursuant to this Section 11 shall be increased to such amount as will, after taking into account all taxes imposed with respect to the accrual or receipt of such payment (as the same may be increased pursuant to this sentence), equal the amount of the payment, reduced by the amount of any savings in such taxes actually realized by the Indemnified Person as a result of the payment or accrual of the amounts in respect of which the payment to or on behalf of the Indemnified Person hereunder is made. To the extent that the Lessee in fact indemnifies any Indemnified Person under the indemnity provisions of this Lease, the Lessee shall be subrogated to such Indemnified Person's rights in the affected transaction and shall have a right to determine the settlement of claims therein.

The indemnities contained in this Section 11 shall not be affected by any termination of this Lease as a whole or in respect of any Parcel of Property or Unit of Equipment leased hereunder or any failure or refusal of the Lessee to accept any Property or Equipment acquired or ordered pursuant to the terms hereof.

Notwithstanding any provisions of this Section 11 to the contrary, the Lessee shall not indemnify and hold harmless any Indemnified Person against any claims and liabilities arising from the gross negligence or willful misconduct of such Indemnified Person or, in the case the Indemnified Person is other than a natural Person, of any Indemnified Person which is an Affiliate of such Indemnified Person.

In the event the Lessor shall be a party defendant to any litigation arising out of any provision contained in this Lease for which the Lessee has given indemnification, the Lessor shall give prompt notice thereof to the Lessee by telephone and in writing and shall consult and cooperate, at the Lessee's expense, with the Lessee, and if the Lessor shall not have appeared or pleaded to any such action then the Lessor does hereby empower any attorney of any court of record appointed by the Lessee (who shall give prompt written notice to the Lessor of such appointment) to appear for the Lessor and in good faith and with due diligence defend such action, to enter counterclaims, to institute actions against third parties and to do all things necessary or desirable in the judgment of such attorney after consultation with the Lessor and the Lessee to preserve the rights of the Lessor and the Lessee, all at the Lessee's own cost and expense. No failure or delay of the Lessor to give the notice required by this Section 11 shall excuse the obligation of the Lessee to indemnify the Lessor with respect to such litigation except to the extent that any increase in liability is a direct result of such failure or delay.

#### SECTION 12. Lessee's Right to Terminate.

(a) So long as no Event of Default has occurred and is continuing and with respect to any Parcel of Property, so long as such Parcel is not undergoing any additions or alterations subject to paragraph (e) of Section 9 hereof, the Lessee shall have the right, upon ninety (90) days' notice to the Lessor, to terminate the lease of any Parcel of Property or any or all Units of Equipment on or after the Basic Rent Payment Date of the last month of the Initial Term but on a Business Day prior to the last Business Day of such last month of the Initial Term or on or after any Basic Rent Payment Date but on a Business Day prior to the last Business Day of any month in which such Basic Rent Payment Date falls during the Extended Term or the Renewal Term, if any, by arranging, at its own cost and expense, for the sale of such Property or Equipment in an arms' length transaction on the date of termination and the receipt by the Lessor of the proceeds of such sale. At the time a Parcel of Property or Unit of Equipment is sold pursuant to this Section 12, such Parcel or Unit shall not be undergoing any additions or alterations, shall be in compliance with all Legal Requirements and shall not be subject to any Permitted Contest or any Lien, except a Permitted Lien which does not reduce the fair market value of such Property or Equipment and except as otherwise agreed to in writing by the Lessor with respect to the sale of such Property or Equipment.

(b) In the event the Lessee exercises its right to terminate the lease of any Equipment pursuant to this Section 12 on or after the Basic Rent Payment Date of the last month of the Initial Term but on a Business Day prior to the last Business Day of such last month of the Initial Term with respect to such Equipment or in the event a termination of the

lease of any Equipment occurs pursuant to Section 14 hereof and the Business Day on which such termination occurs is in or before the last month of the Initial Term of such Equipment and the Lessee chooses to effect a sale pursuant to this Section:

- (i) if the proceeds of sale are greater than the Adjusted Acquisition Cost of the Equipment sold, the Lessor shall pay to the Lessee the amount by which such proceeds exceed such Adjusted Acquisition Cost;
- (ii) if the proceeds of sale are equal to or less than the Adjusted Acquisition Cost of the Equipment sold, but greater than or equal to 16% of the Adjusted Acquisition Cost of such Equipment, the Lessee shall pay to the Lessor an amount equal to (A) such Adjusted Acquisition Cost less (B) the proceeds of such sale; and
- (iii) if the proceeds of sale are less than 16% of the Adjusted Acquisition Cost of the Equipment sold, the Lessee shall pay to the Lessor an amount equal to the sum of (A) 84% of such Adjusted Acquisition Cost and (B) the amount by which the residual value of such Equipment has been reduced by wear and tear in excess of that attributable to normal use (the amount of such excess wear and tear to be such amount as the Lessor and the Lessee agree, or if no agreement is reached, the amount determined pursuant to the Appraisal Procedure).

(c) In the event the Lessee exercises its right to terminate the lease of any Property pursuant to this Section 12 on or after the Basic Rent Payment Date of the last month of the Initial Term but on a Business Day prior to the last Business Day of such last month of the Initial Term with respect to such Property or in the event a termination of the lease of any Property occurs pursuant to Section 14 hereof and the Business Day on which such termination occurs is in or before the last month of the Initial Term of such Property and the Lessee chooses to effect a sale pursuant to this Section:

- (i) If the proceeds of sale are greater than the Adjusted Acquisition Cost of the Property sold, the Lessor shall pay to the Lessee the amount by which such proceeds exceed such Adjusted Acquisition Cost;
- (ii) if the proceeds of sale are equal to or less than the Adjusted Acquisition Cost of the Property sold, but greater than or equal to 20% of the Adjusted Acquisition Cost of such Property, the Lessee shall pay to the Lessor an amount equal to (A) such Adjusted Acquisition Cost less (B) the proceeds of such sale; and

- (iii) if the proceeds of sale are less than 20% of the Adjusted Acquisition Cost of the Property sold, the Lessee shall pay to the Lessor an amount equal to the sum of (A) 80% of such Adjusted Acquisition Cost and (B) the amount by which the residual value of such Property has been reduced by wear and tear in excess of that attributable to normal use (the amount of such excess wear and tear to be such amount as the Lessor and the Lessee agree, or if no agreement is reached, the amount determined pursuant to the Appraisal Procedure).

(d) In the event the Lessee exercises its right to terminate the lease of any Property or Equipment pursuant to this Section 12 on or after any Basic Rent Payment Date but on a Business Day prior to the last Business Day of any month in which such Basic Rent Payment Date falls during the Extended Term or Renewal Term with respect to such Property or Equipment or a sale of Property or Equipment occurs during the Extended Term or Renewal Term as the result of the Lessee's election under paragraph (b)(i) of Section 14 hereof:

- (i) if the proceeds of sale are greater than the Adjusted Acquisition Cost of the Property or Equipment sold, the Lessor shall pay to the Lessee the amount by which such proceeds exceed such Adjusted Acquisition Cost;
- (ii) if the proceeds of sale are equal to or less than the Adjusted Acquisition Cost of the Property or Equipment sold, but greater than or equal to 13% of such Adjusted Acquisition Cost, the Lessee shall pay to the Lessor an amount equal to (A) such Adjusted Acquisition Cost less (B) the proceeds of such sale; and
- (iii) if the proceeds of sale are less than 13% of the Adjusted Acquisition Cost, the Lessee shall pay to the Lessor an amount equal to the sum of (A) 87% of such Adjusted Acquisition Cost and (B) the amount by which the residual value of such Property or Equipment has been reduced by wear and tear in excess of that attributable to normal use (the amount of such excess wear and tear to be such amount as the Lessor and the Lessee agree, or if no agreement is reached, the amount determined pursuant to the Appraisal Procedure).

(e) All payments and credits referred to in paragraphs (b), (c) and (d) above shall be made on the termination date of any Property or Equipment pursuant to this Section 12, and the parties shall account to each other for such payments and credits, and the Lessee shall pay to the Lessor all Basic Rent payable, the Variable Component of Basic Rent accrued with respect to such Property or Equipment and any Additional Rent and other amounts owing hereunder. Upon receipt by the Lessor of the proceeds of sale and all other

amounts then due and owing hereunder, the Lessor shall transfer title to such Property or Equipment to the purchaser at the sale designated by the Lessee. The "proceeds of sale" referred to in paragraphs (b), (c) and (d) above shall mean the proceeds of sale without reduction for any amounts paid by the Lessee. In the event of a sale pursuant to this Section 12, neither the Lessee nor any Affiliate of the Lessee shall purchase the Property or Equipment sold.

(f) In its notice given pursuant to paragraph (a) of this Section 12, the Lessee shall advise the Lessor if the sale provided for in such notice will result in the applicability of paragraph (b)(iii) of Section 12, paragraph (c)(iii) of Section 12 or paragraph (d)(iii) of Section 12 hereof. If the Lessee advises the Lessor that any such Section will be applicable, the Lessor may arrange for such sale to be made to a purchaser designated by the Lessor, if such purchaser will pay an amount sufficient to render paragraph (b)(iii) of Section 12, paragraph (c)(iii) of Section 12 or paragraph (d)(iii) of Section 12 hereof inapplicable. Unless the Lessor shall arrange for such sale and shall give the Lessee notice thereof within thirty (30) days of the Lessor's receipt of the Lessee's notice, the Lessee may proceed with the sale to a purchaser designated by it. Within thirty (30) days of the Lessee's receipt of the Lessor's notice provided for in the preceding sentence, the Lessee may arrange for such sale to be made to another purchaser designated by it, if such purchaser shall pay an amount sufficient to render paragraph (b)(iii) of Section 12, paragraph (c)(iii) of Section 12 or paragraph (d)(iii) of Section 12 hereof inapplicable.

### SECTION 13. Lessee's Rights of Purchase and Renewal.

(a) So long as no Event of Default has occurred and is continuing, the Lessee shall have the right, upon ninety (90) days' written notice to the Lessor, to purchase any Parcel of Property or Unit of Equipment on or after the Basic Rent Payment Date, but on a Business Day prior to the last Business Day, of the last month of the Initial Term or on or after any Basic Rent Payment Date, but on a Business Day prior to the last Business Day, in any month of the Extended Term or the Renewal Term, if any, thereof for an amount equal to its Adjusted Acquisition Cost. In connection with any purchase under this paragraph (a), on the Business Day upon which such purchase occurs, the Lessee shall pay to the Lessor the purchase price, all Basic Rent payable, the Variable Component of Basic Rent accrued with respect to such Property or Equipment and any Additional Rent and other amounts owing hereunder.

(b) If at any time (i) pursuant to the indemnity provisions set forth in Section 11 of this Lease, the Lessee makes a payment or payments to an Indemnified Person which, in the Lessee's reasonable judgment, can reasonably be expected to recur subsequently and which, in the Lessee's reasonable judgment, is or are, or would be in the aggregate (taking into account the recurring nature of the payments) material, (ii) the Lessee makes a payment or payments of Additional Rent to the Lessor, which (x) in the Lessee's reasonable judgment, can reasonably be expected to recur subsequently and which, in the Lessee's reasonable judgment, is or are, or would be in the aggregate (taking into account the

recurring nature of the payments) material or (y) the Lessor utilizes to retire the entire principal amount of its Commercial Paper and borrowings under a Credit Agreement, or (iii) the Variable Component of Basic Rent shall increase as the result of an Event of Default (as defined in the Credit Agreement) under the Credit Agreement which has not been caused by or resulted from an Event of Default under this Lease or from a breach by the Lessee of its obligations under any agreement or document executed and delivered in connection with this Lease, the Lessee shall have the right to terminate this Lease on or after the Basic Rent Payment Date but on a Business Day prior to the last Business Day of any month during the Lease Term upon not less than ninety (90) days' written notice to the Lessor. On the date when the Lease terminates pursuant to such notice, the Lessee shall purchase all of the Property and Equipment leased by it for an amount equal to its Adjusted Acquisition Cost. In connection with any purchase under this paragraph (b) on the date upon which such purchase occurs, and as a condition to such purchase, the Lessee shall pay to the Lessor the purchase price, all Basic Rent payable to and including the date of purchase, the Variable Component of Basic Rent accrued through the date of purchase with respect to the Property and Equipment and Additional Rent and other amounts owing by it hereunder.

(c) So long as no Event of Default has occurred and is continuing, the Lessee shall have the right, upon ninety (90) days' written notice to the Lessor, to renew the lease of any Parcel of Property or Unit of Equipment for a term (the "Renewal Term") equal to the number of calendar months set forth opposite such Parcel of Property or type of Equipment under the heading "Renewal Term" in Exhibit A hereto, commencing on the first day of the calendar month following the last day of the Lease Term thereof, at the fair market value rental.

(d) The fair market value rental of any Parcel of Property or Unit of Equipment for purposes of paragraph (c) of this Section 13 shall be an amount equal to 0.125% per month of the Acquisition Cost of such Parcel of Property or Unit of Equipment.

#### SECTION 14. Lessor's Right to Terminate.

(a) (i) The Lessor shall have the right upon written notice to the Lessee to terminate the lease of any or all Property or Equipment as of the Business Day prior to the last Business Day of any month stipulated in such notice if (A) at any time, for any reason (other than an Event of Default by the Lessor under a Credit Agreement (as therein defined) which has not been caused by or resulted from an Event of Default under this Lease or from a breach by the Lessee of its obligations under any agreement or document executed and delivered in connection with this Lease), Commercial Paper cannot be issued by the Lessor and the Lessor cannot arrange for bank borrowings to finance or refinance the purchase of such Property or Equipment, (B) at any time, for any reason (other than an Event of Default by the Lessor under a Credit Agreement (as therein defined) which has not been caused by or resulted from an Event of Default under this Lease or from a breach by the Lessee of its obligations under any agreement or document executed and delivered in connection with this Lease), a limited partner or partners of the Lessor cannot arrange for borrowings from the bank or banks acting as lender under a Credit Agreement in an amount equal to such limited

partners' limited partnership interest or interests in the Lessor or (C) such bank or banks which shall act as lender to a limited partner or partners of the Lessor shall make a material change in the terms of any such lending arrangement a condition precedent to the extension of such lending arrangement without a corresponding change being effected under the Credit Agreement to which such lender is a party.

(ii) A "Termination Event" shall occur upon the happening of any of the events listed in clauses (A) through (D) below. The lease of any Parcel or Parcels or Unit or Units hereunder shall terminate immediately upon the happening of an event listed in clauses (A), (B) or (C) below in respect thereof (each such event a "Utility Termination Event") and this Lease shall terminate in respect of all Parcels or Units immediately upon the happening of an event listed in clause (D) below (such event a "Lease Termination Event"): (A) as a result of the lease hereunder of any one or more Parcels or Units or of any of the transactions contemplated by this Lease in respect thereof, the Lessor becomes (or with the passage of time would become), or is declared by the SEC to be, a "holding company" or an "electric utility company" or a "gas utility company" as defined in the 1935 Act, or the Lessor, Merrill, Merrill Leasing, Merrill Lynch, any Assignee, any successor or successors and any Affiliate of the foregoing or their respective officers, directors, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor) or employees shall become subject to regulation under the 1935 Act; (B) as a result of the lease hereunder of any one or more Parcels or Units or of any of the transactions contemplated by this Lease in respect thereof, the Lessor becomes (or with the passage of time would become), or is declared by the Secretary of Energy (or any successor thereto) or the FERC to be, a public utility, or the Lessor, Merrill, Merrill Leasing, Merrill Lynch, any Assignee, any successor or successors and any Affiliate of the foregoing or their respective officers, directors, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor) or employees shall become subject to regulation under the Federal Power Act, the Natural Gas Act or the Atomic Energy Act or otherwise subject to regulation by the FERC or the NRC; (C) as a result of the lease hereunder of any one or more Parcels or Units or of any of the transactions contemplated by this Lease in respect thereof, the Lessor becomes (or with the passage of time would become), or is declared by any relevant governmental body or similar entity under the laws of any state or locality, to be, a public utility, or the Lessor, Merrill, Merrill Leasing, Merrill Lynch, any Assignee, any successor or successors and any Affiliate of the foregoing or their respective officers, directors, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor) or employees shall become subject to regulation as a public utility under any such laws; or (D) any law or regulation or interpretation of any law or regulation shall be adopted or enforced by any governmental or regulatory authority (including, without limitation, the Secretary of Energy, the FERC, the public service commission of any state or any similar commission of any locality, the SEC and the NRC), and as a result of such adoption or enforcement, approval of the transactions contemplated by this Lease shall be required and shall not have been obtained within any grace period after such adoption or enforcement, or as a result of which adoption or enforcement this Lease or any transaction contemplated hereby, including any payments to be made by the Lessee or the ownership of any Property or Equipment or interest therein by the

Lessor, shall be or become unlawful or unenforceable or the performance of this Lease shall be rendered impracticable in any material way.

(b) In the event of a termination with respect to any or all Property or Equipment pursuant to paragraph (a)(i) of this Section 14, the Lessee shall be required, at its option, either (i) to arrange for such Property or Equipment to be sold pursuant to Section 12 above and with the consequences therein provided, except that such sale must occur on the Business Day prior to the last Business Day of any month stipulated in the written notice contemplated in paragraph (a)(i) of this Section 14, or (ii) to purchase, on the Business Day prior to the last Business Day of any month stipulated in the written notice contemplated by paragraph (a)(i) of this Section 14, such Property or Equipment for cash at its Adjusted Acquisition Cost. In connection with any purchase or sale under this paragraph, on the date upon which such purchase or sale occurs, the Lessee shall pay to the Lessor, in addition to any purchase price payable, all Basic Rent payable, the Variable Component of Basic Rent accrued with respect to such Property or Equipment and any Additional Rent and other amounts owing hereunder.

(c) Upon the date of the occurrence of a Utility Termination Event or Lease Termination Event (such date being herein called the "Termination Event Date"), (i) with respect to a Utility Termination Event, the lease hereunder of all Parcels or Units resulting in such Event shall terminate, and (ii) with respect to a Lease Termination Event, this Lease shall terminate, in both cases, except with respect to obligations and liabilities of the Lessee, actual or contingent, which arose under this Lease on or prior to the Termination Event Date and except for the Lessee's obligations set forth in Sections 7, 8, 9, 10, 15, 16, 17, 18 and 19 hereof, and in this Section 14(c), all of which obligations will continue until the payment by the Lessee provided for below and the delivery of a bill of sale, a deed or similar documentation by the Lessor in respect of any affected Parcels or Units, which Lessor shall not unreasonably withhold or delay upon receipt of payment as provided herein, and except that Lessee's obligations under Section 11 hereof shall continue as set forth herein. Forthwith also upon such termination, in the case of a Utility Termination Event, title to, and the entire interest of the Lessor in the Parcels or Units resulting in such Event shall automatically transfer to and be vested in the Lessee and in the case of a Lease Termination Event, title to, and the entire interest of the Lessor in, all Property and Equipment shall automatically transfer to and be vested in the Lessee, without the necessity of any action by either the Lessor or the Lessee, but subject to the rights of any Assignee. As soon as possible after either the Lessor or the Lessee shall learn of the happening of any Utility Termination Event, such party shall give notice thereof to the other party hereto which notice shall (i) acknowledge that in respect of all Parcels or Units resulting in such Event, the lease hereunder of such Parcels or Units has terminated, subject to the continuing obligations of the Lessee mentioned above, and that title to and ownership of such Parcels or Units has transferred to and vested in the Lessee, subject as aforesaid and (ii) state that on the Business Day prior to the last Business Day of the calendar month next succeeding the Termination Event Date (such date being herein called the "Termination Settlement Date"), the Lessee shall be obligated to pay to the Lessor, as the purchase price for such Parcels or Units, the Adjusted Acquisition Cost of such Parcels or Units. As soon as possible after either the

Lessor or the Lessee shall learn of the happening of any Lease Termination Event (for purposes of this provision, any Lease Termination Event shall be deemed to have happened upon the passage of any applicable grace period), such party shall give notice thereof to the other party hereto which notice shall (i) acknowledge that this Lease has terminated, subject to the continuing obligations of the Lessee mentioned above, and that title to and ownership of all Property and Equipment has transferred to and vested in the Lessee, subject as aforesaid and (ii) state that on the Termination Settlement Date, the Lessee shall be obligated to pay to the Lessor, as the purchase price for all Property and Equipment, the sum of the Adjusted Acquisition Costs of all Property and Equipment. In connection with any purchase under this paragraph (c), on the date upon which such purchase occurs, the Lessee shall pay to the Lessor, in addition to any purchase price payable, all Basic Rent payable, the Variable Component of Basic Rent accrued with respect to the Parcels or Units being purchased in the case of a Utility Termination Event or the Variable Component of Basic Rent accrued with respect to all Property and Equipment in the case of a Lease Termination Event and any Additional Rent and other amounts owing hereunder. Upon the delivery of notice as provided in this paragraph (c), the Lessee shall become obligated to make the payment required on the Termination Settlement Date to the same extent as if it had acknowledged in writing its obligation so to do. The Lessee's obligation to make such payment shall be unconditional and unaffected by any event or matter whatsoever including, without limitation, failure of the Lessor to deliver a bill of sale, a deed or similar confirmatory documentation of the quality, condition, existence, utility or title of or to any of the Property or Equipment. Any such payment made by Lessee shall not prejudice, or constitute a waiver of, any right, claim or cause of action which the Lessee shall have against the Lessor.

**SECTION 15. Loss of or Damage to Property or Equipment.**

(a) The Lessee hereby assumes all risk of loss of or damage to Property or Equipment, however caused. No loss of or damage to any Property or Equipment shall impair any obligation of the Lessee under this Lease, which shall continue in full force and effect with respect to any lost or damaged Property or Equipment.

(b) In the event of damage of any kind whatsoever to any Property or Equipment (unless the same is determined by the Lessee to be damaged beyond repair) the Lessee, at its own cost and expense, shall place the same in good operating order, repair, condition and appearance. The Lessee's right to any proceeds paid under any insurance policy or policies required under Section 10 of this Lease with respect to any such damage to any Property or Equipment which has been so placed by the Lessee in good operating order, repair, condition and appearance is governed by paragraph (h) of Section 10 hereof.

(c) If any Property or Equipment is lost, stolen, destroyed, seized, confiscated, rendered unfit for use or damaged beyond repair (in the reasonable judgment of the Lessee), or if the use thereof by the Lessee in the ordinary course of business is prevented by the act of any third Person or Persons or governmental instrumentality for a period exceeding forty-five (45) days, or if such Property or Equipment is attached (other than on a claim against

the Lessor as to which the Lessee is not obligated to indemnify the Lessor) and the attachment is not removed within forty-five (45) days, or if a Taking as described in Section 16 shall occur, then in any such event, (i) the Lessee shall promptly notify the Lessor in writing of such event, (ii) on the Basic Rent Payment Date following such event the Lessee shall pay to the Lessor an amount equal to the Adjusted Acquisition Cost of such Property or Equipment, (iii) the Lease Term or Renewal Term of such Property or Equipment shall continue until the Basic Rent Payment Date on which the Lessor receives payment from the Lessee of the amount payable pursuant to this paragraph (c) and of Basic Rent payable, the Variable Component of Basic Rent accrued with respect to such Property or Equipment and any Additional Rent and other amounts owing hereunder, and shall thereupon terminate and (iv) the Lessor shall on such Basic Rent Payment Date transfer title to such Property or Equipment to the Lessee, and the Lessee shall be subrogated to the Lessor's rights resulting from such event. Insurance and condemnation proceeds, if any, received by the Lessor in excess of the Adjusted Acquisition Cost of the affected Property or Equipment, so long as no Event of Default has occurred and is continuing, shall be paid by the Lessor to the Lessee upon the payment by the Lessee of all amounts referred to in the preceding sentence.

**SECTION 16. Condemnation and Dedication of  
Property; Easements.**

(a) If the use, occupancy or title to all or substantially all of a Parcel of Property is taken, requisitioned or sold in, by or on account of actual or threatened eminent domain proceedings or other action by any person or authority having the power of eminent domain (such events collectively referred to as a "Taking"), then the Lease Term or Renewal Term shall terminate as provided in paragraph (c) of Section 15 hereof. Upon receipt of proceeds from any award or sale made in connection with such Taking, if the Lessee has paid all amounts owing under paragraph (c) of Section 15 hereof, so long as no Event of Default has occurred and is continuing, the Lessor shall remit to the Lessee at the direction of the Lessee the net amount of such proceeds remaining after reimbursement for all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Lessor in connection with the negotiation and settlement of any proceedings related to such Taking; provided, however, in connection with the negotiation and settlement of such proceedings, so long as no Event of Default has occurred and is continuing, the Lessor shall act at the direction of the Lessee. A Taking shall be deemed a Taking of substantially all of a Parcel of Property if the remainder of the Parcel of Property is unusable for the Lessee's ordinary business purposes.

(b) If less than substantially all of a Parcel of Property is subject to a Taking, then this Lease shall continue in effect as to the portion of the Parcel not taken and any net proceeds, so long as no Event of Default has occurred and is continuing, shall be paid to the Lessee, provided that, if such proceeds exceed the lesser of \$2,000,000 or 5% of the Adjusted Acquisition Cost of such Parcel of Property, then the portion of such proceeds which shall equal the reduction in the fair market value of such Parcel resulting from such Taking shall be paid to the Lessor. If the Lessor and the Lessee shall disagree as to the

amount of such reduction, the amount of such reduction shall be determined pursuant to the Appraisal Procedure.

(c) So long as no Event of Default has occurred and is continuing, the Lessee shall have the right (i) to grant minor easements for the benefit of any Parcel of Property, (ii) to voluntarily dedicate or convey, as required, portions of any Parcel of Property for road, highway and other public purposes and (iii) to voluntarily execute petitions to have any Parcel of Property or a portion thereof annexed to any municipality or included within any utility, highway or other improvement or service district, provided that no more than minor restoration is required. If any monetary consideration is paid for such easement or dedication, the Lessee shall be entitled to receive and retain such consideration.

The Lessee shall exercise the above power to grant without the joinder of the Lessor, except that the Lessor will cooperate, without unreasonable delay and at the Lessee's expense, as necessary and join in the execution of any appropriate instrument or shall execute any separate instrument as necessary. As a condition precedent to the Lessee's exercise of any of the Lessee's powers under this Section 16, (i) the Lessee shall give the Lessor five (5) Business Days' prior written notice of the proposed action and (ii) the Lessee shall provide to the Lessor a certificate of the Lessee stating that such action will not adversely affect either the fair market value of such Property or the use of such Property for its intended purpose, will not affect the Lessor's ability to exercise its rights and remedies under this Lease and that the Lessee undertakes to remain obligated under this Lease to the same extent as if the Lessee had not exercised its powers under this Section 16 and the Lessee will perform all obligations under such instrument and shall prepare all required documents and provide all other instruments and certificates as the Lessor may reasonably request.

#### SECTION 17. Surrender of Property or Equipment.

(a) Subject to the provisions of Sections 12, 13, 14, 15, 19, 20 and 29 hereof, upon termination of the lease of any Property or Equipment hereunder, the Lessee shall surrender such Property or Equipment to the Lessor. Equipment shall be surrendered by delivering the same to the Lessor at such location within the continental United States as the Lessor and the Lessee may agree and, if they are unable to agree, at such location within the continental United States as the Lessor may reasonably direct. Such Property or Equipment shall be surrendered (i) in the condition required by Section 9(b), (ii) in the case of Aircraft, in the condition required by Section 9(f) of this Lease, or (iii) in the case of Railcars, in the condition required by the standards of the interchange rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. Any cost of removal and delivery of Equipment to the Lessor shall be paid by the Lessee.

(b) Subject to the provisions of Sections 12, 13, 14, 15, 19 and 20 hereof, upon termination of the lease of the Aircraft, the Lessee, at its own expense, will cause such Aircraft, if not then registered in the name of the Lessor, to be registered in the name of the

Lessor or its designee. At the time of such return the Aircraft shall be duly certified as airworthy by the Federal Aviation Administration.

(c) Subject to the provisions of Sections 12, 13, 14, 15, 19, and 20 hereof, upon termination of the lease of the Aircraft, the Lessee shall have the option of having the aircraft engines installed on the Aircraft be engines of the same model as the original Engines or substitute engines suitable and approved by the Federal Aviation Administration for the Aircraft, free and clear of all Liens, encumbrances or rights of others whatsoever and having a value and utility at least equal to, and being in as good operation and condition, ordinary wear and tear excepted, as such original Engines. "Ordinary wear and tear" as used herein is intended to reflect the Federal Aviation Administration regulations pertaining to the requirement of a periodic overhauling of aircraft engines. Thus, in returning the Engines, the Lessee, under normal circumstances, shall be required to overhaul them only if the total flying hours of such Engines would require an overhaul under the Federal Aviation Administration regulations.

(d) Upon the return of the Aircraft, the Lessee shall deliver to the Lessor or its designee, all logs, manuals, inspection data, modification and overhaul records or copies thereof which are applicable to the Aircraft and are of the type that the Lessee customarily retains or is required by law to retain with respect to its own aircraft.

(e) Subject to the provisions of Sections 12, 13, 14, 15, 19 and 20 hereof, upon termination of the lease of any Railcar, the Lessee will, at its own cost and expense, deliver possession of such Railcar to the Lessor at such location or locations in the continental United States as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, or, at the request of the Lessor, permit the Lessor to store such Railcar on such storage tracks as the Lessee may select for a period not exceeding ninety (90) days and transport the same upon disposition of such Railcar, at any time within such ninety (90) day period, to any such location or locations, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Railcar to be at the expense and risk of the Lessee; provided, however, that the Railcars shall be returned to the Lessor, upon such termination, in not more than four groups of Railcars (the number of such groups and the number of Railcars in each such group to be designated by the Lessor). During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Railcar, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of gross negligence or an intentional tortious act of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Railcar returned to the Lessor pursuant to this paragraph (e) shall (i) be in the order, repair and condition as required by Section 9(b) of this Lease, (ii) meet the standards then in effect under the interchange rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered the property of the Lessor and have removed therefrom any such device not so considered the property of the Lessor. During

any such storage period the Lessee shall maintain the Railcars in such manner as owners or lessees of similar units of railroad equipment normally maintain such units owned or leased by them in similar storage circumstances. The assembling, delivery, storage and transporting of the Railcars as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Railcars.

#### SECTION 18. Events of Default.

Any of the following events of default shall constitute an "Event of Default" and shall give rise to the rights on the part of the Lessor described in Section 19 hereof:

(a) Failure of the Lessee to pay amounts due to the Lessor at the time of any scheduled sale of any Parcel of Property or Unit of Equipment hereunder, failure of the Lessee to pay Basic Rent for more than five (5) days after such payment is due pursuant to Section 7 hereof or failure of the Lessee to pay any other amount payable by the Lessee hereunder for more than ten (10) days after demand for such payment has been made; or

(b) Failure to maintain insurance to the extent required by Section 10 hereof, or default in the performance of the covenant contained in paragraph (l) of Section 10 hereof; or

(c) Default in the performance of any other obligation or covenant of the Lessee pursuant to this Lease or any Consent and the continuance of such default for thirty (30) days after written notice to the Lessee by the Lessor or any Assignee; or

(d) The entry of a decree or order for relief in respect of the Lessee or Enogex Inc. by a court having jurisdiction in the premises in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Lessee or Enogex Inc. or of any substantial part of the Lessee's or Enogex Inc.'s property, or ordering the winding up or liquidation of the Lessee's or Enogex Inc.'s affairs, and the continuance of any such decree or order unstayed and in effect for a period of thirty (30) consecutive days; or

(e) The suspension or discontinuance of the Lessee's or Enogex Inc.'s business operations, the Lessee's or Enogex Inc.'s insolvency (however evidenced) or the Lessee's or Enogex Inc.'s admission of insolvency or bankruptcy, or the commencement by the Lessee or Enogex Inc. of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or the consent by the Lessee or Enogex Inc. to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Lessee or Enogex Inc. or of any substantial part of the Lessee's or Enogex Inc.'s property, or the making by the Lessee or Enogex Inc. of an assignment for the benefit of creditors, or the failure of the Lessee or Enogex Inc. generally to pay its debts as such debts

become due, or the taking of corporate action by the Lessee or Enogex Inc. in furtherance of any such action; or

(f) A default or event of default under any instrument evidencing indebtedness (or under the provisions of any agreement pursuant to which such instrument was issued) in excess of \$20,000,000 and providing the holder or holders thereof with recourse against the Lessee (including, without limitation, lease obligations which are shown on the balance sheet of the Lessee or which relate to sale-leaseback transactions) shall occur and as a result thereof the holder or holders thereof (or a trustee or a representative on their behalf) shall cause the indebtedness evidenced by such instrument to become due prior to its stated maturity or any obligation of the Lessee for the payment of the principal amount of such indebtedness shall not be paid when the same shall become due, whether by acceleration or otherwise; provided that no such indebtedness shall be "due" for purposes of this paragraph until any applicable grace period shall have passed; or

(g) Any representation or warranty made by the Lessee in this Lease, any Consent or any document contemplated hereby or thereby proves to be false or inaccurate in any material respect on or as of the date made or deemed made; or

(h) Final judgment for the payment of money in excess of \$1,000,000 shall be rendered against the Lessee by any U.S. Federal or state court and the same shall remain undischarged for a period in excess of thirty (30) days during which execution of such judgment shall not be effectively stayed; or

(i) An Event of Default (as defined in the Agreement for Lease) shall occur under the Agreement for Lease.

#### SECTION 19. Rights upon Default.

Upon the occurrence and continuation of any Event of Default the Lessor may in its discretion declare this Lease to be in default and do any one or more of the following:

(a) Terminate the lease of any or all Property or Equipment leased hereunder;

(b) Whether or not the lease of any Property or Equipment is terminated, take immediate possession of and remove any or all Equipment and other equipment or property of the Lessor in the possession of the Lessee, wherever situated, and for such purpose, enter upon any premises without liability to the Lessee for so doing;

(c) Whether or not any action has been taken under paragraph (a) or (b) above, sell any Property or Equipment (with or without the concurrence or request of the Lessee);

(d) Hold, use, occupy, operate, remove, lease or keep idle any or all Property or Equipment as the Lessor in its sole discretion may determine, without any duty to account to the Lessee with respect to any such action or inaction or for any proceeds thereof; and

(e) Exercise any other right or remedy which may be available under applicable law and in general proceed by appropriate judicial proceedings, either at law or in equity, to enforce the terms hereof or to recover damages for the breach hereof.

Suit or suits for the recovery of any default in the payment of any sum due hereunder or for damages may be brought by the Lessor from time to time at the Lessor's election, and nothing herein contained shall be deemed to require the Lessor to await the date whereon this Lease or the term hereof would have expired by limitation had there been no such default by the Lessee or no such termination or cancellation.

The receipt of any payments under this Lease by the Lessor with knowledge of any breach of this Lease by the Lessee or of any default by the Lessee in the performance of any of the terms, covenants or conditions of this Lease, shall not be deemed to be a waiver of any provision of this Lease.

No receipt of moneys by the Lessor from the Lessee after the termination or cancellation hereof in any lawful manner shall reinstate, continue or extend the Lease Term or any Renewal Term, or affect any notice theretofore given to the Lessee, or operate as a waiver of the right of the Lessor to enforce the payment of Basic Rent or Additional Rent or other charges payable hereunder, or operate as a waiver of the right of the Lessor to recover possession of any Unit of Equipment or Parcel of Property by proper suit, action, proceedings or remedy; it being agreed that, after the service of notice to terminate or cancel this Lease, and the expiration of the time therein specified, if the default has not been cured in the meantime, or after the commencement of any suit, action or summary proceedings or of any other remedy, or after a final order, warrant or judgment for the possession of any Unit of Equipment or Parcel of Property, the Lessor may demand, receive and collect any moneys payable hereunder, without in any manner affecting such notice, proceedings, suit, action, order, warrant or judgment; and any and all such moneys so collected shall be deemed to be payments on account for the use and operation of any Unit of Equipment or the use, operation and occupation of any Parcel of Property, or at the election of the Lessor, on account of the Lessee's liability hereunder. Acceptance of the keys to any Parcel of Property, or any similar act, by the Lessor, or any agent or employee of the Lessor, during the term hereof, shall not be deemed to be an acceptance of a surrender of any Parcel of Property unless the Lessor shall consent thereto in writing.

After any Event of Default, the Lessee shall be liable for, and the Lessor may recover from the Lessee, (i) all Basic Rent accrued to the date of payment, (ii) any Additional Rent owing with respect to all Property or Equipment leased by the Lessee, (iii) all amounts payable pursuant to Sections 11, 25 and 27 hereof and (iv) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes) sustained by the Lessor by reason of such Event of Default and the exercise of the Lessor's remedies with respect thereto, including, in the event of a sale by the Lessor of any Property or Equipment pursuant to this Section 19, all costs and expenses associated with such sale. The amounts payable in clauses (i) through (iv) above are hereinafter sometimes referred to as the "Accrued Default Obligations".

After an Event of Default, the Lessor may sell its interest in any Property and Equipment upon any terms that the Lessor deems satisfactory, free of any rights of the Lessee or any Person claiming through or under the Lessee. In the event of any such sale, in addition to the Accrued Default Obligations, the Lessor shall be entitled to recover from the Lessee, as liquidated damages, and not as a penalty, an amount equal to the Adjusted Acquisition Cost of any Property or Equipment so sold, minus the proceeds of such sale received by the Lessor. Proceeds of sale received by the Lessor in excess of the Adjusted Acquisition Cost of such Property or Equipment sold shall be credited against the Accrued Default Obligations the Lessee is required to pay under this Section 19. If such proceeds exceed the Accrued Default Obligations, or, if the Lessee has paid all amounts required to be paid under this Section 19, such excess shall be paid by the Lessor to the Lessee. As an alternative to any such sale, or if the Lessee converts any Property or Equipment after an Event of Default, or if such Property or Equipment is lost or destroyed, in addition to the Accrued Default Obligations, the Lessor may cause the Lessee to pay to the Lessor, and the Lessee shall pay to the Lessor, as liquidated damages and not as a penalty, an amount equal to the Adjusted Acquisition Cost of such Property or Equipment. In the event the Lessor receives payment pursuant to the previous sentence of this paragraph, the Lessor shall transfer all of the Lessor's right, title and interest in and to the Property and Equipment to the Lessee.

In the event of a sale pursuant to this Section 19, upon receipt by the Lessor of the amounts payable hereunder, the Lessor shall transfer all of the Lessor's right, title and interest in and to the Property and Equipment to the Lessee or purchaser other than the Lessee, as the case may be.

No remedy referred to in this Section 19 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity, and the exercise in whole or in part by the Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by the Lessor of any or all such other remedies. No waiver by the Lessor of any Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default.

With respect to the termination of this Lease as to any Parcel of Property as a result of an Event of Default, the Lessee hereby waives service of any notice of intention to re-enter. The Lessee hereby waives any and all rights to recover or regain possession of any Parcel of Property or to reinstate this Lease as permitted or provided by or under any statute, law or decision now or hereafter in force and effect.

#### SECTION 20. Equipment to be Personal Property.

It is the intention and understanding of the Lessor and the Lessee that all Equipment shall be and at all times remain personal property. The Lessee shall obtain and record such instruments and take such steps as may be necessary to prevent any Person from acquiring any rights in Equipment paramount to the rights of the Lessor by reason of such

Equipment being deemed to be real property. If, notwithstanding the intention of the parties and the provisions of this Section 20, any Person acquires or claims to have acquired any rights in any Equipment superior to the rights of the Lessor, by reason of such Equipment being deemed to be real property, the Lessee shall promptly notify the Lessor in writing of such fact and (unless the basis for such claim is waived or eliminated to the satisfaction of the Lessor within a period of thirty (30) days from the date it is asserted) the Lessee shall on the Basic Rent Payment Date following the expiration of the thirty (30) day period referred to above in this sentence pay to the Lessor an amount equal to the Adjusted Acquisition Cost of such Equipment at the time of payment. On such Basic Rent Payment Date, in addition to the payment of the Adjusted Acquisition Cost, the Lessee shall pay to the Lessor Basic Rent payable, the Variable Component of Basic Rent accrued with respect to such Equipment and any Additional Rent and other amounts owing hereunder and the lease of such Equipment shall thereupon terminate. The Lessor shall on such Basic Rent Payment Date transfer title to such Equipment to the Lessee, and the Lessee shall be subrogated to the Lessor's rights in the affected transaction.

#### SECTION 21. Sale or Assignment by Lessor.

(a) The Lessor shall have the right to finance the acquisition and ownership of the Property or Equipment by selling or assigning its right, title and interest in any or all amounts due from the Lessee or any third party under this Lease; provided, that any such sale or assignment shall be subject to the rights and interests of the Lessee under this Lease.

(b) Any Assignee shall, except as otherwise agreed by the Lessor and such Assignee, have all the rights, powers, privileges and remedies of the Lessor hereunder, and the Lessee's obligations as between itself and such Assignee hereunder shall not be subject to any claims or defense that the Lessee may have against the Lessor. Upon written notice to the Lessee of any such assignment, the Lessee shall thereafter make payments of Basic Rent, Additional Rent and other sums due hereunder to the Assignee, to the extent specified in such notice, and such payments shall discharge the obligation of the Lessee to the Lessor hereunder to the extent of such payments. Anything contained herein to the contrary notwithstanding, no Assignee shall be obligated to perform any duty, covenant or condition required to be performed by the Lessor hereunder, and any such duty, covenant or condition shall be and remain the sole obligation of the Lessor.

#### SECTION 22. Income Taxes.

The Lessor agrees that it will not file any Federal, state or local income tax returns during the Lease Term or Renewal Term, if any, with respect to any Property or Equipment that are inconsistent with the treatment of the Lessee as owner of such Property or Equipment for Federal, state and local income tax purposes.

**SECTION 23. Notices and Requests.**

Any notice or request which by any provision of this Lease is required or permitted to be given by either party to the other shall be deemed to have been given when delivered by hand, deposited in the mail, postage prepaid, by certified or registered mail or, if promptly confirmed by mail as provided above, when sent by telex, or other written telecommunication, addressed to the following specified addresses or to such other addresses or parties as the Lessor or the Lessee may specify by written notice to the other party:

If to the Lessor:

Red Bud Funding, Limited Partnership  
c/o ML Leasing Equipment Corp.  
Project and Lease Finance Group  
North Tower-27th Floor  
World Financial Center  
250 Vesey Street  
New York, New York 10281-1327

Attention: Jean M. Tomaselli  
Telephone: (212) 449-7925  
Telex: 177121  
Answerback: MERSEC  
Telecopy: (212) 449-2854

With a copy of each such notice to be simultaneously given, delivered or served to Gary Carlin at the following address:

ML Leasing Equipment Corp.  
Controller's Office  
World Financial Center  
South Tower-8th Floor  
225 Liberty Street  
New York, New York 10080-6108

If to the Lessee:

Oklahoma Gas and Electric Company  
321 N. Harvey Avenue  
Oklahoma City, OK 73102

Attention: Al M. Strecker  
Telephone: (405) 272-3216  
Telecopy: (405) 272-3760

With a copy in each case to any Assignee at such address as such Assignee may specify by written notice to the Lessor and the Lessee.

**SECTION 24. Covenant of Quiet Enjoyment.**

During the Lease Term or Renewal Term, if any, of any Property or Equipment hereunder and so long as no Event of Default shall have occurred and be continuing, the Lessor recognizes the Lessee's right to quiet enjoyment of the Property or Equipment on the terms and conditions provided in this Lease without any interference from the Lessor or anyone claiming through or under the Lessor.

**SECTION 25. Right to Perform for Lessee.**

(a) If the Lessee fails to perform or comply with any of its covenants or agreements contained in this Lease, the Lessor may, upon notice to the Lessee but without waiving or releasing any obligations or default, itself perform or comply with such covenant or agreement, and the amount of the reasonable expenses of the Lessor incurred in connection with such performance or compliance, shall be payable by the Lessee, not later than ten (10) days after written notice by the Lessor.

(b) Without in any way limiting the obligations of the Lessee hereunder, the Lessee hereby irrevocably appoints the Lessor as its agent and attorney at the time at which the Lessee is obligated to deliver possession of any Parcel of Property or Unit of Equipment to the Lessor, to demand and take possession of such Parcel of Property or Unit of Equipment in the name and on behalf of the Lessee from whomsoever shall be at the time in possession thereof.

**SECTION 26. Merger, Consolidation or Sale  
of Assets.**

The Lessee may not consolidate with or merge into any other corporation or sell all or substantially all of its assets to any Person, except that the Lessee may consolidate with or merge into any other corporation, or sell all or substantially all of its assets to any Person; provided, that the surviving corporation or transferee Person shall assume, by execution and delivery of instruments satisfactory to the Lessor, the obligations of the Lessee hereunder and become successor to the Lessee, but the Lessee shall not thereby be released, without the consent of the Lessor, from its obligations hereunder and; provided, further, that such surviving corporation or transferee Person will, on a pro forma basis, immediately after such consolidation, merger or sale, possess a consolidated net worth and credit rating substantially equivalent to or greater than that of the Lessee immediately prior to such consolidation, merger or sale. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the Lessee and its respective successors and assigns.

**SECTION 27. Expenses.**

The Lessee shall pay all of the out-of-pocket costs and expenses incurred by the Lessor and any Assignee in connection with the negotiation and documentation of this Lease and amendments or waivers thereto including, without limitation, the reasonable fees and disbursements of counsel to the Lessor and counsel to any Assignee.

**SECTION 28. Permitted Contests.**

(a) The Lessee shall not be required, nor shall the Lessor have the right, to pay, discharge or remove any tax, assessment, levy, fee, rent, charge or Lien, or to comply or cause any Parcel of Property or Unit of Equipment to comply with any Legal Requirements applicable to any Parcel of Property or Unit of Equipment or the occupancy, use or operation thereof, so long as no Event of Default exists under this Lease with respect to any Parcel of Property or Unit of Equipment, and, in the opinion of the Lessee's counsel, the Lessee shall have reasonable grounds to contest the existence, amount, applicability or validity thereof by appropriate proceedings, which proceedings in the reasonable judgment of the Lessor and any Assignee, (i) shall not involve any material danger that any Parcel of Property or Unit of Equipment or any Basic Rent or any Additional Rent would be subject to sale, forfeiture or loss, as a result of failure to comply therewith, (ii) shall not affect the payment of any Basic Rent or any Additional Rent or other sums due and payable hereunder, (iii) will not place the Lessor in any danger of civil liability for which the Lessor is not adequately indemnified (the Lessee's obligations under Section 11 of this Lease shall be deemed to be adequate indemnification if no Event of Default or Potential Default exists and if such civil liability is reasonably likely to be less than \$500,000 per Parcel or Unit and \$1,000,000 in the aggregate) or to any criminal liability, (iv) if involving taxes, shall suspend the collection of taxes, and (v) shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Lessee or the Parcel of Property or Unit of Equipment is subject and shall not constitute a default thereunder (the "Permitted Contest"). The Lessee shall conduct all Permitted Contests in good faith and with due diligence and shall promptly after the final determination (including appeals) of any Permitted Contest, pay and discharge all amounts which shall be determined to be payable therein. The Lessor shall cooperate in good faith with the Lessee with respect to all Permitted Contests conducted by the Lessee pursuant to this Section 28.

(b) In the event the Lessor deems, in its sole discretion, that its interests under this Lease or in any Parcel of Property or Unit of Equipment are not adequately protected in connection with a Permitted Contest brought by the Lessee under this Section 28, the Lessee shall give such reasonable security, as may be demanded by the Lessor to insure payment of such tax, assessment, levy, fee, rent, charge or Lien and compliance with Legal Requirements and to prevent any sale or forfeiture of any Parcel of Property or Unit of Equipment, any Basic Rent or any Additional Rent by reason of such nonpayment or noncompliance. The Lessee hereby agrees that the Lessor may assign such security provided by the Lessee to any Assignee.

(c) At least ten (10) days prior to the commencement thereof, the Lessee shall notify the Lessor in writing of any such proceeding in which the amount in contest exceeds \$500,000, and shall describe such proceeding in reasonable detail. In the event that a taxing authority or subdivision thereof proposes an additional assessment or levy of any tax for which the Lessee is obligated to reimburse the Lessor under this Lease, or in the event that the Lessor is notified of the commencement of an audit or similar proceeding which could result in such an additional assessment, then the Lessor shall in a timely manner notify the Lessee in writing of such proposed levy or proceeding.

#### SECTION 29. Leasehold Interests.

The following provisions relate to each lease (a "Ground Lease") under which a leasehold interest in a Parcel of Property is subleased to the Lessee hereunder:

(a) The Lessee hereunder covenants and agrees to perform and to observe all of the terms, covenants, provisions, conditions and agreements of the underlying Ground Leases on the Lessor's part as lessee thereunder to be performed and observed (including, without limitation, payment of all rent, additional rent and other amounts payable by the Lessor as lessee under any Ground Lease) to the end that all things shall be done which are necessary to keep unimpaired the rights of the Lessor as lessee under any Ground Lease. The Lessee further covenants that it shall cause to be exercised any renewal option contained in the Ground Lease which relates to renewal occurring in whole or in part during the term of this Lease.

(b) The Lessee covenants and agrees pursuant to Section 11 hereof to indemnify and hold harmless the Lessor and any Assignee from and against any and all liability, loss, damage, suits, penalties, claims and demands of every kind and nature (including, without limitation, reasonable attorneys' fees and expenses) by reason of the Lessee's failure to comply with any Ground Lease or the provisions of this Section 29.

(c) The Lessor and the Lessee agree that the Lessor shall have no obligation or responsibility to provide services or equipment required to be provided or repairs or restorations required to be made in accordance with the provisions of any Ground Lease by the lessor thereunder. The Lessor shall in no event be liable to the Lessee nor shall the obligations of the Lessee hereunder be impaired or the performance thereof excused because of any failure or delay on the part of the lessor under any Ground Lease in providing such services or equipment or making such restorations or repairs and such failure or delay shall not constitute a basis for any claim against the Lessor or any offset against any amount payable to the Lessor under this Lease.

(d) If the Lessor's interest under any Ground Lease shall expire, terminate or otherwise be extinguished, the Lease of the Parcel of Property to which such Ground Lease relates shall thereupon terminate as provided in this paragraph (d). Upon such expiration, termination or extinguishment, the Lessee shall be required to purchase the Lessor's interest in such Parcel of Property at its Adjusted Acquisition Cost. If the Lessee shall be required

to purchase the Lessor's interest in such affected Parcel, then (i) on the Basic Rent Payment Date next succeeding such event, the Lessee shall pay to the Lessor an amount equal to the Adjusted Acquisition Cost of such Property, (ii) the Lease Term or Renewal Term of such Property shall continue until the date on which the Lessor receives payment from the Lessee of the amount payable pursuant to this paragraph (d) and of all Basic Rent payable, the Variable Component of Basic Rent accrued with respect to such Parcel of Property and any Additional Rent and other amounts owing hereunder, and shall then terminate upon the payment of such amounts and (iii) the Lessor shall on such date transfer title to the Lessor's interest in such Parcel to the Lessee.

(e) The Lessee shall ensure that each Ground Lease shall be a Mortgageable Ground Lease.

### SECTION 30. Miscellaneous.

(a) All agreements, indemnities, representations and warranties, and the obligation to pay Additional Rent contained in this Lease shall survive the expiration or other termination hereof.

(b) This Lease, the Unit Leasing Records and the AFL Unit Leasing Records covering Property or Equipment leased pursuant hereto and the instruments, documents or agreements referred to herein constitute the entire agreement between the parties and no representations, warranties, promises, guarantees or agreements, oral or written, express or implied, have been made by any party hereto with respect to this Lease or the Property or Equipment, except as provided herein or therein.

(c) This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purpose unless it is in writing, signed by the party against whom enforcement thereof is sought. A waiver on one occasion shall not be construed to be a waiver with respect to any other occasion.

(d) The captions in this Lease are for convenience of reference only and shall not be deemed to affect the meaning or construction of any of the provisions hereof. Any provision of this Lease which is prohibited by law 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 the parties hereto shall negotiate in good faith appropriate modifications to reflect such changes as may be required by law, and, as nearly as possible, to produce the same economic, financial and tax effects as the provision which is prohibited or unenforceable; and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee and the Lessor hereby waive any provision of law which renders any provision hereof prohibited or unenforceable, in any respect. THIS LEASE HAS BEEN DELIVERED IN THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN

ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE; PROVIDED, HOWEVER, THAT THE PARTIES HERETO SHALL BE ENTITLED TO ALL RIGHTS CONFERRED BY 49 U.S.C. § 11303; AND FURTHER PROVIDED, THAT TO THE EXTENT THAT ENFORCEMENT OF RIGHTS AND REMEDIES UNDER THIS LEASE PURSUANT TO THE LAWS OF THE STATE WHERE ANY PARCEL OF PROPERTY IS LOCATED REQUIRES THE APPLICATION OF SUCH STATE'S LAW, THEN, TO SUCH EXTENT, SUCH ENFORCEMENT SHALL BE GOVERNED BY THE LAW OF SUCH STATE. THE LESSEE HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND ANY COURT IN THE STATE OF NEW YORK LOCATED IN THE CITY AND COUNTY OF NEW YORK IN ANY ACTION, SUIT OR PROCEEDING BROUGHT AGAINST IT AND RELATED TO OR IN CONNECTION WITH THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LESSEE HEREBY WAIVES AND AGREES NOT TO ASSERT BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURTS, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER, OR THAT THIS LEASE OR ANY DOCUMENT OR ANY INSTRUMENT REFERRED TO HEREIN OR THE SUBJECT MATTER HEREOF MAY NOT BE LITIGATED IN OR BY SUCH COURTS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LESSEE AGREES NOT TO SEEK AND HEREBY WAIVES THE RIGHT TO ANY REVIEW OF THE JUDGMENT OF ANY SUCH COURT BY ANY COURT OF ANY OTHER NATION OR JURISDICTION WHICH MAY BE CALLED UPON TO GRANT AN ENFORCEMENT OF SUCH JUDGMENT. THE LESSEE AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL TO THE ADDRESS FOR NOTICES SET FORTH IN THIS LEASE OR ANY METHOD AUTHORIZED BY THE LAWS OF NEW YORK. THE LESSEE EXPRESSLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM RELATED TO THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY. THE LESSEE ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION 30(d) HAVE BEEN BARGAINED FOR AND THAT IT HAS BEEN REPRESENTED BY COUNSEL IN CONNECTION THEREWITH.

(e) In connection with any sale of Property or Equipment pursuant to Section 12, 13, 14, 15, 19, 20 or 29 of this Lease, when the Lessor transfers title, such transfer shall be on an as-is, non-installment sale basis, without warranty by, or recourse to, the Lessor. As between the Lessee and the Lessor, the Lessor agrees that such transfer shall be free and clear of Liens created by the Lessor pursuant to the requirements of a Credit Agreement. At such time as the Lessor transfers its interest in a Parcel of Property which is subject to a Ground Lease, the Lessor will transfer to the purchaser of such Parcel its interest in such Ground Lease.

(f) In connection with, and as a condition to, the sale or purchase of Property or Equipment pursuant to Section 12, 13, 14, 15, 19, 20 or 29, the Lessee shall pay or shall cause the purchaser of such Property or Equipment to pay in addition to the purchase price, all transfer taxes, transfer gains taxes, mortgage recording tax, if any, recording and filing fees and all other similar taxes, fees, expenses and closing costs (including reasonable attorneys' fees) in connection with the conveyance of such Property or Equipment to the Lessee or any purchaser; provided, that the Lessee or any purchaser shall not be required to pay U.S. Federal net income taxes or state and local net income taxes which are imposed by a state or locality because of a relationship between the Lessor and such state or locality unrelated to ownership of such Parcel of Property or Unit of Equipment.

(g) When used in Section 12, 13, 14, 15, 20 or 29 of this Lease, the phrase "the Variable Component of Basic Rent accrued" means the Variable Component of Basic Rent accrued through the date of termination of this Lease pursuant to such Section which has not been included in Basic Rent then payable or previously paid.

(h) During the Lease Term or Renewal Term, if any, of any Property or Equipment hereunder and so long as no Event of Default shall have occurred and be continuing, the Lessor shall not voluntarily create any Lien on any Property or Equipment, except for any Lien created pursuant to the requirements of a Credit Agreement.

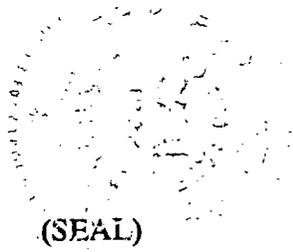
#### SECTION 31. No Recourse.

The Lessor's obligations hereunder are intended to be the obligations of the limited partnership and of the corporation which is the general partner thereof only and no recourse for the payment of any amount due under this Lease or for any claim based thereon or otherwise in respect thereof, shall be had against any limited partner of the Lessor or any incorporator, shareholder, officer, director or Affiliate, as such, past, present or future of such corporate general partner or of any corporate limited partner or of any successor corporation to such corporate general partner or any corporate limited partner of the Lessor, or against any direct or indirect parent corporation of such corporate general partner or of any limited partner of the Lessor or any other subsidiary or Affiliate of any such direct or indirect parent corporation or any incorporator, shareholder, officer or director, as such, past, present or future, of any such parent or other subsidiary or Affiliate, it being understood that the Lessor is a limited partnership formed for the purpose of the transactions involved in and relating to this Lease on the express understanding aforesaid. Nothing contained in this Section 31 shall be construed to limit the exercise or enforcement, in accordance with the terms of this Lease and any other documents referred to herein, of rights and remedies against the limited partnership or the corporate general partner of the Lessor or the assets of the limited partnership or the corporate general partner of the Lessor.

**SECTION 32. No Merger.**

**There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in any Parcel of Property by reason of the fact that the same person acquires or holds, directly or indirectly, this Lease or the leasehold estate hereby created or any interest herein or in such leasehold estate as well as the fee estate in any Parcel of Property or any interest in such fee estate.**

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease to be executed and delivered by their duly authorized officers as of the day and year first above written.



Red Bud Funding, Limited Partnership  
by Red Bud Capital, Inc., its General Partner

By *Teresa A. Miles*  
Name: **Teresa A. Miles**  
Title: **Vice President and  
Assistant Secretary**

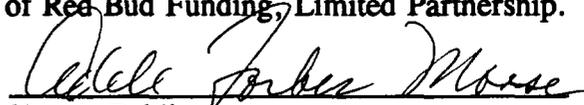
Oklahoma Gas and Electric Company

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

(SEAL)

State of New York            )  
                                          ) ss.:  
County of New York         )

On this 19th day of June, 1992 before me personally appeared Teresa A. Miles, to me personally known, who being by me duly sworn, says that she is the Vice President and Assistant Secretary of Red Bud Capital, Inc., the general partner of Red Bud Funding, Limited Partnership, that the seal affixed to the foregoing instrument is the corporate seal of said general partner, that said instrument was signed and sealed on behalf of Red Bud Funding, Limited Partnership, by said general partner by the authority of said general partner's Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said general partner on behalf of Red Bud Funding, Limited Partnership.

  
Notary Public

(SEAL)

My Commission Expires:

ADELE FORBES MORSE  
Notary Public, State of New York  
No. 31-4969830  
Qualified in New York County  
Commission Expires July 30, 1992

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease to be executed and delivered by their duly authorized officers as of the day and year first above written.

Red Bud Funding, Limited Partnership  
by Red Bud Capital, Inc., its General Partner

(SEAL)

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

Oklahoma Gas and Electric Company

(SEAL)

By   
Name: A. M. Strecker  
Title: Vice President and Treasurer

State of Oklahoma            )  
                                          ) ss.:  
County of Oklahoma         )

On this 23rd day of June, 1992 before me personally appeared A. M. Strecker, to me personally known, who being by me duly sworn, says that he is the Vice President and Treasurer of Oklahoma Gas and Electric Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

  
Notary Public

My Commission Expires:

*May 10, 1994*

**EXHIBIT A**

<b>Type of Equipment or Property</b>	<b>Initial Term (in months)</b>	<b>Extended Term (in months)</b>	<b>Renewal Term (in months)</b>
<b>Railcars</b>	12	468	120
<b>automobiles</b>	12	*	*
<b>trucks</b>	12	*	*
<b>telecommunica- tions equipment</b>	12	*	*
<b>computers and computer peripheral equipment</b>	12	*	*
<b>real property</b>	60	*	*
<b>aircraft</b>	12	*	*
<b>other*</b>			

---

\* As agreed in writing by Lessor, Lessee and any Assignee and as reflected in the applicable Unit Leasing Record or AFL Unit Leasing Record.

EXHIBIT B

AFL UNIT LEASING RECORD to Lessor: Red Bud Funding, Limited Partnership  
the Lease Agreement, dated Lessee: Oklahoma Gas and Electric Company  
as of June 25, 1992,  
between Red Bud Funding, Limited Partnership,  
as lessor, and Oklahoma Gas and Electric Company,  
as lessee (the "Lease Agreement").

A. AFL ULR No.: \_\_\_\_  
Effective Date of this AFL  
Unit Leasing Record ("AFL ULR") \_\_\_\_\_, 19\_\_.

B. PLEASE COMPLETE THE FOLLOWING STATEMENTS, IF APPLICABLE:

1. This AFL ULR relates to [Deed/Ground Lease] dated \_\_\_\_\_ 19\_\_.

PROPERTY DESCRIPTION AND RENTAL INFORMATION.

C. Type of Property (use category specified in Exhibit A to the Lease Agreement)

\_\_\_\_\_

D. Specific Description: (See Schedule A hereto if more space needed)

\_\_\_\_\_

E. Location of  
Property

\_\_\_\_\_

State

County

City

F. Unit Acquisition Cost under the Agreement for Lease is \$\_\_\_\_\_.

G. If the Effective Date of this AFL ULR is after the first day of the month and prior to the Lease Rate Date in such month, the partial first month's Basic Rent for Property placed under lease by this AFL ULR will be paid from the date of this AFL ULR until the end of the month on the Basic Rent Payment Date in such month. If the Effective Date of the AFL ULR falls on or after the Lease Rate Date, the partial first month's Basic Rent will be paid from the date of this AFL ULR until the end of the month on the next succeeding Basic Rent Payment Date.

H. The Initial Term, Extended Term and Renewal Term for the Property placed under lease pursuant to this AFL ULR will be in accordance with Exhibit A to the Lease Agreement.

I. The Basic Rent is as defined in the Lease Agreement. The Monthly Rent Component will be in accordance with Schedule B hereto.

- J. The Property will be fully amortized as of the last day of the Lease Term on \_\_\_\_\_  
\_\_\_\_, \_\_\_\_.
- K. The Basic Rent for the Renewal Term (after the Property is fully amortized) equals fair market rental value.
- L. Termination of the lease of the Property leased pursuant to this AFL ULR will be in accordance with the Lease Agreement.

M. ACKNOWLEDGEMENT AND EXECUTION

The undersigned Lessor hereby leases to the undersigned Lessee, and the Lessee acknowledges delivery to it in good condition of the Property described on this AFL ULR. The Lessee agrees to pay the Basic Rent, Additional Rent and additional payments set forth in the Lease Agreement. The covenants, terms and conditions of this lease are those appearing in the Lease Agreement, as it may from time to time be amended, which covenants, terms and conditions are hereby incorporated by reference. The terms used herein have the meaning assigned to them in the Lease Agreement.

- |                                                |                                                |
|------------------------------------------------|------------------------------------------------|
| N. Oklahoma Gas and Electric Company<br>Lessee | Red Bud Funding, Limited Partnership<br>Lessor |
| O. By _____<br>Authorized Signature            | By _____<br>Authorized Signature               |

EXHIBIT C

UNIT LEASING RECORD to the Lease Agreement, dated as of June 25, 1992, between Red Bud Funding, Limited Partnership, as lessor, and Oklahoma Gas and Electric Company, as lessee (the "Lease Agreement").

Lessor: Red Bud Funding, Limited Partnership  
Lessee: Oklahoma Gas and Electric Company

A. ULR No.: \_\_\_\_  
Effective Date of this  
Unit Leasing Record ("ULR") \_\_\_\_\_, 19\_\_.

B. PLEASE COMPLETE THE FOLLOWING STATEMENTS, IF APPLICABLE:

1. This ULR relates to [Deed/Ground Lease/  
Bill of Sale/Invoice] dated \_\_\_\_\_, 19\_\_.

PROPERTY OR EQUIPMENT DESCRIPTION AND RENTAL INFORMATION

C. Type of Property or Equipment (use category specified in Exhibit A to the Lease Agreement)

\_\_\_\_\_

D. Specific Description, including, in the case of Railcars, identification number (See Schedule A hereto if more space needed)

\_\_\_\_\_  
\_\_\_\_\_

E. Location of Property  
or Equipment \_\_\_\_\_

State

County

City

F. Basic Cost      Additional Charges      Sale & Use Tax      Acquisition Cost

\$\_\_\_\_\_ + \$\_\_\_\_\_ + \$\_\_\_\_\_ = \$\_\_\_\_\_

G. If the Effective Date of this ULR is after the first day of the month and prior to the Lease Rate Date in such month, the partial first month's Basic Rent for Property or Equipment placed under lease by this ULR will be paid from the date of this ULR until the end of the month on the Basic Rent Payment Date in such month. If the Effective Date of this ULR falls on or after the Lease Rate Date, the partial first month's Basic



State of New York            )  
                                          ) ss.:  
County of New York         )

On this    th day of June, 1992 before me personally appeared Teresa A. Miles, to me personally known, who being by me duly sworn, says that she is the Vice President and Assistant Secretary of Red Bud Capital, Inc., the general partner of Red Bud Funding, Limited Partnership, that the seal affixed to the foregoing instrument is the corporate seal of said general partner, that said instrument was signed and sealed on behalf of Red Bud Funding, Limited Partnership, by said general partner by the authority of said general partner's Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said general partner on behalf of Red Bud Funding, Limited Partnership.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:

State of Oklahoma            )  
                                          ) ss.:  
County of                        )

On this \_\_\_ day of \_\_\_\_\_, 1992 before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Oklahoma Gas and Electric Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires: